

**THE WATER RESOURCES MANAGEMENT
ACT, 2011**

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THIRD SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 21 of 2011

Date of Assent: 15th April, 2011

An Act to establish the Water Resources Management Authority and define its functions and powers; provide for the management, development, conservation, protection and preservation of the water resource and its ecosystems; provide for the equitable, reasonable and sustainable utilisation of the water resource; ensure the right to draw or take water for domestic and non-commercial purposes, and that the poor and vulnerable members of the society have an adequate and sustainable source of water free from any charges; create an enabling environment for adaptation to climate change; provide for the constitution, functions and composition of catchment councils, sub-catchment councils and water users associations; provide for international and regional co-operation in, and equitable and sustainable utilisation of, shared water resources; provide for the domestication and implementation of the basic principles and rules of international law relating to the environment and shared water resources as specified in the treaties, conventions and agreements to which Zambia is a State Party; repeal and replace the Water Act, 1949; and provide for matters connected with, or incidental to, the foregoing.

[18th April, 2011

ENACTED by the Parliament of Zambia.

PART I
PRELIMINARY

1. This Act may be cited as the Water Resources Management Act, 2011, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title
and
commence-
ment

2. In this Act, unless the context otherwise requires—
“ abstraction ” means the removal of water from any water resource, whether temporarily or permanently, and

Interpretation

- “abstract” shall be construed accordingly;
- “agricultural purposes” means the use of water for commercial—
- (a) irrigation;
 - (b) fishing; or
 - (c) livestock husbandry;
- “allocation” means the quantity of water set aside for a specific purpose or that which the permit holder is entitled to take or use for a particular purpose as specified in the permit, and “allocate” or “allocated” shall be construed accordingly;
- “appointed date” means the date appointed by the Minister under section *one*;
- “appropriate authority” means the Minister for the time being having responsibility for, or such public or statutory officer or body having powers under any other law over, any natural resource situated in, or other activity in, a catchment or sub-catchment and includes a public or statutory officer, body or institution under the following—

Act No 12 of
1998

Act No. 12 of
2011

Act No. 28 of
1997

Cap. 173

Cap. 184

Cap. 185

Act No. 7 of
2008

Act No. 22 of
2011

Cap. 199

Cap. 466

Cap. 283

Cap. 295

Cap 416

Cap. 281

Act No. 13 of
2010

Act No. 9 of
2006

Act No. 11 of
2006

Act No. 14 of
2009

(a) the Zambia Wildlife Act, 1998;

(b) the Environmental Management Act, 2011;

(c) the Water Supply and Sanitation Act, 1997;

(d) the National Heritage Conservation Commission Act;

(e) the Lands Act;

(f) the Lands and Deeds Registry Act;

(g) the Mines and Minerals Development Act, 2008;

(h) the Fisheries Act, 2011;

(i) the Forests Act;

(j) the Inland Water Shipping Act;

(k) the Town and Country Planning Act;

(l) the Public Health Act;

(m) the Standards Act;

(n) the Local Government Act;

(o) the Disaster Management Act, 2010;

(p) the Citizens Economic Empowerment Act, 2006;

(q) the Zambia Development Agency Act, 2006;

(r) the Public Private Partnership Act, 2009;

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- (s) the Tourism and Hospitality Act, 2010; Act No. of 2010
- (t) the Energy Regulation Act; and Cap. 436
- (u) any treaty, agreement or convention, to which Zambia is a State Party, relating to the management of a shared water resource;
- “ aquifer ” means any geological formation which absorbs, stores and transmits ground water;
- “ arbitration ” means the resolution of disputes or conflicts under this Act or in accordance with the Arbitration Act, 2000; Act No. 19 of 2000
- “ Authority ” means the Water Resources Management Authority established under section *seven*;
- “ biodiversity ” means the variability among living organisms from all sources, including genetically modified organisms, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part of;
- “ Board ” means the Board of the Authority constituted under section *eleven*;
- “ borehole ” includes an excavation or any artificially constructed or improved underground cavity, as may be prescribed, which can be used for —
- (a) intercepting, collecting or storing water in, or removing water from, an aquifer;
- (b) observing and collating data and information on water in an aquifer; or
- (c) recharging an aquifer; but does not include a well;
- “ brackish ” means salty;
- “ catchment ” means a geographical area which naturally drains into a water resource and from which the water resource receives surface or ground flow that originates from rainfall;
- “ catchment council ” means a catchment council constituted under section *seventeen*;
- “ catchment manager ” means a person appointed as a catchment manager under section *twenty-one*;
- “ Chairperson ” means the person appointed as Chairperson of the Board under section *eleven*;
- “ charges ” include levies and tariffs;

- “ climatic ” means amounts of seasonal precipitation and evapo-transpiration contributing to the water balance and water resource flow;
- “ climate change ” means weather changes such as heat waves, extreme weather, temperature and precipitation with its modulating influences such as microbial contamination pathways, transmission dynamics, agro-ecosystems, hydrology, socio-economic and demographic factors and their resultant effects on the water resources and human health and wellbeing;
- “ commercial livestock husbandry ” means the use of water for the sustenance and support of livestock which are not kept only for the subsistence needs of a household;
- “ commercial fishing ” means the catching of fish in bulk for sale or in order to realise a profit, and includes aquaculture;
- “ commercial irrigation ” means the use of water for farming that exceeds the number of cubic meters a day as prescribed;
- “ committee ” means a committee of the Board established under section *twelve*;
- “ conservancy authority ” means any person or institution who, either voluntarily or under the authority of any law, manages, conserves, preserves, maintains or protects the environment;
- “ constructor ” means any person or institution licensed by the Board to construct waterworks under section *eighty-eight*;
- “ customary area ” means the area described as such in the Schedules to the Zambia (State Lands and Reserves) Orders, 1928 to 1964 and the Zambia (Trust Lands) Orders, 1947 to 1964, as specified under the Lands Act;
- “ Director ” means the person appointed as such under section *twenty-seven*;
- “ Director-General ” means the person appointed as such under section *fifteen*;
- “ district council ” includes a city council and municipal council;
- “ domestic or non-commercial purposes ” means the household use of water for—
- (a) drinking, cooking, washing, bathing or sanitation;
 - (b) subsistence gardening and support of livestock not being commercial livestock husbandry;

- (c) subsistence fishing;
 - (d) the making of bricks for the private use of the occupier;
 - (e) the dipping of livestock not being commercial livestock husbandry; or
 - (f) firefighting; for which no permit is required for the use of that water under this Act;
- “driller ” means any person or institution licensed by the Board to drill boreholes under section *eighty-eight*;
- “easement ” means the right, under a permit, to enter, use and occupy so much of the land of another person as may be necessary for, or incidental to, the construction or maintenance of waterworks authorised under this Act or the exercise or enjoyment of any entitlement conferred by a permit;
- “ecological ” means an amount of seasonal water needed for environmental and ecosystem maintenance and sustainability, including the quantities and carrying capacities of ecosystems;
- “ecosystem ” means the biological community of interacting organisms and their physical environment;
- “effluent ” means waste water or fluid of domestic, agricultural, trade, industrial or other origin, treated or untreated and discharged, directly or indirectly, into the aquatic environment;
- “engineer ” means an engineer approved by the Board under section *ninety*;
- “Environmental Agency ” means the Agency established under the Environmental Management Act, 2011;
- “environmental flow ” means the water provided within a water resource to maintain ecosystems and their benefits where there are competing users and where flows are regulated by means of waterworks or management instruments;
- “environmental purposes ” means the use of water for the preservation and maintenance of the ecosystem;
- “equitable ” means fair, reasonable and just;
- “existing right ” means an entitlement to use water granted under the repealed Act or any permit to discharge effluent granted under any other law;
- “Fund ” means the Water Development Trust Fund established under section *one hundred and fifty-five*;

Act No.12
of 2011

Cap. 198

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- “gender” means female or male and the role individuals play in society as a result of their sex and status;
- “geographic” means the relative position and size of an area in terms of a catchment;
- “ground water” means any water resource found under the surface of the ground;
- “HIV and AIDS” means the human immunodeficiency virus and the acquired immunodeficiency syndrome;
- “hydroelectric purposes” means the use of water for the production of electricity;
- “hydrographic” means the measured seasonal quantities and quality of water available in a water resource in terms of water levels and streams contributing to the water level, sedimentation and chemical quality;
- “hydrologic” means the seasonal quantities of water resources available in a water resource in terms of river flow, underground flow and surface runoff;
- “hydrological” means all the elements relating to the properties, occurrence and movement of water;
- “hydrological cycle” means the complete cycle of phenomena through which water passes from the atmosphere to the earth and back to the atmosphere;
- “hydrological station” means a place where measurements and observations of the flow, level or other parameter of any surface or ground water are taken, made or recorded;
- “industrial purposes” includes the use of water for manufacturing or commercial activities, processing, construction, fabrication, quarrying, smelting, mechanical or slaughtering;
- “licence” means a licence granted to a constructor or driller under section *eighty-eight*;
- “licensee” means a person holding a licence granted under this Act;
- “livestock” has the meaning assigned to it in the Animal Health Act, 2010;
- “local authority” means a city council, municipal council or district council as established under the Local Government Act;
- “management” in relation to a water resource includes—
- (a) planning the sustainable development of the water resource and providing for the implementation of any catchment management plan and national water resources strategy and plan; and
- Act No. of
27 2010
- Cap. 281

- (b) promoting the rational and optimal utilisation, protection, conservation and control of the water resource;
- “ member ” means a member of the Board;
- “ mining ” has the meaning assigned to it in the Mines and Minerals Development Act, 2008; Act No. 7 of 2008
- “ mining operations ” means operations carried out in the course of mining;
- “ mining purposes ” means the use of water for mining operations;
- “ municipal purposes ” means the supply of water and sanitation services in accordance with the Water Supply and Sanitation Act, 1997; Act No. 28 of 1997
- “ national water resources strategy and plan ” means a strategy formulated by the Authority under section *thirty-one*;
- “ navigational purposes ” means the use of water for sailing, transport, hunting, recreational fishing, recreation or tourism;
- “ occupier ” in relation to land, means—
- (a) a statutory leaseholder, sub-lease and under-lease holder and any other person having a legal or contractual right to land or to the administration of land;
 - (b) any person who, by any established right, custom or estate is, or is entitled to be, the holder or possessor of land; or
 - (c) any person to whom a mining licence or mining location has been granted under the Mines and Minerals Development Act, 2008; Act No. 7 of 2008
- “ permit ” means an authorisation for the right to use of water for the purposes specified in this Act, for the construction of any water works or for the sinking, altering or deepening of any borehole in a water shortage area;
- “ permit holder ” means a person holding a permit granted under this Act;
- “ pollution ” in relation to water, means—
- (a) any direct or indirect contamination or alteration of the biological, chemical or physical properties of water, including changes in colour, odour, taste, temperature or turbidity; or
 - (b) any discharge of any gaseous, liquid, solid or other substance into any water resource;

as will, or is likely to, create a nuisance or render the water detrimental, harmful or injurious to, or potentially harmful or injurious to, the health, safety or welfare of any human being, bird, fish or other aquatic ecosystem, livestock, wildlife or the environment;

“recreational fishing” means the catching of fish for amusement or as a sporting activity;

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“repealed Act” means the Water Act;

“reserve” in relation to a water resource, means the quantity and quality of water required to—

(a) satisfy basic human needs of all the people who are, or may be, supplied from the water resource; and

(b) protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource;

“resource quality” means the quality of all aspects of a water resource including the—

(a) water quality stipulated for the reserve;

(b) quantity, pattern, timing, water level and assurance of environmental flow;

(c) physical, chemical and biological characteristics of the water;

(d) character and condition of the instream and riparian habitat; and

(e) characteristics, condition and distribution of the aquatic life;

“resource quality objectives” means the level to be achieved and maintained in each aspect of the resource quality for the water resource;

“riparian habitat” includes the physical structure and associated areas of a water resource which are commonly characterised by alluvial soils and inundated or flooded to an extent, and with a frequency, sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas;

“riparian land” means any land on, or along the boundary of the whole or any portion of, which a water resource exists;

“shared watercourse” means a water resource that forms, or is bisected by, an international border between Zambia and another State or among States including Zambia;

- “ sub-catchment council ” means a sub-catchment council constituted under section *nineteen*;
- “ subsistence ” means that which is necessary for the sustenance of life or any activity undertaken to provide for the needs of a household;
- “ subsistence fishing ” means the catching of fish for sustenance;
- “ supply of water in bulk ” means a supply of water for distribution to the public by, or on behalf of, any person or utility;
- “ surface water ” means all water found on or below the bed of a water resource and includes water in storage works, drainage works or permanent pools;
- “ sustainable ”, in relation to water, means the human use of a water resource so that it may yield the greatest continuous benefit to the present generations while maintaining its potential to meet the needs and aspirations of future generations;
- “ traditional authority ” means a Chief who has been recognised under the Chiefs Act;
- “ training and research purposes ” means the use of water for education, skills training and scientific and technological research;
- “ use ” means an entitlement limited to the beneficial, reasonable and equitable use of water for the purposes and up to the limit prescribed or specified by a permit and includes—
- (a) abstraction, obstruction or diversion of water;
 - (b) storing water;
 - (c) discharge of materials or substances into water;
 - (d) dewatering of a mine, quarry or any land;
 - (e) altering the bed, banks, course or characteristics of a water resource; or
 - (f) any prescribed activity of a kind relating to water;
- but does not include a guarantee as to the availability of water;
- “ utility ” means any person who supplies water in bulk;
- “ Vice-Chairperson ” means the person appointed as Vice-Chairperson of the Board under section *eleven*;
- “ waste water ” means water which has been used for domestic, commercial, agricultural, trading, mining or industrial purposes or other purposes and as a result of such uses may or may not cause water pollution when discharged into the aquatic environment;

- “water” means water in its natural state, including—
- (a) surface water;
 - (b) water which rises naturally on any land or drains or falls naturally on to any land, even if it does not visibly join any watercourse; or
 - (c) ground water;
- “Water Board” means the Board established under the repealed Act;
- “watercourse” means a system of surface waters and ground waters constituting, by virtue of their physical relationship, a unitary whole and normally flowing into a common terminus;
- “water resource” includes water, any river, spring, hot spring, pan, lake, pond, swamp, marsh, stream, watercourse, estuary, aquifer, artesian basin or other body of naturally flowing or standing water;
- “Water resource protection area” means a catchment, sub-catchment or geographic area that is declared, by the Minister, as a water resource protection area under section *twenty-nine*;
- “water shortage area” means an area declared, by the Minister, under section *fifty*, to be a water shortage area;
- “water storage works” includes a dam, reservoir, barrage, weir or any facility for storing water, exceeding the volume prescribed, for periods of time, but does not include a borehole;
- “water resources protection area” means a catchment, sub-catchment or geographic area that is declared, by the Minister, as a water resource protection area under section *twenty-nine*;
- “water users association” means an association constituted under section *twenty four*;
- “water works” means—
- (a) a canal, channel, embankment, filter, filterbed, pipeline, pumping plant, purification plant, plant for the generation of hydroelectric power or water storage works;
 - (b) any accessory, apparatus, appliance, fitting, machinery or other thing constructed, erected or used for, or in connection with, the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water including effluent or waste water, conservation of rain water or the development of water power; or

(c) any gauge post, measuring weir or other appliance erected or used for undertakings authorised by, or under, this Act;

and includes any area around any hydraulic structure or water works, necessary for their use, operation, maintenance and protection; and

“ Zambia Bureau of Standards ” means the Bureau of Standards established under the Standards Act.

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3. Subject to this Act and notwithstanding any other law, instrument or document, all water, in its natural state, in Zambia vests in the President and is held by the President on behalf and benefit of the people of Zambia.

Vesting of water in President

4. Notwithstanding any other law, a person shall not own any water, in its natural state, in Zambia and no property in such water shall be acquired.

No ownership of water

5. (1) After the commencement of this Act and notwithstanding when any existing entitlement to use water, in its natural state, commenced but subject to the Second Schedule—

(a) no entitlement shall exist to use that water except as provided under this Act; and

(b) allocation of that water for various purposes shall be in accordance with this Act.

Water allocation and traditional practices in water resource management

(2) The Authority shall ensure that traditional practices as recognised in customary areas and which are beneficial to water resource management are taken into account in the management of water resources.

6. The management of water resources in Zambia shall be governed by the following principles—

Principles governing water resources management

(a) water resources shall be managed in an integrated and sustainable manner;

(b) water is a basic human need and as such domestic and non-commercial needs shall enjoy priority of allocation use;

(c) the environment is a water user and shall enjoy second priority of allocation use to the human need;

(d) there shall be equitable access to water;

(e) water resources shall be managed in such a manner as will help combat malaria and other waterborne diseases in order to ensure access to safe water;

(f) water shall be used efficiently, sustainably and beneficially in the public interest;

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- (g) water has an economic and a social value and this shall be reflected in its use, but all domestic and non-commercial use of water shall not be required to obtain a water permit;
 - (h) water has an economic value and the cost of facilitating its use has a significant administrative cost element and this shall be reflected in the charges for water permits for the right to use water for economic purposes;
 - (i) there shall be no private ownership of water and no authorisation for its use shall be in perpetuity;
 - (j) the State shall be the trustee of the nation's water resources and shall ensure that water is allocated equitably, protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, in the public interest while promoting environmental and social values and protecting Zambia's territorial sovereignty;
 - (k) there shall be equity between both gender in accessing water resources and, in particular, women shall be empowered and fully participate in issues and decisions relating to the sustainable development of water resources and, specifically, in the use of water;
 - (l) efforts to create wealth shall be reflected in all decisions made in relation to the use of water;
 - (m) water resources management and planning shall contribute to the eradication of hunger and poverty and this shall be reflected in all decisions made in relation to the use of water, in particular, the right to use water for domestic and noncommercial purposes shall not be under any permit or attract any charge for its use;
 - (n) location of a water resource on land shall not itself confer preferential rights to its use;
 - (o) the basic management unit shall be the catchment in recognition of the unity of the hydrological cycle;
 - (p) Zambia's water resources shall be protected, used, developed, conserved, managed and controlled sustainably, beneficially, reasonably and equitably for the needs of the present and future generations; and

- (q) the management, development and utilisation of water resources shall take into account climate change adaptation.

PART II

THE WATER RESOURCES MANAGEMENT AUTHORITY

7. (1) There is hereby established the Water Resources Management Authority which shall be a body corporate with perpetual succession and a common seal capable of suing and of being sued in its corporate name, and with power, subject to this Act, to do all such acts and things as a body corporate may, by law, do or perform.

Establishment of Water Resources Management Authority

(2) The First Schedule applies in respect of the Authority and the Board of the Authority.

8. (1) The function of the Authority is to promote and adopt a dynamic, gender-sensitive, integrated, interactive, participatory and multisectoral approach to water resources management and development that includes human, land, environmental and socio-economic considerations, especially poverty reduction and the elimination of water borne diseases, including malaria.

Functions of Authority

(2) Without prejudice to the generality of subsection (1) and subject to this Act, the Authority shall—

- (a) identify and protect potential sources of freshwater supply;
- (b) conserve, preserve and protect the environment, in particular, wetlands, quarries, dambos, marshlands and headwaters and take into account climate change and the challenges posed by climate change by—
 - (i) measuring, minimising and managing the impacts of climate change on water resources using effective adaptation approaches;
 - (ii) being proactive in adapting watershed protection, wetlands and infrastructure programmes;
 - (iii) developing tools, standards, guidelines and best practices to understand and measure the nature and magnitude of chemical, biological and physical effects of climate change on water resources;
 - (iv) applying environmental science, technology and information to guide and support proactive climate change planning and management;

- (v) ensuring extensive participation in interagency and intraagency research planning related to climate change; and
- (vi) investing in climate change education on water issues and supporting the sharing of information about Government and local responses to water impacts of climate change;
- (c) plan for and ensure the sustainable and rational utilisation, management and development of water resources based on community and public needs and priorities, within the framework of national economic developmental policies;
- (d) ensure, in collaboration with the Ministries responsible for community development, finance, commerce, agriculture, fisheries and livestock, youth and child development and disaster management and mitigation, that the management and planning of water resources contributes to the eradication of hunger and poverty;
- (e) provide access to water resources of acceptable quantity and quality for various purposes;
- (f) ensure, in collaboration with the ministries responsible for health and local government, that water resources are managed in such a manner as will help combat malaria and other waterborne diseases;
- (g) set standards and guidelines, with relevant appropriate authorities, to be used in undertaking water resources management and developmental activities in a catchment;
- (h) in consultation with the institution responsible for national statistics, establish and maintain an information system, which will be accessible by both gender, in accordance with regulations issued by the Minister providing for the content of the system, which shall include relevant hydrological, hydrogeological, meteorological, climatological, water quality, water storage and supply and use data, and relevant information on potentials for the use of water;
- (i) publish forecasts, projections and information on water resources;
- (j) advise the Minister on matters relating to, and recommend to the Minister policies for, the utilisation, development, management, conservation, preservation and protection of water resources and shared water resources;

- (k) research on, and carry out analysis of, the structural linkages between gender relations, poverty, disease, climate change, water use and development;
 - (l) where the Minister has not constituted a catchment council, perform the functions of a catchment council;
 - (m) where necessary or expedient, empower any appropriate authority or conservancy authority to carry out any function under this Act and utilise its facilities for the better regulation and management of water resources;
 - (n) set ambient water quality standards, for each water resource, in consultation with the Environmental Agency and recommend these standards to the Zambia Bureau of Standards;
 - (o) monitor the resource quality of the water;
 - (p) provide technical support to catchment councils, and sub-catchment councils and water users associations;
 - (q) coordinate and monitor the activities of catchment councils, and sub-catchment councils and water users associations;
 - (r) liaise in, and supervise where necessary, and in collaboration with the relevant authority responsible for disaster management and mitigation, the management of any emergency declared under this Act;
 - (s) approve catchment management plans and sub-catchment management plans;
 - (t) maintain hydrological equipment for all catchment areas;
 - (u) ensure that the right to use water for domestic and non-commercial purposes does not attract any charge; and
 - (v) address the impact of malaria, HIV and AIDS and other diseases on, or in, the water sector.
- 9.** The Authority, in accordance with this Act, may—
- (a) exercise control over all water resources in Zambia;
 - (b) plan, review and approve management plans in a catchment or sub-catchment, including inter-catchment and intra-catchment diversions;
 - (c) issue equitable and reasonable water entitlements and allocate water equitably and reasonably for various purposes stipulated under this Act;
 - (d) grant water permits and licences for the right to use water for various purposes under this Act, except for the right to use water for domestic and non-commercial purposes;

Powers of
Authority

(e) carry out advocacy programmes, in liaison with the ministries responsible for health, community development and social welfare and local government, with respect to waterborne diseases in communities; and

(f) enforce and implement this Act.

Relations
with
appropriate
and
conservancy
authorities

10. The Authority shall liaise, consult, collaborate and cooperate with all the relevant appropriate authorities and conservancy authorities in the management, development and use of water resources and may, for such purposes, have joint programmes, plans, strategies and policies, taking into account national decentralisation policies with respect to water.

Constitution
of Board

11. (1) There is hereby constituted a Board for the Authority which shall consist of —

(a) four persons with expertise in any of the following:

(i) environmental management;

(ii) hydropower;

(iii) engineering; and

(iv) commerce and industry;

(b) one person each from the following groups:

(i) farmers;

(ii) traditional authorities; and

(iii) consumers;

(c) a representative of the Attorney-General;

(d) one representative each of the Ministries responsible for water resources, local government, agriculture and the environment;

(e) the Commissioner of Lands; and

(f) one other person.

(2) The Minister shall appoint the members of the Board.

(3) The Minister shall appoint the Chairperson and Vice-Chairperson of the Board from amongst the members referred to in subsection (1), except that a public officer shall not be appointed Chairperson.

(4) A person shall not be appointed as a member of the Board if that person—

(a) is not a citizen of Zambia;

(b) is an undischarged bankrupt;

(c) has been convicted of an offence under this Act;

(d) has been convicted of an offence involving fraud or dishonesty; or

(e) has been convicted of an offence under any other written law and sentenced to a term of imprisonment of not less than six months without the option of a fine.

12. (1) The Board may, for the purposes of performing the functions of the Authority, establish such committees as it considers necessary and delegate to any of those committees any of the functions of the Authority.

Committees
of Board

(2) The Board may appoint, as members of a committee, persons who are or are not members of the Board, except that at least one member of the Board shall be a member of a committee.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

13. (1) Except as otherwise provided under this Act, the Board shall exercise the functions and powers of the Authority relating to or connected with—

Exercise of
functions of
Authority

(a) policy matters;

(b) the grant, varying, cancellation and renewal of permits and licences;

(c) the establishment or issue of guidelines and standards; and

(d) the making of recommendations to the Minister for amendments to this Act or the issue of rules or regulations under this Act.

(2) The Board shall carry out such other functions specifically assigned to the Board under this Act.

14. (1) The Board may, subject to any conditions imposed, and guidelines issued, by the Board, delegate any of its functions to the Director-General, and shall, in particular, delegate its power to grant, vary, cancel or renew permits or licences, except that the Board shall not delegate its powers and functions specified under paragraphs (a), (c) and (d) of subsection (1) of section *thirteen*.

Delegation of
functions
and
directions

(2) Subject to this Act, the Board may, on the recommendation of the Director-General, by directions in writing and subject to any terms and conditions as it considers necessary, delegate to a catchment council, a sub-catchment council or water users association any of the functions of the Authority as it considers necessary for the efficient management of water resources at the local level.

(3) A catchment council, sub-catchment council and water users association shall perform such functions of the Authority as are specifically stipulated for such bodies under this Act.

(4) The Minister may give to the Board general or specific directions, relating to the discharge of the functions of the Authority and the Board shall give effect to those directions.

Director-
General

15. (1) The Board shall appoint, on such terms and conditions as the Board may determine, a Director-General who shall be the chief executive officer of the Authority.

(2) The Director-General shall be responsible under the general directions of the Board for—

- (a) the management and administration of the affairs of the Authority;
- (b) the implementation of the decisions of the Board; and
- (c) any other function assigned or delegated to the Director-General by the Board or by or under this Act.

(3) Except as otherwise provided under this Act, the Director-General shall exercise the general functions and powers of the Authority relating to, and connected with, the general management and development of water resources and shall, where the Board has delegated to the Director-General the power to grant, vary, cancel or renew permits and licences, do so in accordance with—

- (a) conditions specified in this Act;
- (b) regulations issued under this Act;
- (c) guidelines established by the Board; and
- (d) any directions, in writing, not inconsistent with this Act, given by the Board.

(4) The Director-General shall attend meetings of the Board and may address those meetings but shall not vote on any matter.

Secretary,
inspectors
and other
staff of
Authority

16. (1) There shall be a Secretary for the Authority who shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Secretary shall, under the general supervision of the Director-General, carry out corporate secretarial duties for the Board and perform such other functions as may be assigned to the Secretary by the Director-General.

(3) The Director-General may appoint, on such terms and conditions as the Board may determine, inspectors, water officers and such other staff considered necessary for the performance of the functions of the Authority.

PART III
CATCHMENT COUNCILS, SUBCATCHMENT COUNCILS AND
WATER USERS ASSOCIATIONS

17. (1) The Minister may, on the recommendation of the Authority, by statutory instrument, constitute a catchment council for a catchment.

Constitution
of catchment
council

(2) A catchment council shall be composed of the following members:

- (a) not more than three representatives from the provincial administration situated in the catchment nominated by the Permanent Secretaries responsible for the provinces in which a catchment council is situated; and
- (b) not more than nine other stakeholders representing, as far as is possible, the users of water in the catchment, nominated by the users of water or, where there is a water users association, by the association, appropriate authorities and conservancy authorities operating in the catchment, in accordance with prescribed criteria.

(3) The Minister shall appoint the members of a catchment council in accordance with the prescribed criteria, except that the Minister shall ensure that, when making the appointments to the catchment council, the persons nominated represent, as far as is possible, all the sub-catchments in the catchment.

(4) In the exercise of the power under subsection (1), the Minister shall prescribe—

- (a) the procedure to be followed at the meetings of, or by, a catchment council in the discharge of its functions; and
- (b) the remuneration, if any, and allowances payable to members of a catchment council from funds allocated for that purpose by the Authority to meet the reasonable expenses incurred by the members and staff of a catchment council in connection with the business of the catchment council.

18. (1) Subject to this Act, a catchment council shall, for the purposes of the water resources in that catchment:

Functions of
catchment
council

- (a) recommend to the Director-General the decisions of a sub-catchment council on the issue of permits and licences in the subcatchment council, as may be prescribed;
- (b) regulate and supervise the use of water;

- (c) investigate and deal with any dispute relating to the use of water as may be prescribed;
- (d) consolidate data forwarded to it by a sub-catchment council or any other person;
- (e) in conjunction with the Authority, prepare, and periodically update, catchment management plans for its catchment in accordance with this Act;
- (f) harmonise sub-catchment management plans and local management plans with catchment management plans and facilitate implementation of these plans;
- (g) prepare catchment reports and regularly report to the Authority on catchment matters;
- (h) supervise and coordinate activities of sub-catchment councils and provide technical support to sub-catchment councils and water users associations, where necessary;
- (i) carry out hydro-geological and hydro geological services, including water quantity and quality and monitoring and assessment of water resources and climate change;
- (j) take appropriate action in emergency situations related to water as may be prescribed;
- (k) carry out public awareness campaigns for, and inform the public on, water resources and environmental management and climate change in cooperation with sub-catchment councils;
- (l) promote gender mainstreaming in the decision-making processes relating to the use of water;
- (m) recommend, to the Director-General, disciplinary and other measures to be taken in respect of any member of a catchment council, sub-catchment council or water users association or any officer of the Authority working with those institutions;
- (n) undertake catchment protection and resource quality monitoring and evaluation;
- (o) propose catchment management strategies to the Authority;
- (p) monitor implementation of international and regional agreements at catchment level;
- (q) perform the functions of a sub-catchment council where none exists;
- (r) collect revenue through charges for the use of water and transmit these to the Authority;

- (s) ensure compliance with this Act; and
- (t) perform any other function conferred or imposed upon a catchment council by, or under, this Act.

(2) For the better exercise of its functions, a catchment council may delegate to a catchment manager, with or without conditions, such of its functions as it considers necessary, except that:

- (a) the delegation shall not prevent the catchment council from exercising the functions concerned where the catchment council has not already exercised, or is not in the process of exercising, a particular function; and
- (b) the catchment council may, in any matter dealt with by the catchment manager, after hearing all the parties concerned and on giving due consideration to the matter, amend or withdraw any decision of the catchment manager made in the exercise of a delegated function.

19. (1) The Minister may, on the recommendation of the Authority, by statutory instrument, constitute a sub-catchment council.

Constitution
of sub-
catchment
council

(2) A sub-catchment council shall be composed of the following members—

- (a) a representative from, and nominated by, each of the local authorities in the sub-catchment, nominated by a local authority;
- (b) not more than two persons representing the traditional authorities in the sub-catchment nominated by those traditional authorities; and
- (c) not more than nine other stakeholders representing, as far as is possible, the users of water in the sub-catchment nominated by the users of water, or, where there is a water users association, by the association, appropriate authorities and conservancy authorities in the sub-catchment, in accordance with prescribed criteria.

(3) The Minister shall appoint the members of a sub-catchment council in accordance with the prescribed criteria.

(4) In the exercise of the power specified under subsection (1), the Minister shall prescribe—

- (a) the procedure to be followed at meetings of, or by, a sub-catchment council in the discharge of its functions; and

(b) the remuneration, if any, and allowances payable to members of a sub-catchment council from funds allocated for that purpose by the Authority to meet the reasonable expenses incurred by the members and staff of the sub-catchment council in connection with the business of the sub-catchment council.

(5) The Minister may, by statutory instrument, on the recommendation of the Authority, upon hearing any representations made by a sub-catchment council—

(a) abolish a sub-catchment council;

(b) alter the area for which a sub-catchment council was constituted; or

(c) alter the membership or the name of a sub-catchment council.

Functions of
sub-
catchment
council

20. (1) Subject to this Act and without derogating from the powers of a catchment council, a sub-catchment council shall, within the area for which it is constituted and for the purposes of the water resources in that area—

(a) prepare, in collaboration with the appropriate authorities in the sub-catchment, an allocation plan for the sub-catchment for inclusion in the sub-catchment plan and submit the sub-catchment plan to the catchment council;

(b) undertake investigations, as may be prescribed, and make recommendations on applications for a permit or licence and submit such recommendations to the catchment council for consideration;

(c) regulate the use of water;

(d) monitor permits, licenses, water works, water quantity and quality;

(e) develop sub-catchment management plans;

(f) harmonise local management plans with sub-catchment management plans and submit them to the catchment council for harmonisation with the catchment management plan;

(g) facilitate implementation of sub-catchment management plans;

(h) collect hydrological, hydro-geological meteorological, water quality and quantity, socio-economic and environmental data and forward the data to the catchment council—

- (i) liaise and coordinate with appropriate authorities, conservancy authorities and water users associations on any matter relating to, or impacting on, the water resources in the sub-catchment, including measures on adaptation to climate change;
- (j) investigate and deal with disputes relating to the use of water, as may be prescribed;
- (k) monitor water quality and implement regulations and guidelines on catchment protection;
- (l) provide technical support to water users associations in the sub-catchment;
- (m) maintain equipment for data capturing;
- (n) compile regular reports on activities in the sub-catchment and submit the reports to the catchment council;
- (o) participate in emergency management and preparedness activities, as may be prescribed;
- (p) carry out public awareness campaigns for, and inform the public on, water resources and environmental management in cooperation with water users associations and appropriate authorities and conservancy authorities;
- (q) promote the participation of the community in water resources management and ensure gender mainstreaming in the decision making process relating to the management, development and use of water; and
- (r) perform such other functions as may be conferred or imposed upon it by, or under, this Act.

(2) In the performance of its functions, a sub-catchment council may, within the area for which it is constituted, require any permit holder or license to undertake measures to maintain, in efficient repair, any water works connected with the permit or licence.

(3) Any permit holder or licensee who is aggrieved by a requirement of a sub-catchment council, made under subsection (2), may, within thirty days of the request, appeal to the catchment council or the Authority, where no catchment council exists.

(4) If any person fails to comply with a requirement, under subsection (2), which has not been set aside by the catchment council or the Authority, the sub-catchment council may itself

undertake such measures as it considers necessary to maintain any water works and shall recover the costs of doing so with any prescribed interest, on the costs incurred, from the permit holder or licensee.

Catchment
manager and
other staff

21. (1) The Authority shall, for the day-to-day management and administration of a catchment and sub-catchment, appoint a catchment manager for each catchment and other staff that are necessary for the effective performance of the functions of a catchment council, sub-catchment council and water users association.

(2) A catchment manager and the other staff, appointed under subsection (1), shall be employees of the Authority under its terms and conditions of service and but shall act under the direction of a catchment council or sub-catchment council but under the general supervision of the Authority.

(3) A catchment council, sub-catchment council or water users association may delegate to the catchment manager or any other employee of the Authority, appointed under subsection (1), any of its functions under this Act or as may be prescribed.

General
functions of
catchment
manager

22. Subject to this Act, a catchment manager may, where the catchment council or sub-catchment council has not been constituted by the Minister or is unable to meet—

(a) cause any investigation, as may be prescribed, to be carried out;

(b) authorise an applicant to withdraw an application on any matter, on any conditions set out in guidelines issued by the Board, including the payment of prescribed fees for any costs incurred as a result of such withdrawal as the catchment manager considers necessary; or

(c) submit any application on any matter or other issue, pending consideration by a catchment council or sub-catchment council, to the Director-General for consideration in accordance with this Act.

Collection of
charges

23. (1) A catchment manager shall collect, and issue a receipt for, in the prescribed manner, all charges payable for the use of water in the catchment or sub-catchment and transmit the charges to the Authority.

(2) A receipt issued under subsection (1), shall not in anyway be a permit or licence for the right to use water.

24. (1) The Minister may, on the recommendation of the Authority, by statutory instrument, constitute a water users association for any area of a catchment.

Constitution
of water
users
association

(2) The members of a water users association shall be nominated, in accordance with prescribed criteria, by the users of water, an appropriate authority, a conservancy authority, a local authority or a traditional authority, in the area of the catchment.

(3) The Minister shall appoint the members of a water users association, as nominated under subsection (2), in accordance with the prescribed criteria.

(4) The Minister shall, in the statutory instrument, made under subsection (1), specify—

- (a) the name of the water users association;
- (b) the number of members that will constitute the water users association, not exceeding ten members;
- (c) the area of a catchment in which the water users association shall operate;
- (d) such other functions related to the management of the water resource in the area under the jurisdiction of the water users association not specified under section *twenty five*;
- (e) matters relating to the management of the water users association, establishment of, and election of members to, a management committee and their tenure of office, the holding of annual general meetings and other meetings of the association, annual plans and budgets of the water users association, finances and financial records, annual reports and technical and other support to the water users association; and
- (f) the manner in which the water users association shall operate.

25. A water users association shall, in the area of a catchment in which it operates and for purposes of the water resources in that area—

Functions of
water users
association

- (a) undertake projects that will ensure catchment protection;
- (b) monitor water quality and ensure water resources conservation;

- (c) collect hydrological, hydro-geological, meteorological, environmental, socio-economic and water quality and quantity data for submission to the sub-catchment council;
- (d) facilitate inspections under this Act;
- (e) promote the participation of the community in water resources management and ensure gender mainstreaming in the decision-making process relating to the use of water;
- (f) investigate and deal with disputes relating to the use of water, as may be prescribed;
- (g) propose local water management plans to the subcatchment council and implement the plans; and
- (h) perform any other function assigned to the association by the sub-catchment council or as may be prescribed.

PART IV

WATER RESOURCES PLANNING

General
functions of
Minister

- 26.** The Minister shall, for purposes of this Act—
- (a) ensure that the Authority equitably and efficiently allocates water resources for the development of all sectors of the economy, including the rural and peri-urban areas;
 - (b) ensure that the Authority provides access to water resources of acceptable quantity and quality;
 - (c) give effect to any international or regional agreement or declaration, to which Zambia is a party, on, or which mentions, shared water resources and water courses, in a spirit of mutual co-operation;
 - (d) ensure that the Authority puts in place adaptive measures for climate change in collaboration with appropriate and conservancy authorities;
 - (e) ensure that research is carried out, and information is obtained and kept, by the Authority on hydrological and hydro-geological matters such as—
 - (i) the quality and quantity of Zambia's water resources;
 - (ii) the utilisation of Zambia's water resources; and
 - (iii) resources needed to develop Zambia's water resources sufficient to meet the needs of the nation; and
 - (f) mobilise resources for the development, management and conservation of water resources in the public interest.

- 27.** (1) The Public Service Commission shall appoint a public officer as Director responsible for water resources planning and policy development.
- (2) The Director shall, for the purposes of this Act, advise the Minister on the—
- (a) development of policies for the efficient and effective integrated planning and optimum development, utilisation and protection of Zambia's water resources, in the public interest; and
 - (b) mainstreaming of gender into the policies, programmes and activities relating to water resource management development and use.
- 28.** (1) The Minister shall, by statutory instrument, designate the six catchments of Zambia.
- (2) The Minister shall, on the recommendation of the Authority, by statutory instrument, designate, for the purposes of this Act, any area as a subcatchment.
- (3) A catchment or sub-catchment designated under this section may lie wholly or partly within a local authority.
- (4) A catchment and sub-catchment shall, subject to this Act, be under the control of a catchment council or sub-catchment council, as the case may be, and under the general supervision and direction of the Authority.
- 29.** (1) Where the Board is satisfied that special measures are necessary for the protection of a catchment, sub-catchment or geographic area, it may, after consulting any appropriate authority or conservancy authority, operating within the catchment or sub-catchment, recommend to the Minister that the catchment, sub-catchment or geographic area be declared a water resource protection area.
- (2) The Minister may, on receiving a recommendation under subsection (1), declare, by statutory notice, a catchment, sub-catchment or geographic area to be a water resource protection area.
- (3) The Minister may, in a statutory notice issued under subsection (2)—
- (a) impose any requirement and regulate or prohibit any conduct or activity in relation to a water resource protection area as may be considered necessary for the protection of the area and its water resources; and

Appointment of Director responsible for water resources planning and policy development

Designation of catchment and sub-catchment

Water resource protection area

(b) make different requirements and regulate or prohibit different conduct or activities in different water resource protection area.

(4) The powers conferred on the Minister under this section shall not extend to areas declared, or which may be declared, as protected areas under any other written law.

Consistency of water resources management with environmental and national heritage protection

30. Without limiting the generality of the functions of the Authority, in considering, formulating and implementing any proposal for the use, management, development or exploration of any water resource, the Board shall—

(a) ensure the protection, conservation and sustenance of the environment;

(b) take into account the regulations, standards and guidelines issued by, or under, the Environmental Management Act, 2011, and the Standards Act;

(c) ensure that an environmental impact assessment is carried out, where necessary, in accordance with the Environmental Management Act, 2011;

(d) respect any national heritage site or monument declared under the National Heritage Conservation Commission Act;

(e) collaborate with the appropriate authorities responsible for wildlife, natural resources, tourism and forestry; and

(f) ensure the right of access by members of the public to places of leisure, recreation or any natural beauty related to a water resource.

Act No. 12 of 2011
Cap. 416

Act No. 12 of 2011
Cap. 173

National water resources strategy and plan

31. (1) The Authority shall, following public consultation, and in collaboration with the appropriate authorities and conservancy authorities, formulate a national water resources strategy and plan for the management, use, development, conservation, preservation, protection, control and regulation of water resources.

(2) The Authority shall periodically review and update the national water resources strategy and plan.

(3) The national water resources strategy and plan shall—

(a) take into account the resource quality objectives;

(b) set out the principles, objectives, procedures and institutional arrangements of the Authority for the management, use, development, conservation, preservation, control and regulation of water resources within each catchment, including possible financing requirements;

- (c) contain water allocation plans which set out the principles for allocating water, taking into account the reserve;
- (d) provide mechanisms and facilities for enabling the public and communities, in particular women, to participate in managing the water resources within each catchment; and
- (e) generally contain measures to avert environmental degradation, such as desertification, deforestation, erosion, sedimentation, toxic waste and the aftermath of the use of unsuitable agro-chemical products.

(4) The national water resources strategy and plan shall be submitted to the Minister for approval and thereafter the Authority shall publish the strategy and plan in the *Gazette*, a daily newspaper circulating in Zambia and a newsletter issued by the Authority, catchment council, sub-catchment council or water users association.

(5) The Minister, the Authority, an appropriate authority and a conservancy authority shall, when exercising any power or performing any function under this Act or any other law, take into account, and give effect to, the national water resources strategy and plan.

32. (1) For the purposes of ensuring the optimum management, development and utilisation of Zambia's water resources, a catchment council shall prepare, in collaboration with the Authority, a catchment management plan.

Catchment
management
plan

(2) A catchment council and the Authority shall, in preparing a catchment management plan—

- (a) consult any appropriate authority, conservancy authority and any other stakeholders who are likely to be concerned with the development, conservation, preservation or protection of the catchment or sub-catchment and the utilisation of the water resources;
- (b) take into account subcatchment and local water management plans proposed by the sub-catchment councils and water users associations, respectively;
- (c) draw up an inventory of the water resources of the catchment or sub-catchment; and
- (d) have regard to any relevant plan prepared under the Town and Country Planning Act and to such other matters as may be relevant.

Cap. 283

- Contents of catchment management plan
- 33.** The Minister shall, on the recommendation of the Authority, by statutory instrument, specify what a catchment management plan should contain, including any diagrams, illustrations and maps which shall accompany the plan.
- Publication of catchment management plan
- 34.** The Minister shall prescribe—
- (a) the manner in which any objections or representations to a catchment management plan are to be made and the period within which they are to be made to the Authority;
 - (b) the process for handling any objections or representations;
 - (c) the procedure and manner for effecting any changes to the catchment management plan; and
 - (d) the publication of a final catchment management plan.
- Approval of catchment management plan
- 35.** (1) The Board shall approve a catchment management plan within thirty days of its finalisation.
- (2) The Board shall notify the public, in the *Gazette*, a daily newspaper circulating in Zambia and a newsletter issued by the Authority, catchment council, sub-catchment council or water users association, of the approval of a catchment management plan and of the date on which the plan shall come into operation.
- Effect of catchment management plan
- 36.** Any person, the Government, any appropriate authority or conservancy authority undertaking natural resources management or any development within any catchment shall, in so doing, have regard to the catchment management plan relating to the catchment.
- Review of catchment management
- 37.** The Board shall, within a period of not more than five years from the date on which a catchment management plan came into operation or such other period as the Minister may prescribe and thereafter at intervals of not more than five years or such other intervals, as the Minister may prescribe, review the catchment management plan and decide whether or not a new catchment management plan should be prepared under this Act.
- National monitoring and information system
- 38.** (1) The Authority shall put in place and maintain a gender sensitive integrated national management, monitoring and information system on water resources as may be prescribed by the Minister.
- (2) The Minister shall, in prescribing the system referred to under subsection (1), provide for the—
- (a) procedures for the collection and management of data and information regarding water resources and their management, use and development;

- (b) procedures for gathering data and the analysis and dissemination of data and information on water resources; and
- (c) the integration of the national management, monitoring and information system with the systems of relevant appropriate and conservancy authorities.

(3) For the purposes of any system established under this section, the Authority shall consult and collaborate with any appropriate authority or conservancy authority operating within a catchment or sub-catchment.

(4) For the purposes of any system established under this section, the Board may, in writing, require any person, appropriate authority or conservancy authority, within a reasonable time or on a regular basis, to provide it with specified information, documents, samples or materials.

(5) The Authority shall issue guidelines to catchment councils, sub-catchment councils, water users associations, appropriate authorities and conservancy authorities on the keeping of records and the furnishing of information or returns to the Authority as may be prescribed.

(6) Any person, appropriate authority or conservancy authority shall, on payment of a prescribed fee—

- (a) have access to information contained in any national management, monitoring and information system; and
- (b) be supplied with a copy of any data or information.

39. (1) The Authority may establish hydrological stations for the purpose of carrying out its functions under this Act.

Establishment
of
hydrological
stations

(2) Where the Authority—

- (a) wishes to construct or maintain a hydrological station on any land; and
 - (b) is unable to agree on reasonable terms with the occupier;
- the Authority shall recommend the compulsory acquisition of the land in accordance with section *forty-one*.

40. The Authority may, so far as is reasonably practicable, enter into and maintain such arrangements, including memorandum of understanding and joint catchment management plans, with a utility, appropriate authority or conservancy authority for—

Arrangement
with utility,
appropriate
or
conservancy
authority

- (a) securing the proper management of any water resource;
- and

(b) the construction or installation of any water works or the drilling of any borehole which the utility, appropriate authority or conservancy authority require for carrying out their functions.

Compulsory acquisition of land
Cap. 189

41. The President may, by statutory order, on the recommendation of the Board, acquire any land, in accordance with the Lands Acquisition Act, for the purposes of, or in connection with, the carrying out of the functions of the Authority under this Act.

Delegation of functions to local authorities and other authorities

42. (1) The Minister may, after consultation with the Authority, the local authorities within a catchment and the Minister responsible for local government and after considering the financial, human and technical resources available to the local authority, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia—

(a) authorise the delegation, by the Authority, of any of the functions of a catchment council or sub-catchment council to the local authority, subject to such conditions as the Minister may impose; and

(b) amend or withdraw the functions delegated to the local authority under paragraph (a).

(2) The Authority may, after consultation with the water users associations in a catchment, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia, delegate to any utility, appropriate authority or conservancy authority any of the functions of a catchment council or sub-catchment council, subject to such conditions as the Board may impose.

PART V

WATER QUANTITY AND QUALITY MANAGEMENT

Environmental flow, level or volume of water resource

43. (1) The Authority shall, where it is appropriate to do so, and after consultations with any appropriate authority or conservancy authority operating within a catchment, specify the environmental flow, level or volume of any water resource, taking into consideration any relevant use of the water.

(2) Where the Authority makes a specification, under subsection (1), it shall set out—

(a) the control points at which the flow, level or volume in the water is to be measured;

- (b) the method of measurement which is to be used at each control point; and
 - (c) the flow, level or volume which is to be the environmental flow, level or volume at each control point or, where appropriate, the acceptable flow, level or volume at each control point for different areas, times and periods.
- (3) The Authority shall provide—
- (a) on request by any interested person, such information relating to the flow, level or volume of any water resource;
 - (b) reasonable facilities for the inspection by any interested person of any records dealing with the flow, level or volume of any water resource; and
 - (c) the taking for the making of copies of, or extracts from, any records, upon payment of the prescribed fee.

44. (1) Subject to subsections (2) and (3), the Minister shall, on the recommendation of the Authority, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia, specify the reserve for all or part of a water resource.

Reserve

(2) A determination of the reserve shall ensure that adequate allowance is made for each component of the reserve.

(3) The Minister shall, before determining and specifying the reserve under subsection (1)—

- (a) publish a notice, in the *Gazette* and in a daily newspaper of general circulation in Zambia—
 - (i) setting out the proposed reserve; and
 - (ii) inviting written comments to be submitted, on the proposed reserve, and specifying an address to which, and a date before which, comments are to be submitted, which date may not be earlier than sixty days after publication of the notice; and
- (b) consider all comments received within the date specified in paragraph (a).

(4) A person, the Government, the Authority, appropriate authority and conservancy authority shall observe the reserve as specified under this section when exercising any power or performing any duty under this Act.

Water conservation management practise

45. (1) The Authority shall develop water conservation management practices that minimise waste of water, encourage sustainable and efficient use of water and improve the quality of water.

(2) A user of water shall comply with the water conservation management practices developed under subsection (1).

(3) Where a user of water is failing or fails to comply with the water conservation management practices, developed under subsection (1), the Director-General shall give the user a period of thirty days within which to put in measures to enable the user comply.

(4) Where a user of water fails to comply with the water conservation management practices, within the period specified under subsection (3), the Director-General may, after giving the user a hearing on the matter, impose any of the following:

(a) suspend or cancel the permit;

(b) impose monitoring requirements, including water saving devices;

(c) prosecute the user for an offence under paragraph (g) of section *one hundred and sixty four*; or

(d) take such other measures as the Director-General considers appropriate in the circumstances.

(5) A person who is aggrieved by a decision of the Director-General, made under subsection (3) or (4), may appeal to the Board against the decision.

Diluting effluent and discharge into water resource Act No. of 2011

46. (1) A person shall not use any water for purposes of diluting any effluents without a permit issued under this Act.

(2) A person, trade or industrial undertaking who or which, as the case may be, wishes to discharge any effluent into a water resource shall do so in accordance with the Environmental Management Act, 2011.

(3) A person who contravenes subsection (1) commits an offence and is liable to the general penalty specified under section *one hundred and seventy two*.

Ambient standards, resource quality monitoring and pollution control

47. (1) The Authority shall, in collaboration with the Environmental Agency, recommend to the Zambia Bureau of Standards ambient water quality standards and ensure that the standards are maintained.

(2) The Authority shall, in collaboration with the Environmental Agency, monitor the resource quality and control the pollution of any water resource.

48. (1) Notwithstanding the Environmental Management Act, 2011, where any person discharges or disposes of—

- (a) any organic or inorganic matter, including water containing such matter, into a water resource, whether directly or through drainage or seepage, so as to cause pollution of the water resource; or
- (b) any effluent or waste water which has been produced by, or results from, the use of water for any purpose, into a water resource, whether directly or through drainage or seepage;

that person commits an offence, whether or not that person acted intentionally, and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

(2) Where a person is convicted of an offence, under subsection (1), but proves that due care and all reasonable steps necessary to prevent the discharge or disposal referred to in that subsection were taken, the court shall take that fact into account in the assessment of the sentence to be passed on that person.

(3) In addition to any penalty imposed, under subsection (1), the court may order the person concerned to—

- (a) take such remedial action, specified by the court, on the advice of the Authority, as may be necessary;
- (b) reimburse the Authority for any remedial action taken by it; and
- (c) pay compensation for any damage caused.

49. (1) Where the Authority, after consultation with the Environmental Agency, is satisfied that the activities of any person may lead or give rise to the pollution of a water resource, the Authority may, by notice in writing, require the person to take such measures, within a specified period as it may direct in the circumstances, including all or any of the following:

- (a) ascertain as to whether the water is drinkable or not;
- (b) the installation of devices to test and monitor the quality and quantity of gases, liquids or solids in any water, effluent or waste water;
- (c) the sinking of boreholes to test and monitor the quality and quantity of ground water;
- (d) the provision of facilities for the taking of samples by the Authority;

Pollution of
water
resources
Act No. of
2011

Steps to
control or
prevent
water
pollution

- (e) the testing or monitoring of any water, effluent or waste water and the submission to the Authority of the results of such testing and monitoring;
- (f) the taking of reasonable measures for the control or prevention of pollution;
- (g) the construction or installation of water works or devices for the control or prevention of pollution; or
- (h) the preparation and submission to the Authority of a report giving information concerning that person's existing or proposed activities.

(2) Subject to subsection (3), a person who, without reasonable excuse, fails to comply with a requirement, made under subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

(3) In addition to any penalty imposed under subsection (2), the court may order the person concerned to—

- (a) take any remedial action, specified by the court, on the advice of the Authority, as may be necessary;
- (b) reimburse the Authority for any remedial action taken by it; and
- (c) pay compensation for any damage caused.

(4) A person who is aggrieved by a requirement to take any measures, requested, under subsection (1), may appeal to the Minister within thirty days of the directive of the Authority.

Resource
quality
objectives

50. (1) The Authority and the Environmental Agency shall establish resource quality objectives for any water resource and shall publish the objectives in the *Gazette* and in a daily newspaper of general circulation in Zambia.

(2) The Authority and the Environmental Agency shall, where establishing resource quality objectives for any water resource under subsection (1), do so in accordance with the following criterion:

- (a) general requirements as to the purposes for which the water shall be suitable;
- (b) specific requirements as to the substances that are to be present in, or absent from, the water and as to the concentrations of substances which are, or are required to be, present in the water; and
- (c) specific requirements as to the other characteristics of the water resource.

PART VI

WATER SHORTAGE AREAS

51. (1) The Minister may, on the recommendation of the Authority, after the Authority has consulted any relevant catchment council and conservancy authority, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia or a newsletter issued by the Authority, catchment council, sub-catchment council or water users association, declare any area as a water shortage area, where the Minister is satisfied that there is a need to mobilise water resources due to any of the following factors:

Declaration of water shortage areas

- (a) the flow of water in any water resources in the area have fallen or is are likely to fall below the normal flow of the water resource as prescribed;
- (b) the flow of water or the level of water in any water storage works in the area has fallen or is likely to fall below the level specified in the permits;
- (c) the abstraction of water from any boreholes in any the area is likely to diminish, unduly, the ground water resources in the area or affect adversely the flow of any surface water in any water resource; or
- (d) certain circumstances have brought about a shortage of water in the area.

(2) The Minister may, in consultation with the Authority, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia or a newsletter issued by the Authority, catchment council, sub-catchment council or water users association, cancel a declaration, made under subsection (1), where the need for such a declaration is no longer necessary.

52. (1) Notwithstanding any other law, in particular the Lands Act, or this Act, and subject to subsections (2) and (7), the Board may, in consultation with a catchment council, in respect of a water shortage area —

Powers of Authority in water shortage areas
Cap. 184

- (a) suspend or amend any permit;
- (b) make orders in relation to the use of any water;
- (c) with the consent of the Minister and the traditional authority, where the area falls within customary land as provided in the Lands Act, enter or authorise any other person to enter on any land for the purpose of—
 - (i) using water from any water works, borehole, mine or quarry on the land;
 - (ii) sinking boreholes on the land and using water from the boreholes; and
 - (iii) conserving the water.

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(2) Where the Board exercises any power under paragraph (c) of subsection (1), the Board shall pay compensation to the occupier of the land, as may be prescribed by the Minister, by statutory instrument.

(3) The Board shall, in consultation with a catchment council, determine the priority in the use of water in a water shortage area, except that the following purposes shall have priority in that order:

- (a) domestic and noncommercial purposes;
- (b) environmental purposes;
- (c) municipal purposes; and
- (d) agricultural purposes.

(4) For the purposes of paragraph (c) of subsection (3), a utility or any person that supplies water for municipal purposes shall pay compensation to any permit holder who may be prejudiced by the use of water for municipal purposes, at such amount as may be mutually agreed on or failing such agreement as may be determined by arbitration.

(5) The priority of use stipulated under subsection (3) shall be secured against any encroachment, demarcation or interference by water permits subsequently granted to any other person and the Authority shall not grant any subsequent permits to use water in the water shortage area except on payment of compensation to those permit holders having priority of use under subsection (3).

(6) Any action taken or authorisation given under subsection (1) shall lapse—

- (a) after such period as the Board may determine; or
- (b) on the cancellation of the declaration made under subsection (1).

(7) Any borehole drilled or other water works constructed during a water shortage period on any occupier's land in the water shortage area shall, after the cancellation of the declaration as specified under section *fifty-one*, be transferred to that occupier, except that where the Minister declares that area as a water shortage area, no further compensation shall be paid to that occupier of land for the exercise of any power under subparagraphs (i) and (ii) of paragraph (c) of subsection (1) in respect of the borehole or other water works .

(8) The Board shall not delegate any of its powers under this section to any person or body.

(9) A person who is aggrieved with any decision of the Board made under this section may appeal to the Minister within thirty days of the decision of the Board.

53. (1) A person shall not, in a water shortage area, sink, deepen or alter a borehole for any purpose before obtaining a permit.

(2) Subject to this Act, a person shall apply to the Authority for a permit to sink, deepen or alter a borehole for any purpose in accordance with Part IX.

(3) Part IX shall apply, with the necessary modifications, to a permit for the sinking, altering or deepening of a borehole for any purpose.

(4) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

54. (1) The Board may, subject to section *fifty two* and subsections (6), (7) and (8) and on the recommendation of a catchment council, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia or a newsletter, fix a maximum volume of water which may be abstracted from any water resource or water storage works and the maximum rate per month at which water may be abstracted from any borehole or any water storage works in a water shortage area.

(2) The rate or volume of water to be abstracted, as provided under subsection (1), may be fixed in relation to the area of land occupied by any person in the water shortage area or to any other circumstance which the Board considers relevant to the fixing of the rate or volume of water to be abstracted.

(3) Subject to subsections (5) and (6), a person shall not, after the publication of the notice referred to in subsection (1), in any month, abstract water from any water resource, water storage works or borehole, in a water shortage area, at a rate exceeding the maximum rate fixed under subsection (1).

(4) A catchment council may cause an investigation to be undertaken on the use being made of water in a water shortage area and may, after having given the occupier of land, on which the water resource, borehole or water storage works is located, not less than seven days' notice of its intention to do so, recommend to the Authority the amendment of the conditions or the suspension of any permit or licence.

(5) A person who—

(a) uses or intends to use water within a water shortage area for the purpose of that person's occupation or trade; or

Sinking, deepening or altering boreholes in water shortage areas restricted

Maximum volume and rate of abstraction in water shortage areas

- (b) has carried out water conservation measures or water works, the nature and extent of which are approved by a catchment council and which are likely to result in an improvement in the water resources in a water shortage area;

may apply to the Authority for a permit to use water within the water shortage area at a rate higher than the maximum rate fixed under subsection (1).

(6) A local authority, a utility or person supplying water for municipal purposes may, if part of the area under its jurisdiction is within a water shortage area, apply to the Authority for a permit to use water within a water shortage area at a rate higher than the maximum rate fixed under subsection (1).

(7) The Director-General may, on an application made under subsection (5) or (6)—

- (a) grant a permit authorising the use of water at a rate higher than the maximum rate fixed under subsection (1), subject to such conditions as the Board may impose; or
- (b) reject the application and give reasons for so rejecting.

(8) A person who is aggrieved with—

- (a) the maximum rate of abstraction of water fixed under subsection (1) may, within a period of thirty days from the date of publication of the notice referred to in that subsection, appeal to the Minister; or
- (b) any decision of the Director-General made under subsection (7) may, within a period of thirty days from the date of the decision, appeal to the Board.

(9) On an appeal under subsection (8) relating to—

- (a) the maximum rate of abstraction of water, fixed under subsection (1), the Minister may direct the Board to amend the rate or confirm it; or
- (b) any decision of the Director-General under subsection (7), the Board may direct the Director-General to—
 - (i) grant or re-issue the permit applied for, subject to such conditions as the Board may specify in the direction; or
 - (ii) set aside the appeal.

(10) A person who contravenes subsection (3), commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

PART VII

MANAGEMENT OF SHARED WATER COURSES AND WATER RESOURCES

55. (1) Notwithstanding subsection (2), the Government shall protect Zambia's territorial sovereignty over its water resources.

Strategy on
management
of shared
water
resources

(2) Without prejudice to the rights and obligations arising from any other treaty, convention, agreement or declaration relating to shared water resources to which Zambia is a State Party, the Government shall uphold such basic principles and rules of international law as are reflected in the treaties, conventions, declarations and agreements listed in Part 1 of the Third Schedule and as provided under this Part.

56. (1) Subject to the Constitution and this Act and notwithstanding any other law, the Ministry responsible for water resources may, on behalf of the Government—

Cooperation
over shared
water
resources
Cap. 1

- (a) enter into bilateral or multilateral agreements with any foreign State or government relating to any shared water resource;
- (b) in cooperation with other riparian States, develop legal instruments, on the advice of the Authority and any appropriate authority, that may be required to protect and conserve the water resource and for the—
 - (i) use of water;
 - (ii) monitoring and control of pollution and its effects in any shared water resource;
 - (iii) the putting into place of adaptation measures to deal with climate change; and
 - (iv) control of longrange transport of pollution;
- (c) on the advice of the Director—
 - (i) establish or strengthen research and development programmes at sub-regional, regional and international levels in support of water resource assessment activities and climate change and monitor such research and development to ensure that they are appropriate for the needs of Zambia; and
 - (ii) set up mechanisms for the sharing of appropriate knowledge and technology for the collection of data and the implementation of planned development; and

(d) in cooperation with other riparian States, and in consultation with the Authority, formulate water resources strategies, prepare joint water resources management plans and, where appropriate, harmonise their strategies and plans with national strategies and plans.

Powers and duties of Minister on management of shared water resources

57. (1) The Minister may, on the advice of the Director, do any of the following in relation to the management of shared water resources:

- (a) establish national mechanisms for dispute resolution regarding shared water resources;
- (b) promote and ensure stakeholder participation, as part of Government's decision support system, in the management of shared water resources; and
- (c) facilitate the building of appropriate capacity for negotiations of shared water resources agreements as well as participation in institutions established under section *fifty eight* to deal with shared water resources.

(2) The Minister shall ensure that any agreement entered into, under section *fifty six*, protects Zambia's sovereignty and adequately operationalises the principles of equitable, reasonable and sustainable utilisation of shared water resources by taking into account the following:

- (a) geographical, hydrographic, hydrological, hydro-geological, climatic and climate change, ecological and other factors of a natural character;
- (b) the social and economic needs of Zambia;
- (c) the people who are dependent on the water resources, including their health and safety;
- (d) existing and potential uses of the water resource;
- (e) economy of use of the water resource;
- (f) the prevention, reduction and control of pollution of the water resource;
- (g) the protection and preservation of the aquatic environment;
- (h) the regulation of the flows and levels of the waters of the watercourses and other water resources; and
- (i) the protection, preservation, conservation and development of the water resource and its ecosystems.

(3) The Minister may delegate any of the functions, specified under subsection (2), in writing, to the Authority.

- 58.** Any agreement entered into by the Government, under section *fifty-six*, may establish an institution to implement the agreement in collaboration with the Authority and in particular to—
- (a) investigate, manage, monitor and protect the watercourse;
 - (b) foster regional cooperation over the watercourse;
 - (c) acquire, construct, alter, operate or maintain any water works; or
 - (d) allocate, use and supply water from the watercourse.
- 59.** The institutions listed in Part II of the Third Schedule shall be institutions contemplated under section *fifty eight*, except that they shall continue to function as provided under existing agreements until such time as the State Parties revise their functions and operations to comply with this Act.

Establishment of institutions to implement agreements

Transitional provisions for existing institutions

PART VIII WATER USE

- 60.** (1) The use of water shall—
- (a) maximise the social and economic benefits to the community;
 - (b) be consistent with the principles specified under section *six*; and
 - (c) avoid or minimise the adverse impact of that use on other users of water.
- (2) Subject to this Act, water may be used for the following purposes:
- (a) domestic or non-commercial purposes;
 - (b) environmental purposes;
 - (c) training and research purposes;
 - (d) municipal purposes;
 - (e) agricultural purposes;
 - (f) industrial purposes;
 - (g) hydro-electric purposes;
 - (h) mining purposes;
 - (i) navigational purposes;
 - (j) supply of water in bulk; and
 - (k) any other purposes as may be specified by the Board.
- (3) A person who uses water, as specified under subsection (2), shall comply with any condition, limitation, restriction or prohibition imposed for that use by, or under, this Act or any other law.

Uses of water

Allocation of
water and
prioritising
its uses

61. (1) Subject to subsections (2) and (4), prioritisation of, and the process of allocating and classifying water for various purposes for inclusion in an allocation plan shall be as follows:

(a) a sub-catchment council shall prepare an allocation plan for inclusion in a subcatchment management plan as specified under subsection (3) and (5) and shall submit the sub-catchment management plan to the catchment council; and

(b) the catchment council shall include the sub-catchment management plan in the catchment management plan and shall submit the plan to the Authority, together with a compilation of all the allocation plans for the approval of the Board.

(2) When classifying water for various purposes a sub-catchment council shall, in consultation with the water users associations in the sub-catchment—

(a) determine the development and management priorities of the sub-catchment;

(b) endeavour to ensure that statutory minimum flows required for a particular catchment or sub-catchment are taken into account;

(c) ensure that water reserves are set aside for priority purposes and environmental needs;

(d) make an assessment of actual or potential effects on the environment; and

(e) ensure that the following purposes have priority in that order—

(i) domestic and noncommercial purposes;

(ii) environmental purposes; and

(iii) any other purposes determined by the sub-catchment council in order of the development and management priorities;

in accordance with the criteria, terms and conditions prescribed by the Minister under subsection (5).

(3) An allocation plan and a catchment management plan, submitted under subsection (1), shall include the following information:

(a) water committed for the reserve;

(b) the various categories of uses of water in that subcatchment and catchment;

(c) the prioritisation of the various uses of water as specified under subsection (2);

- (d) requirements for water within the catchment to satisfy the needs of existing permit holders;
- (e) the effect of climate change or variability on the availability of water;
- (f) the adjustment to entitlements given for the use of water in case there is a reduction in the availability of water; and
- (g) water storage works existing or that are being, or are to be, constructed in the catchment.

(4) The Board shall, subject to the national water resources strategy and plan and this Act, on receipt of a catchment management plan submitted under subsection (1), determine the—

- (a) quantity of water to be allocated for the various uses of water; or
- (b) purpose for, or manner in which, the water shall be used; taking into account the recommendations made, and factors specified, in the allocation plan and the water available in the resource that is required for —
 - (i) the reserve;
 - (ii) any regional and international obligation; and
 - (iii) municipal purposes, agricultural purposes, mining purposes, hydroelectric purposes and industrial purposes.

(5) Subject to this Act, the Minister, on the recommendation of the Authority and a catchment council may prescribe—

- (a) the matters which shall be taken into account in considering the respective priority of different uses of water;
- (b) the manner of allocating water between users who have competing needs for water;
- (c) the limitations in terms of cubic metres that may be abstracted for any category of use as specified under section *sixty*;
- (d) the methods of allocating water; and
- (e) the detailed processes and procedures, subject to subsection (1), relating to the classification and allocation of water in a subcatchment and under a water users association.

(6) Notwithstanding subsections (1),(4) and (5), the Authority shall not allocate any water in a customary area without first consulting the traditional authority in that area and taking into consideration the local customs and practices which are beneficial to water resources management.

Use of water for domestic purposes domestic and non-commercial purposes

62. (1) Subject to this Act, any person may use water for domestic and non-commercial purposes, except that such use shall not be construed as conferring on that person a right, which that person would not otherwise possess, to enter or occupy any land for the purposes of using any water.

(2) A person shall not require a permit for the use of water for domestic and non-commercial purposes, except as otherwise provided under this Act.

(3) Notwithstanding subsection (2) and section *seventy*, any person who intends to construct water storage works, above a prescribed limit, on a water resource for domestic and non-commercial purposes shall obtain a permit under Part IX.

(4) A person who intends to construct water storage works for domestic and non-commercial purposes, under subsection (3), shall, in writing, notify the catchment council, sub-catchment council and every occupier of riparian land which is contiguous to the proposed water storage works—

- (a) of the intention to construct the proposed water storage works; and
- (b) that such occupier may, on payment of an agreed proportion of the cost of construction and maintenance of the proposed water storage works, participate in their benefit.

Water for domestic purposes domestic and non-commercial purposes in customary area

63. A person who intends to apply for a permit to use water for any purpose, other than for domestic and non-commercial purposes, in a customary area and that use is likely to substantially affect the supply of water for domestic and non-commercial purposes for the occupants of that customary area, that person shall prior to making an application to the Director-General—

- (a) obtain approval of the traditional authority in that area; and
- (b) put in place alternative means for securing water for domestic purpose.

Use of minimum quantities of water for investigating ground water and preliminary works

64. (1) Notwithstanding this Act, a person may, after obtaining a temporary permit from the Director-General, as specified under section *seventy-five*, construct or extend any water works or install any machinery, for the purpose of paragraphs (d) and (e) of section *seventy*, or where it is necessary to carry out preliminary work prior to the use, diversion or construction of water works.

(2) A temporary permit issued for the purposes of subsection (1) shall not, in any way, impose any liability or obligation on the Authority for any expenses incurred by any person undertaking any works under the permit, including a case where the Director-General does not thereafter issue that person with a permit for the use of water for purposes of this Act.

65. (1) The Authority—

Investigation
of use of
water

(a) shall, where required to do so by the Minister, investigate, in consultation with a catchment council, sub-catchment council or water users association, any use, allocation, or control of water in any catchment, sub-catchment or area under the jurisdiction of a water users association, and report to the Minister; and

(b) may, by public consultation with permit holders, licencees, traditional authorities, catchment councils, sub-catchment councils or water users associations, as the case maybe, investigate any use, appropriation allocation or control of water in any catchment.

(2) Where the Board is satisfied that, as a result of any investigation, undertaken under subsection (1), there is need to—

(a) grant, cancel or vary any permit or licence; or

(b) take any other appropriate action in the matter;

it shall do so in accordance with this Act.

66. (1) A person shall not, except with the written consent of the Director-General—

Wastage of
water

(a) cause any water to run to waste from any water works, except for the purpose of testing the quantity, quality or supply of water or the cleaning, disinfecting, examining or repairing of water works;

(b) use or cause to be used water in excess of that granted under a permit;

(c) conduct water from any water works or any other source through any channel or conduit so that water is wasted between the source and the point of beneficial use; or

(d) use or cause to be used water from any water works unless such water is carried through pipes fitted with float valves or other satisfactory means of control to prevent wastage of the water.

(2) The Director-General shall, where the Director-General is satisfied that a person has contravened this section, give notice to that person to take such remedial action, as may be specified in the notice, within thirty days of the notice.

(3) The Director-General may, where a person fails to comply with a notice, given under subsection (2), take such measures as are provided under section *forty-five*.

Records of amount of water used to be maintained

67. (1) A sub-catchment council may request a permit holder or licensee to—

- (a) provide and install a metre or other measuring device for measuring and recording the amount of water used; and
- (b) submit to the sub-catchment council or water users association, in the prescribed form, annually or at such intervals as the sub-catchment council or water users association may require, records indicating the amount of water used.

(2) Notwithstanding subsection (1), the Authority may install or cause to be installed a metre or other measuring device on any water works belonging to a permit holder or licensee.

(3) Any officer of the Authority or other person authorised by a sub-catchment council may inspect any metre or other measuring device, take readings from it and seal the device in order to prevent interference with its working.

(4) Where a person fails to comply with any request, made under subsection (1), the sub-catchment council shall—

- (a) give notice to the permit holder or licensee to comply with a request made under subsection (1) within thirty days of the notice; and
- (b) take any action provided under section *forty-five*.

Regulations for use of water

68. (1) Subject to subsection (3), the Minister may, on the recommendation of the Authority, make regulations—

- (a) limiting or restricting the purpose, manner or extent of the use of water;
- (b) prescribing the outcome or effect which must be achieved by the installation and operation of any water works;
- (c) regulating the design, construction, installation, operation and maintenance of any water works;

- (d) for the various roles and responsibilities of officers, of the Authority, water users associations, appropriate authorities and any department or agency of Government responsible for water resources management and environmental protection, in the decision making process relating to water use; or
- (e) regulating or prohibiting any activity in order to protect a water resource or riparian habitat.
- (2) Regulations made under subsection (1) may—
- (a) differentiate between different purposes for the use of water;
- (b) make different provisions for different water resources;
- (c) differentiate between different geographical areas; and
- (d) create offences and prescribe penalties.
- (3) The Minister shall, in making regulations, under subsection (1), take into account all relevant considerations, including the need to—
- (a) promote the social, economic, sustainable, equitable and reasonable use of water;
- (b) conserve and protect water resources or riparian habitat;
- (c) provide for adaptive measures for climate change;
- (d) prevent wastage of water;
- (e) facilitate the monitoring of the use of water and water resources; and
- (f) facilitate the imposition and recovery of charges.

PART IX

PERMITS FOR WATER USE

69. (1) An appropriate authority shall not issue or grant any licence, permit or other authorisation for the doing of any activity by any person, in any catchment or on, or along, a water resource, before the appropriate authority first consults the Authority as to whether the issuing or the grant of any licence, permit or other authorisation will affect the resource quality or quantity of water in any water resource.

Integrated decision-making process and single permit or licence system

(2) The Authority may, where consulted under subsection (1), impose such conditions or stipulate such requirements as the Authority considers necessary to maintain or protect the resource quality or quantity of water in any water resource, including conditions relating to the strict compliance of any other written law.

(3) Where the Authority imposes any conditions or stipulates any requirement under subsection (2), an appropriate authority shall endorse such condition or requirement on any licence or permit issued to any person whose activities under the licence or permit will affect the resource quality or the quantity of water in any water resource.

(4) A conservancy authority or an appropriate authority shall, when requested to do so by the Authority, give to the Authority any advice or assistance or submit such information as may be necessary for the performance of the Authority's functions under this section.

(5) Any contravention of any condition or requirement endorsed on any licence or permit, under subsection (3), shall be a ground for the revocation of any permit or licence issued by an appropriate authority under the relevant law.

(6) A person whose permit or licence authorises the use of water for a purpose specified in the permit or licence shall pay, to the appropriate authority that issued the permit or licence, the charge prescribed under this Act for the use of that water and such permit or licence shall for all purposes be deemed to be a permit or licence issued under this Act for the use of the water as specified and shall be subject to this Act.

(7) Where a person makes a payment under subsection (6) for the use of water by that person, the appropriate authority shall transmit to the Authority the charges paid.

70. Subject to the requirements, limitations and conditions specified by, or under, this Act, a permit shall not be required for—

- (a) the use of water, from any water resource, for domestic and non-commercial purposes by a person having lawful access to it;
- (b) the development or use of ground water for domestic and non-commercial purposes;
- (c) the harvest of any rain water from any facility not specified in paragraph (g) of section *seventy-one*;

Activities
where no
permits
required

- (d) the investigation of the presence of water in any aquifer of the quality or quantity of ground water; or
- (e) ascertaining the effect of using water from any borehole or water works or the level of water in any other borehole or water works on any water resource.

71. Subject to this Act, a person who intends to—

- (a) use water for purposes specified under section *sixty*, other than for the domestic purposes specified under section *seventy*;
- (b) construct, acquire any water works, impound, supply or distribute water from any water works or borehole to any other person;
- (c) de-water any mine, quarry or water works;
- (d) drain any swamp, marsh, dambo, wetland, re-charge area or other land;
- (e) construct or acquire any water works for the purpose of draining into, conserving or utilising, in any manner whatsoever, water from a water resource;
- (f) construct water works necessary to restore the course of a water resource that has changed its course;
- (g) harvest any rainwater by means of a dam, weir or barrage that is on a water resource;
- (h) conduct any operation that would interfere with the bank or course of a watercourse;
- (i) sink, deepen or alter any borehole for any purpose in a water shortage area; or
- (j) carry out any activity in relation to a water resource as may be prescribed;

Activities
where
permits
required

shall apply for a permit and pay such charges, for the use of the water, as may be prescribed.

72. (1) An application for a permit under section *seventy-one* shall be made in the prescribed form and lodged with the Authority, catchment council, sub-catchment council or water users association and be accompanied with—

Application
for permit

- (a) such information in support of the application as the form may require; and
- (b) a prescribed application fee.

(2) The Authority, catchment council, sub-catchment council or water users association shall, where an application is received under subsection (1), subject the application to public comment by a notice in a daily newspaper of general circulation in Zambia and, where applicable, to an environmental impact assessment in accordance with the Environmental Management Act, 2011.

Act No. 12
of 2011

Act No. 7 of
2008

(3) Notwithstanding subsection (1), a person holding a permit or a licence under the Mines and Minerals Development Act, 2008 who requires the use of water for mining purposes, shall make an application to the Director of Mines, setting out the volume of water required, the nature of the proposed use and such other information as may be prescribed.

(4) The Director of Mines shall cause an inquiry to be made into the merits of the application, made under subsection (3), and shall thereafter forward the application with comments and recommendations to the Director-General, catchment council, sub-catchment council or water users association for consideration.

(5) A person opposed to the grant of a permit may object to the grant of the permit, within thirty days of the notice inviting comments on an application, in the prescribed manner, to the Authority, catchment council, sub-catchment council or water users association.

(6) Where there are no objections to an application, made under subsection (1), the decision on the application shall be submitted to the sub-catchment council for consideration.

(7) A catchment council shall consider the decision of the sub-catchment council within thirty days of receipt of the decision and transmit its decision to the Director-General.

(8) Where there are objections to an application, made under subsection (1) or (3)—

(a) the Authority, catchment council, sub-catchment council or water users association shall consider the objections and make a decision on the application;

(b) the decision of the water users association shall be sent to the sub-catchment council for further consideration and the decision of the sub-catchment council shall be sent to the catchment council for further consideration; and

(c) the catchment council shall submit all decisions received, including its own decision, to the Director-General for consideration and determination.

(9) Where the Authority, catchment council, sub-catchment council or water users association does not agree with an objection made, it shall notify the person making the objection within fourteen days of its decision.

(10) Where there are no objections to an application made under subsection (1) or (3)—

- (a) the Authority, catchment council, sub-catchment council or water users association shall consider the application and make a decision on the application;
- (b) the decision of the water users association shall be sent to the sub-catchment council for further consideration and the decision of the sub-catchment council shall be sent to the catchment council for further consideration; and
- (c) the catchment council shall submit all the decisions received, including its own decision, to the Director-General for consideration and determination by the Board.

(11) The period for the consideration of applications for permits shall be thirty days from the date of receipt of an objection on an application or the expiry of the notice inviting public comments where there are no objections.

(12) A person aggrieved with a decision of the catchment council, sub-catchment council or water users association under subsection (8) may, within thirty days of the decision, appeal to the Director-General.

73. (1) The Board shall consider and make a decision on an application for a permit, as provided under section *seventy-four*, as soon as practicable but not later than thirty days from the date it was lodged with the Authority or received from a catchment council.

Duty to consider application for permit

(2) Where an application for a permit is not considered and a decision made by the Board within thirty days, as specified under subsection (1), any application fee paid by the applicant shall be refunded to the applicant and the Board shall immediately proceed to consider and make a decision on the application which shall be done in not more than seven days.

(3) Where the Board still does not consider and decide on an application for a permit, lodged or submitted under subsection (1), after the application fee is refunded to the applicant, as provided under subsection (2), the applicant may appeal to the catchment council within thirty days of receipt of the refunded application fee.

74. Subject to this Act, in particular to the priorities for the use of water in an allocation plan and a catchment management plan, the Board shall, on receipt of applications for permits from a catchment council, before granting a permit—

Consideration before grant of permit

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- (a) identify and take into consideration existing entitlements to the use of the water;
 - (b) in the case of more than one application for the use of the same water, have regard to—
 - (i) the need to achieve, as far as possible, an equitable allocation of the available water resources;
 - (ii) the needs of each application; and
 - (iii) the likely economic, social and environmental benefits or effects of the proposed use;
 - (c) in respect of an application for a permit to construct water works that are necessary to restore the course of a water resource, have regard to—
 - (i) any interests lawfully acquired in the changed course of the water resource; and
 - (ii) the extent to which existing permits may be affected;
 - (d) have regard to the economic aspects of the proposed scheme, undertaking or water works;
 - (e) if the use will result in effluent requiring treatment and disposal, order the applicant to ensure that the proposed method of treatment and disposal of the effluent complies with Part V;
 - (f) take into account the resource quality objectives of the water resource;
 - (g) take into account the investments already made, and to be made, by the user of the water in respect of the use of the water in question;
 - (h) take into account the strategic importance of the use of the water applied for;
 - (i) take into account the quantity of water in the water resource which may be required for meeting the reserve and any international obligation;
 - (j) consider the probable duration of any undertaking or activity for which the use of water is applied for;
 - (k) if the application for a permit for the use of water is for water being beneficially used by a permit holder, consider the payment of compensation by the applicant to the permit holder on such terms and conditions as may be agreed by the parties concerned; and
 - (l) consider such matters as may appear to be relevant in the circumstances of each case.

75. (1) The Director-General may grant a temporary permit for the use of water to an applicant, excluding construction of water works, on such terms and conditions as the Board may specify in guidelines issued to the Director-General.

Temporary permit

(2) A person shall not commence any works or activities, specified under *sixty four*, unless that person applies for a temporary permit.

(3) A temporary permit shall authorise the holder to do such things as are necessary to carry out the works or activities specified in the temporary permit for the duration of the preliminary works or activities to be undertaken, but in no case shall its duration exceed a period of one year.

(4) A temporary permit issued by the Director-General under this section shall not oblige the Board to issue a permit for such works or activities as specified under this Act.

76. (1) The Board may, subject to this Act, grant a permit for the use of water within sixty days of a lodgement or submission or receipt of an application.

Grant of permit and conditions of permit

(2) The Board shall grant a permit subject to the following conditions:

- (a) any condition or requirement relating to the use of water as is specified or required by this Act or as may be prescribed;
- (b) any condition relating to the rate of abstraction of water as the Board may specify;
- (c) the payment by the permit holder of any prescribed charges for the use of the water on the grant of the permit and thereafter on an annual basis; or
- (d) such other conditions, not inconsistent with this Act, as the Board may specify in writing.

(3) Without limiting subsection (2), regulations made by the Minister, under paragraph (a) of subsection (2), may impose conditions for different circumstances and for different uses.

77. (1) Subject to subsection (2), permits for various uses of water shall not be granted so as to be in force for a period exceeding, or for periods which in the aggregate exceed, twenty-five years.

Duration of permit

(2) Notwithstanding subsection (1), a permit for hydroelectric purposes shall be granted for a period not exceeding, or for periods which in the aggregate do not exceed, thirty years.

Refusal of permit

78. If the Board is satisfied that an application does not comply with, or is contrary to, any regulations made under this Act, the Board may refuse to grant a permit for the use of water and, in such a case, the Board shall inform the applicant and any person objecting to the grant of the application, of the reasons the Board refused to grant the permit.

Renewal of permit

79. (1) Subject to this Act, on the expiry of the period for a permit, specified in section *seventy seven*, a permit shall, upon application by the permit holder, in the prescribed form, be renewed for a similar period, as long as the applicant has not breached the conditions of the previous permit and the hydrological conditions have not substantially changed.

(2) An application for a renewal of a permit under this section shall be subject to the same procedure as applies to an application for a permit under section *seventy-two*.

(3) Subject to this Act and in particular subsection (2), an application for a renewal of a permit, that is valid for at least ten years, may be made to the Authority, catchment council, a sub-catchment council or water users association, three years prior to its expiration and the Board may grant another permit to the applicant, for a period not exceeding the periods specified under subsections (1) and (2) of section *seventy-seven*, valid from the date of the renewal.

Permit to run with land or undertaking

80. A permit shall specify, as far as practicable, the particular portion of any land or the particular undertaking to which the permit is to be appurtenant and on its grant the permit shall, for the duration of that permit, and subject to this Act:

(a) be appurtenant to that portion of land or that undertaking; and

(b) pass with any demise, device, alienation, transfer or other disposition of the land or undertaking, whether by operation of law or otherwise.

Variation of permit

81. (1) A permit may be varied by the Board after due investigation by the Authority in the following circumstances:

(a) where it is shown, by any person that, owing to any emergency as specified under Part XIV, the use of water under a permit or the method or point of diversion or other manner in which the water is so used, causes—

(i) inequity; or

(ii) a deterioration in the quality of water;

- (b) if, after a hydrological survey of the relevant water resource has been made or due to climate change, there is a shortage of water for any purpose which has priority under this Act; or
 - (c) if the permit holder makes partial use of the permit after taking into consideration the nature of the investment.
 - (2) The Board may vary a permit, under subsection (1), so as to—
 - (a) reduce the quantity of water allocated for the purpose;
 - (b) alter the use of the water specified by the permit;
 - (c) alter the method of diversion or other specification stipulated in the permit; or
 - (d) alter the terms and conditions of the permit so as to effect the variation.
 - (3) A permit shall not be varied under this section unless notice, of not less than thirty days, of the proposed variation has been served on the permit holder and the permit holder has been afforded a reasonable opportunity to show cause to the Board as to why the permit should not be varied.
 - (4) Subsection (3) shall not apply where the variation is necessary owing to an emergency of a kind provided under Part XIV.
 - (5) Subject to subsection (6), the Board may, in each particular case, determine whether compensation should be paid, and by whom it should be paid, to a permit holder who suffers a variation to the permit.
 - (6) Compensation shall not be paid under this section in respect of a variation of a permit to reduce the quantity of water which the permit holder is authorised to use if the—
 - (a) Board is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the permit relates;
 - (b) variation does not reduce the quantity of water the holder of the permit is authorised to abstract to less than the minimum amount required for the use; or
 - (c) variation is necessary to protect, from serious damage—
 - (i) any water resource;
 - (ii) underground water; or
 - (iii) any ecosystem.

Variation of permit at request of permit holder

82. (1) A permit may, at the request of the permit holder, be varied by the Board so as to—

- (a) change the point of diversion or abstraction of the water used under the permit;
- (b) reduce or increase the use of water authorised by the permit;
- (c) allow the apportionment of the water to be apportioned between two or more parts of the land to which the permit pertains;
- (d) allow the mixture of waters authorised to be taken or used with those authorised to be taken or used by another permit, whether held by the same or another permit holder;
- (e) remedy any defect where the permit is incomplete or indefinite in its terms and conditions; or
- (f) alter any term or condition of the permit if the Director-General is satisfied that the variation is not contrary to the public interest or the rights of others.

(2) A variation of a permit, under subsection (1), shall not be made without undertaking public consultations, if prescribed for that particular variation.

Power to require permit application or re-application

83. (1) For the purpose of sections *eighty-one* and *eighty-two* and where it is necessary that the use of water within a specific geographic area be rationed or reviewed so as to—

- (a) achieve a sustainable allocation of water from a water resource or ground water which is under stress;
- (b) achieve equity in allocations;
- (c) promote beneficial use of water in the public interest;
- (d) facilitate efficient use and management of water resources, including the promotion of the conjunctive use of surface and ground water; or
- (e) protect the water resource quality and ecosystems;

the Authority may issue a notice, of not less than sixty days, in the *Gazette* and a daily newspaper of general circulation in Zambia or a newsletter, requiring all users of water, including permit holders, to apply or re-apply for permits for the use of water.

(2) Following the receipt of applications or re-applications under subsection (1), the Board shall, after undertaking public consultations, grant permits for the use of water within that geographic area, subject to such conditions as may be prescribed.

- 84.** (1) Subject to this Act, a permit may be cancelled by the Board, on the recommendation of the Director-General—
- Cancellation of permit
- (a) if the permit holder contravenes any condition of the permit;
 - (b) if the permit holder fails to make beneficial use of the water or any part of the water within a period of one year of the permit or such longer period as may be determined by the Board taking into consideration the nature of the investment;
 - (c) where it is necessary to enable a Government scheme or community project to be undertaken in accordance with this Act; or
 - (d) if the permit holder is convicted of an offence under this Act and sentenced to a period of imprisonment exceeding six months.

(2) A permit shall not be cancelled under this section unless notice of the proposed cancellation has been served on the permit holder and the permit holder has been afforded a reasonable opportunity to show cause to the Authority as to why the permit should not be cancelled.

(3) A permit holder whose permit is cancelled as a result of paragraph (c) of subsection (1) shall be paid compensation in accordance with the Lands Acquisition Act.

Cap. 189

(4) A person aggrieved with a decision of the Board, made under subsection (1), may appeal to the Minister.

85. (1) A permit holder who ceases to use water in accordance with the terms and conditions of the permit may, by notice to the Authority, abandon the whole of the permit or any part capable of separation.

Abandonment of activities under permit

(2) Where a permit holder abandons the whole or part of a permit, under subsection (1), the Authority may direct the permit holder to remove, within such time as it may specify, all or any water works erected in connection with the permit.

(3) A permit holder who neglects or fails to remove the water works, specified under subsection (2), commits an offence and the Authority may remove all or any portion of the works and may recover the cost of their removal from the permit holder as a debt owing to the Authority.

(4) Notwithstanding subsection (3), the Authority may, if it considers it to be necessary or prudent in the public interest, take over the operations and management of abandoned water works.

(5) Nothing in this section shall be construed as requiring or authorising a permit holder wholly or in part to abandon a permit contrary to the conditions of any mortgage or charge upon the land to which the permit is appurtenant.

Surrender of
permit

- 86.** (1) Where a permit—
- (a) is cancelled or varied by the Board;
 - (b) has been granted erroneously or irregularly; or
 - (c) has been granted in contravention of this Act;

the Board may, by notice served on the permit holder, require the permit holder to surrender the permit to the Authority.

(2) A permit holder who fails to comply with a notice under subsection (1) commits an offence and is liable, upon conviction, to the general penalty provided under section *one hundred and seventy-two*.

Register of
permits

87. (1) The Authority shall establish and maintain a register of permits that are in force and specify the details of the permits, their terms and conditions and the results of monitoring and enforcement action taken by the Authority regarding each permit.

(2) Information contained in the register, established under subsection (1), shall be accessible by the public on payment of a prescribed fee.

Cap. 185

(3) An entitlement to use water granted under a permit shall be registered, by the permit holder, in the Lands and Deeds Registry in accordance with that Act, and the permit holder shall inform the Authority of the date such registration was made.

PART X

LICENSING OF CONSTRUCTORS AND DRILLERS

Licensing of
constructors
and drillers

88. (1) A person shall not engage in the trade or business of constructing any water works or drilling any boreholes without a licence from the Authority.

(2) The Board may licence a person as a constructor or a driller and issue to that person a licence in such manner and under such conditions as may be prescribed.

- (3) The Minister may prescribe—
- (a) the criterion for the licensing of constructors or drillers; and
 - (b) the qualifications for constructors and drillers who are authorised to design, construct, install, operate or maintain any water works or drill any borehole.

- 89.** The Minister may prescribe—
- (a) the procedure for applying for a licence and the grant, modification, renewal, transfer and revocation of a licence;
 - (b) the terms and conditions attaching to the application, grant, modification, refusal, renewal, transfer or revocation of a licence; and
 - (c) such other matters as are necessary or incidental to the effective regulation of constructors and drillers licenced under this Part.
- 90.** An engineer shall not carry out any functions relating to the construction, design, installation, operation or maintenance of any water works unless that engineer is approved by the Board, in consultation with the Engineering Institution of Zambia.
- 91.** For the purposes of this Act, where any person is contracted to construct water works or drill any borehole by an occupier of land, the contractor shall be deemed to be the constructor of the water works or driller of the borehole.
- 92.** The Authority shall establish and maintain a register, as may be prescribed, of all constructors, drillers and engineers for purposes of this Part.

Procedure for application, grant, modification etc. of licence

Approved engineers

Contractor deemed to be constructor or driller

Register of constructors, drillers and engineers

PART XI

GROUND WATER AND BOREHOLES

- 93.** (1) The Authority shall protect ground water, in collaboration with any appropriate or conservancy authority, by—
- (a) encouraging the development of sustainable practices that do not degrade ground water;
 - (b) specifying measures that are necessary to mitigate saline intrusion into aquifers;
 - (c) preventing the pollution of aquifers through the regulation of toxic substances that permeate the ground;
 - (d) recommending to the Minister the declaration of water resource protection areas around groundwater, re-charge areas and abstraction sources; and
 - (e) promoting measures to improve the safety and integrity of boreholes.
- (2) The Authority may, for any borehole that is registered under this Part, carry out periodic assessments of its characteristics.

Protection of ground water

Notice to
drill borehole

94. A person who intends to drill a borehole and the occupier of the land shall, before any construction begins, notify the Authority, a catchment council or a subcatchment council of the proposed construction.

Permission
to drill and
access for
inspection

95. (1) The Director-General, a catchment council or a subcatchment council may, on such terms and conditions as may be prescribed, within thirty days of the notification given under section *ninety-four*, and after due investigations authorise in writing, the drilling of a borehole.

(2) Subject to section *one hundred and sixty-two*, an officer of the Authority shall, where an authorisation is granted under subsection (1)—

- (a) have free access to the borehole;
- (b) inspect the borehole and the material excavated from it;
- (c) take specimens of the material and of the water abstracted from the borehole; and
- (d) inspect any record kept in respect of the borehole.

(3) The Board shall specify the period of time for which the records and specimen of the materials, kept or taken under subsection (2), shall be kept by the person drilling the borehole or the occupier.

(4) The Authority shall ensure that all work necessary for the development of a borehole or the location of boreholes are within the distances prescribed.

(5) Nothing in this section or in any authorisation given under this section shall be construed so as to guarantee the quantity or quality of the water obtainable from any borehole.

Defective
borehole

96. (1) After the commencement of this Act, any borehole which encounters brackish water or other substances, as prescribed, shall be securely cased, plugged, or sealed off by the owner of the borehole so that the brackish water or other substance shall be confined to the strata in which it was found and the casing, plugging or sealing of the borehole shall be done in a manner that is effective to prevent the brackish water or other substance from escaping from the strata in which it was found into any other waterbearing strata or to the surface of the ground.

(2) The owner of a defective borehole, referred to under subsection (1), shall report the borehole to the Authority or a catchment manager and provide the location and data on the borehole.

- 97.** A person shall not recase or remove the plug or seals from a defective borehole, as referred to under section *ninety six*, except with the written authority of the Director-General or the catchment manager. Interference with defective borehole
- 98.** A person who contravenes section *ninety four, ninety five* or *ninety seven* commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both. Offences
- 99.** (1) A person drilling a borehole shall— Information on ground water and confidentiality
- (a) keep a journal of the progress of the work and, on completion or abandonment of the work, send a completion report, to the Authority and to the catchment council or sub-catchment council concerned, which shall specify the measurement of —
 - (i) the strata passed through; and
 - (ii) the levels at which water was struck and subsequently rests; and
 - (b) send to the Authority and the catchment council or sub-catchment council concerned particulars of any test made, before completion or abandonment of the work, of the flow of water, specifying—
 - (i) the rate of flow throughout the test;
 - (ii) the duration of the test;
 - (iii) where practicable, the water levels during the test and afterwards until the water returns to its natural level; and
 - (iv) any other information as the Authority, the catchment council or sub-catchment council may request.
- (2) A driller or occupier of land, on which a borehole is being drilled, may give notice to the Authority requiring—
- (a) any information or any records connected with the borehole kept or taken under this section; or
 - (b) any specimen or material connected with the borehole;
- to be treated confidentially and the Authority, on receipt of the notification, shall not allow any copy, extract, specimen or other information to be made by, published or shown to, any person, not being an employee of the Authority, unless the person giving the notice consents.

(3) Notwithstanding subsection (2), where the Authority gives notice to any driller or occupier, who has given notice under subsection (2), that the person's consent is being unreasonably withheld, that person may, within thirty days of the notice, appeal to the Minister.

(4) Where, at the expiration of the thirty day period referred to in subsection (3), no appeal is made or if after hearing the appeal the Minister does not make an order restraining the Authority from disclosing the information, the Authority may proceed to disclose the information.

(5) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units.

Register of
boreholes

100. (1) A person who drills a borehole shall, immediately after the completion of the borehole, notify the Authority or catchment manager, in writing, of the location and details of the borehole.

(2) The Authority shall keep a register of all boreholes in the manner prescribed.

Reporting of
existing
borehole

101. (1) After the commencement of this Act, a catchment council may require all occupiers to notify the catchment manager, in writing, within the period specified, of the location and data relating to any existing boreholes.

(2) A person who, without good reason, fails or refuses to comply with a requirement made under subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand penalty units.

PART XII

WATER WORKS

Definitions

102. (1) In this Part—

“appurtenant works” means water works which contribute, directly or indirectly, to the functioning, operation or safety of dams, and includes—

(a) outlet works, penstocks, pipelines, tunnels and other water conduits;

(b) gated and ungated spillways and erosion control and energy dissipating works, whether in the structure of the dam or separate from the dam; and

(c) anchoring, buttressing, drainage and other stabilising works in original earth or rock slopes, whether downstream or upstream, of the dam;

“community project” means a project approved by the Board and operating under a permit for one or more purposes which are—

(a) connected with the use of water within a geographic area; and

(b) classified and declared by the Board, with the approval of the Minister, as a community project;

“dam” means a small dam or large dam and includes a weir, barrage or other facility for the impoundment of water;

“dam with safety risk” means any dam—

(a) which can contain or store more than fifty thousand cubic metres of water or as may be prescribed, and which has a wall of a vertical height of more than five metres measured as the vertical difference between the lowest down stream ground elevation on the outside of the dam wall and the nonover spill crest level or the general top level of the dam wall; or

(b) declared to be a dam with a safety risk under section *one hundred and twenty*;

“dam works” means the alteration, construction, reconstruction or removal of a dam;

“de-commissioning” in relation to a dam, means removing a dam from service and, where appropriate, physically dismantling it;

“full supply level” means the water level in a dam immediately prior to the release of excess flood water through a spillway;

“Government scheme” means—

(a) a scheme for any public purpose;

(b) a reservation by the Minister, after consultation with the Authority, of the whole or part of a water resource for any public purpose;

“large dam” means a structure, whether constructed or proposed to be constructed, which, together with its abutments, appurtenant works and foundation is capable of diverting or storing water and which—

(a) has a vertical height of at least fifteen metres, or as may be prescribed, measured from the nonoverflow crest of the wall of the structure to the lowest point on the downstream face of the wall; or

(b) is capable of storing at least one million or more cubic metres of water at full supply level;

“owner” in relation to a dam—

(a) means the permit holder; and

(b) includes the legal representative of a permit holder who has died, become insolvent, is a minor or of unsound mind or is otherwise under disability and, in the case of a company, the liquidator of the company;

“public purpose” includes—

(a) the use of water, by the Government, for social or economic development, in the public interest;

(b) the drainage or reclamation of land;‘

(c) the protection of any water resource, its source or catchment;

(d) identification and development of a retarding basin for the control and management of flood water or other measures for its control or disposal;

(e) the conservation or improvement of water quality; or

(f) the storage or impoundment of water for purposes of supply of water in bulk, including the construction of reservoirs for impounding surface runoff and for regulating stream flows to synchronise them with water conservation practices;

“registration certificate” means a registration certificate issued under section *one hundred and eleven*; and

“small dam” means a structure, whether constructed or proposed to be constructed, which, together with its abutments, appurtenant works and foundation, is capable of diverting or storing water and which—

(a) has a vertical height of more than eight metres, or as may be prescribed, but less than fifteen metres measured from the nonoverflow crest of the wall of the structure to the lowest point on the downstream face of the wall; or

(b) is capable of storing more than five hundred thousand but less than one million cubic metres of water at full supply level.

103. (1) Subject to this Act, a person shall apply to the Authority for a permit, in accordance with Part IX, to construct water works.

Permission to construct water works

(2) Part IX shall apply, with the necessary modifications, to a permit for the construction of water works.

104. After the commencement of this Act, a catchment council may require all owners of water works to notify the catchment manager, in writing, within the period specified, of the location and data relating to any existing water works.

Reporting of existing water works

105. The Authority shall keep a register of all water works in the manner prescribed.

Register of water works

106. (1) The Minister may, after reasonable notice to any occupier, construct and maintain, upon any land, any Government scheme.

Government schemes

(2) The Government shall pay compensation, in accordance with the Lands Acquisition Act, to the occupier of the land on which any Government scheme shall be constructed but, in assessing the amount of compensation payable, the President shall take into consideration any benefit accruing as a result of the construction of the scheme.

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(3) The cost of construction and maintenance of any water works for a Government scheme shall be paid out of moneys appropriated by Parliament or any other source for that purpose.

(4) The development of water works and their management for the purposes of a Government scheme for the supply of water in bulk shall be undertaken in accordance with the relevant law.

107. (1) The Board shall not approve any community project unless—

Community projects

(a) the proposed project is approved by the sub-catchment council concerned; and

(b) provision is made, by the sponsors of the community project, for an adequate alternative supply of water to be used by any permit holder likely to be adversely affected and unable to benefit from the project.

(2) A permit for a community project shall not be cancelled or varied except with the consent of the Minister.

Precedence
of
Government
schemes and
community
projects

108. (1) A Government scheme shall take precedence over a community project and all other purposes for the use of water.

(2) A community project shall take precedence over all other purposes for the use of water, except a Government scheme.

(3) The Minister may—

(a) direct that a Government scheme or community project shall be executed together with, or in modification or improvement of, any other water works; and

(b) order that any water works contemplated, under execution or completed under a community project or Government scheme, be paid for from public moneys to such extent as may be appropriated by Parliament or from any other source.

Monitoring
of dams
works

109. Notwithstanding this Act, the Authority shall monitor the construction of all dams and dam works.

Commence-
ment of dam
works for
dams

110. (1) A person shall not commence any dam works in respect of a dam until—

(a) an engineer has—

(i) prepared a design, together with the plans and specifications, of the proposed dam works; and

(ii) certified the adequacy and safety of the proposed dam works and, in the case of modifications to an existing dam, that the adequacy and safety of the dam will not be prejudiced; and

(b) the owner of the dam has submitted to the Authority, in the prescribed manner, together with the fee as prescribed, such details of the design, plans, specifications and certificate of adequacy and safety specified under paragraph (a).

(2) The Authority may, before approving the details submitted under paragraph (b) of subsection (1), require any owner who intends to commence dam works for a dam to—

(a) provide any additional information relating to the dam works;

(b) modify the design, plans and specifications in any manner; and

(c) provide any additional certificates of adequacy and safety; as, and within the period, specified by the Authority.

(3) Where, during the execution of any dam works, an owner of a dam wishes to modify the details submitted under subsections (1) and (2), the owner of the dam shall comply with this section in respect of the modifications.

- (4) A person who—
- (a) commences dam works in contravention of subsection (1);
 - (b) fails, without reasonable excuse, to comply with a requirement made under subsection (2); or
 - (c) being the owner of the dam, fails to ensure that the dam works in respect of the dam are completed in accordance with the details submitted under subsection (1) and to the satisfaction of an engineer;

commits an offence and is liable, upon conviction, in case of a—

- (a) small dam, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both; and
- (b) large dam, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

111. (1) The owner of a dam shall, within a period of —

- (a) thirty days from the completion of any dam works for the dam, notify the Authority and a sub-catchment council or catchment council, in writing, of the completion of the dam works; and
- (b) one hundred and twenty days from the completion of any dam works or any longer period as the Authority may allow, submit to the Authority and the sub-catchment council or catchment council—
 - (i) a report in the prescribed form;
 - (ii) plans, in the prescribed form, certified as true and correct by an engineer, of the completed dam works;
 - (iii) a completion certificate, in the prescribed form, of the adequacy, safety and completion of the dam works, signed by the engineer;
 - (iv) in the case of dam works, other than the construction of the dam, the registration certificate, if any, issued in respect of the dam; and
 - (v) when requested by the Authority to do so, such further information as the Authority may specify.

Duty of owner on completion of dams and registration

(2) On receipt of the report, plans, completion certificate, any registration certificate and further information, if any, submitted under subsection (1), the Director-General shall, within thirty days—

(a) in the case of the construction of a dam, register the dam as a small or large dam and issue to the owner a registration certificate in the prescribed form;

(b) in the case of dam works, other than the construction or removal of a dam, amend the registration details and certificate in respect of the dam; or

(c) in the case of the removal of a dam, cancel both the registration of the dam and the registration certificate.

(3) The owner of a dam who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.

Reporting of
dams in
certain areas

112. (1) The Authority may, in consultation with a catchment council, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia, require the owners of existing dams, within that catchment, to notify the Authority, in writing and within such period, of such particulars in respect of the dams, as may be specified in the notice.

(2) On receipt of the details submitted under subsection (1), the Director-General or a catchment manager shall, in the case of a dam which is not registered under this Act, register the dam and issue to the owner a registration certificate, within three months of the submission, in the prescribed form:

Provided that the Director-General may, in registering the dam, require the owner to comply, within the period specified by the Director-General, with conditions, stipulated by the Board, that are necessary for the protection of persons and property.

(3) A person who fails to comply with a requirement made under subsection (1), or any condition stipulated under subsection (2), commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both.

Supervision
of dam
works for
large dams

113. (1) An owner of a large dam shall ensure that an engineer—

(a) supervises the progress of the dam works in order to secure compliance with the design, plans and specifications approved for the dam works;

- (b) maintains up-to-date drawings of the dam works; and
- (c) if so required by the Authority and a catchment council in the area, submit, to the Authority and the sub-catchment council or catchment council, any progress reports on the dam works, within the periods specified by the Authority, the sub-catchment council or catchment council.

(2) An owner of a large dam shall, if an engineer considers that modifications to the details approved in respect of the dam works are necessary—

- (a) notify the Authority, in writing; and
- (b) obtain the Authority's approval, in writing of the modifications before causing the modifications to be made.

(3) The Authority, a catchment council, sub-catchment council or any person authorised, in writing, by either of them shall, during the progress of any dam works for a large dam, have access to the dam works for the purpose of inspection.

(4) The Authority, a catchment council or a sub-catchment council may, as a result of information received during the progress of dam works for a large dam, require the owner of the dam to cause an engineer to modify any design, plans or specifications relating to the dam works.

(5) An owner of a large dam who contravenes subsection (1) or (2), or fails to comply with a requirement made under subsection (4), commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

114. An owner of a large dam shall—

- (a) cause an engineer to prepare instructions relating to the maintenance and operation of the dam;
- (b) cause the dam to be maintained and operated in accordance with the instructions, prepared under paragraph (a), and with any additional instructions as the Authority or catchment council may give;
- (c) cause detailed measurements and observations of the large dam to be made by an engineer in such manner and at such intervals as the Authority or the sub-catchment council may require; and
- (d) within thirty days from the date of completion of any measurements and observations, made under paragraph (c), submit to the Authority a report as the Authority may specify.

Maintenance
and
operation of
large dams

Periodic
inspections
of large dams

115. (1) The Authority, a catchment council or sub-catchment council, may request the owner of a large dam to cause a detailed engineering inspection of the large dam to be carried out by an engineer before the end of the month of June or of such other month as the catchment council or sub-catchment council may specify immediately following—

- (a) the first season during which water was diverted or stored by the dam;
- (b) the first season during which water spilled from the dam; and
- (c) the date of completion of construction of the dam.

(2) The owner of a large dam shall, within thirty days of the completion of the engineering inspection, carried out under subsection (1), submit to the Authority a report of the inspection and the maintenance measures carried out since the date of the construction of the dam or last inspection of the dam.

(3) Notwithstanding subsection (1), the Authority, a catchment manager or any person authorised by either of them, may, at any time, carry out a detailed engineering inspection of a large dam.

(4) An owner of a large dam shall provide the Authority, a catchment manager or any person authorised by either of them with such assistance and facilities in the carrying out of an inspection of the large dam as the Authority or catchment manager or such other person may reasonably require.

(5) If, as a result of any report relating to a large dam submitted under subsection (2), the Authority considers that the large dam is inadequate or unsafe, the owner of the large dam shall take such remedial measures as the Authority shall direct within a period specified by the Authority.

(6) If the owner of a large dam fails to comply with a directive given under subsection (5)—

- (a) without reasonable excuse, the owner commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding twelve months, or to both; and
- (b) the Authority shall carry out or cause to be carried out such dam works as may be necessary to ensure the adequacy and safety of the dam and recover the cost of so doing, together with any interest as may be prescribed on the costs incurred, from the owner.

116. (1) The Authority may require the owner of a dam to carry out any dam works, as the Authority considers to be necessary, within a period specified. Owner to carry out dam works

(2) If the owner of a dam—

(a) carries out dam works, in accordance with a requirement made under subsection (1), the DirectorGeneral shall register or amend or cancel the registration of the dam and issue a registration certificate or amend or cancel the registration certificate accordingly;

(b) fails, without reasonable excuse, to carry out any dam works, in accordance with a requirement made under subsection (1), the owner commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both; or

(c) fails to carry out the dam works, in accordance with a requirement made under subsection (1), the Authority shall carry out or cause to be carried out the dam works and recover the costs of so doing, together with interest as may be prescribed on the costs incurred, from the owner.

117. The Authority, a catchment council, sub-catchment council or any person authorised by either of them may—

Right of access, inspection, investigation and survey

(a) have access to the site of any dam works, whether proposed or in progress, or to any existing dam for the purpose of inspection; and

(b) if it is necessary to do so, in order to establish the adequacy and safety or otherwise of any dam works, carry out surveys and conduct investigations, whether by drilling, excavating, mining or otherwise.

118. (1) If, during the execution of any dam works, any sudden danger is posed to the dam or structure connected with it and the danger renders it necessary to carry out other dam works, the owner shall—

Emergencies arising during execution of dam works

(a) immediately commence the dam works; and

(b) within fortyeight hours of the commencement of the dam works, notify the Authority, in writing, as fully as possible, of the action, dam works undertaken and circumstances necessitating the measures.

(2) An owner of a dam who fails to comply with subsection (1), commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

- Access to dam for certain purposes
- 119.** An owner of a dam shall give a catchment manager or any person authorised by the Authority access to the dam to enable the Authority to determine whether that dam—
- (a) is a dam with a safety risk;
 - (b) should be declared to be a dam with a safety risk under section *one hundred and twenty*;
 - (c) should be repaired or altered as specified by the Authority;
- or
- (d) complies with this Act.
- Declaration of dam with safety risk
- 120.** The Minister shall, on the recommendation of the Authority, if the Minister is satisfied that any of the factors, specified under section *one hundred and twenty-one*, applies to a dam, by notice in the *Gazette* and in a daily newspaper of general circulation in Zambia or a newsletter, declare the dam to be a dam with a safety risk.
- Factors to determine whether dam is dam with safety risk
- 121.** A dam shall be declared a dam with a safety risk if—
- (a) there is need to protect the public, property and the resource quality against the potential hazards posed by the dam;
 - (b) the extent of potential loss or harm is great;
 - (c) the cost of any prescribed measures will not be achievable;
 - (d) a negative socio-economic impact would result should the dam fail;
 - (e) the dam is not properly designed, constructed, altered, repaired, operated or maintained;
 - (f) the dam has been abandoned;
 - (g) the person who designed, constructed, altered, repaired, operates, inspected or maintains the dam did not have the qualifications or does not have the capacity, as the case may be, to do so; and
 - (h) the manner in which the water is contained, stored, impounded or released in the dam is dangerous, inadequate or does not meet the specifications or conditions specified by, or under, this Act.
- Control measures for dam with safety risk and de-commissioning of dams
- 122.** (1) The Authority may—
- (a) notify, in writing, the owner of a dam, that the dam is a dam with a safety risk;
 - (b) direct the owner of a dam with a safety risk to submit, at the owner's cost, and within a period specified by the Authority, a report by a constructor or engineer regarding the safety of the dam;

- (c) direct the owner of a dam with a safety risk to undertake, at the owner's cost, and within a period specified by the Authority, any specific repairs or other remedial measures to the dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam; or
- (d) on its own accord or on the recommendation of a catchment council, sub-catchment council, any appropriate authority or conservancy authority, decommission a dam with a safety risk under prescribed conditions.

(2) A person affected by a dam that the person reasonably believes to be a dam with a safety risk may petition the Authority for a review and evaluation of the dam and the owner of the dam shall be given a right to respond to the petition within fourteen days of receipt of a copy of the petition.

(3) If the owner of a dam with a safety risk fails to undertake any specific repairs or other remedial measures as directed by the Authority, within the period specified, the Authority may undertake or cause to be undertaken the repairs or other remedial measures and recover the costs from the owner including interest as may be prescribed on any costs incurred.

(4) The Authority shall, before issuing a directive to repair or undertake certain remedial measures, be satisfied that the repairs or alterations required to be undertaken are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level.

123. (1) An owner of a dam, that has any of the factors specified under section *one hundred* and *twenty-one*, shall register the dam, as a dam with a safety risk, with the Authority.

Registration
of dam with
safety risk

(2) An application for registration of a dam with a safety risk shall be made as soon as practicable and not later than thirty days—

(a) after the date on which the dam is able to impound water;
or

(b) after the date on which an already completed dam is declared to be a dam with a safety risk.

(3) A successor in title to an owner of a dam with a safety risk shall promptly register the dam with the Authority.

124. (1) A constructor or an engineer shall, where carrying out any construction of any water works or dam works under this Part, undertake all necessary activities within the constructor's or engineer's power to ensure the safety of the works.

Responsibilities
of
constructor
or engineer
over works

- (2) A constructor or engineer shall—
- (a) ensure that the water works or dam works are carried out according to prescribed standards and specifications;
 - (b) keep any records that may be prescribed by, or under, this Act;
 - (c) compile any reports that may be prescribed by, or under, this Act; and
 - (d) where the water works or dam works include constructing, altering or repairing a dam, issue a certificate of completion of the works to the owner of the dam to the effect that the task on that dam has been carried out according to the design, drawings, standards and specifications approved by the Authority.

PART XIII

EASEMENTS

- Easement not proprietary interest in land **125.** A right of easement granted under this Part shall not give the person acquiring the easement any proprietary interest in respect of the land on, over, under or through, which the easement is exercised.
- Encumbrances **126.** The acquisition of an easement in accordance with this Part shall not affect the burden or benefit of any encumbrance on the land existing at the date of the acquisition or the liability or right of any person in respect of the land.
- Easement includes right of access **127.** (1) An easement shall include the right of access, along a route to be approved by the Authority after consultation with the occupier, to any piece of land contiguous to the water which is the subject of a permit in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the water works of the permit holder or for any purpose necessary for the effective enjoyment of the easement.
- (2) A permit holder shall give reasonable notice to the occupier over which the easement is held of an intention to enter the land for any of the purposes mentioned in subsection (1).
- Publication of easement **128.** An easement granted under this Part shall be published in the *Gazette* and a daily newspaper of general circulation in Zambia.
- Claim of easement and entry on land **129.** (1) Subject to this Part, an easement may be claimed under this Part by any person who—
- (a) holds a permit under this Act; or
 - (b) is entitled to control or supervise the use of any water.

(2) A person who is entitled to claim an easement under this section may, after giving such notice as is reasonable in the circumstances to the occupier, enter upon the premises, other than a dwelling house, for the purpose of obtaining the information required for compliance with section *one hundred and thirty-seven*.

130. (1) Subject to this Part, an easement shall be claimed by serving on an occupier a notice, in writing, requesting the easement, which request shall specify—

Method of
claiming
easement

- (a) the description of the proposed water works and a statement of their use;
- (b) the quantity or discharge of water, if any, to be diverted or dealt with;
- (c) in a map, the nature and locality of any water works or area of swamp or land to be re-claimed if the easement is for re-clamation of a swamp or land; and
- (d) the area of the land, if any, which is, or will be—
 - (i) occupied by the water works;
 - (ii) flooded as a result of the water works;
 - (iii) required for the purposes of inspection and maintenance of the works;
 - (iv) required for the control or prevention of pollution of the water;
 - (v) the compensation which is offered; and
 - (vi) the period of time during which the permit holder wishes to enjoy the easement.

(2) A copy of the notice shall be sent by the permit holder to the Authority

131. Where the occupier agrees to a claim for an easement, either as originally proposed or as modified by agreement, between the parties concerned, the permit holder —

Consent of
occupier to
easement

- (a) shall embody the particulars and other matters pertaining to the easement in a deed or other instrument suitable for registration and register the deed or instrument in accordance with the Lands and Deeds Registry Act; and
- (b) after its execution by the parties concerned, shall send two copies of the deed or other instrument to the Authority, certified by the Registrar in accordance with the Lands and Deeds Registry Act.

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Application when occupier does not consent	<p>132. Where the occupier does not, within sixty days after the service of a notice under this Part, agree to the claim for an easement, the permit holder may apply to the Board, in the prescribed manner, for an easement and shall serve notice of the application upon the occupier.</p>
Determination of application for easement	<p>133. (1) The Board may dismiss the claim for an easement or grant the claim, with or without modification and subject to such conditions, including payment of compensation, as the Board considers just.</p> <p>(2) The Board shall notify the permit holder and the occupier of its decision within sixty days of an application made under section <i>one hundred and thirty-two</i>.</p> <p>(3) Where the claim for an easement is granted, the permit holder shall embody the particulars and other matters pertaining to an easement, granted under subsection (1), in a deed or other instrument suitable for registration, and shall tender the deed or instrument, together with the amount of any award of compensation made, to the occupier for execution.</p> <p>(4) Where the occupier fails, within such time as may be specified by the Board, to execute and deliver the deed or instrument to the permit holder, the Board may do so on behalf of the occupier and the deed or instrument shall have the same effect as if it had been executed by the occupier.</p> <p>(5) The Registrar shall register the deed or instrument against the title affected, in accordance with the Lands and Deeds Registry Act, and two copies of the deed or instrument, certified by the Registrar shall be sent by the permit holder to the Board.</p> <p>(6) Where an appeal has been lodged against a decision of the Board, made under subsection (1), no action shall be taken under subsection (3), (4) or (5) until the appeal has been decided.</p>
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Lapsing of easement	<p>134. (1) An easement acquired under this Act shall lapse—</p> <p>(a) if the water works authorised are not completed, and the water is not used, within one year from the date of acquiring the easement or within such further period as the Board may determine, taking into account the nature of the investment; or</p> <p>(b) if, at any time, substantial use is not made of the permit, in accordance with the terms of the permit, for a continuous period of two years, or such longer period as the Board may, in any particular case, determine.</p>

(2) Upon the lapse of an easement, the Board shall notify the Registrar, who shall cancel the registration of the easement against the title affected, in accordance with the Lands and Deeds Registry Act.

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135. (1) Where damage is caused, as a result of the water works of a permit holder, to the land over which the easement is held, the occupier may require the permit holder to—

Damage caused by water works of permit holder

- (a) construct such additional water works as are necessary, in the opinion of the Board, to remedy the damage or prevent any recurrence of the damage; or
- (b) pay compensation for the damage caused to the occupier and, in such a case, the Board may, by order, require the occupier to construct such water works at the occupier's sole expense to remedy the damage.

(2) Where a permit holder fails to comply with subsection (1), the Director-General may cancel the permit but without prejudice to the payment of compensation to the occupier.

136. (1) A permit holder who has acquired an easement for the construction of water works on any occupier's land which prevents the occupier passing freely over or on the land or interferes with any existing water works, structures or devices upon the land, shall, at the expense of the permit holder, construct and maintain in repair, to the satisfaction of the Board and under such conditions as it may specify such—

Construction of water works and enjoyment of existing water works

- (a) bridges and other structures and devices as will make communication and passage safe and convenient; or
- (b) water works, structures or devices as the Board considers necessary to enable the occupier effectively to enjoy the use of any water works, structures or devices that have been interfered with.

(2) A permit holder who fails to comply with subsection (1) commits an offence and is liable, upon conviction, to the general penalty provided under section *one hundred and seventy-two*.

137. (1) Where any water works constructed on the land of a person other than that of the permit holder is out of repair or requires cleaning, the permit holder or the agent of the permit holder, if notified, in writing, by the occupier to repair or clean the water works, shall carry out such requirements within thirty days of the notification.

Water works to be in state of repair

(2) Where the permit holder fails to carry out anything required, under subsection (1), the occupier may cause to be done all the things necessary for carrying out the repairs or cleaning of the water works and may recover the cost of so doing from the permit holder in any court of competent jurisdiction.

(3) All the repairs or cleaning undertaken under subsection (1) shall not be unreasonably demanded and, in the event of a dispute between the parties, the Board shall decide what constitutes reasonable repairs or cleaning.

(4) A permit holder—

(a) who allows or suffers any water works to fall into disrepair; or

(b) where the Authority determines that the water works are in such a state as to require cleaning;

is liable for all the damages which may arise as a consequence of the disrepair or lack of cleaning.

Use of water works by occupier

138. (1) An occupier on, over or through whose land an easement has been applied for or been granted, either before or after the construction of any water works, may apply for a permit to make use of the water works or the proposed water works of the permit holder, as the case may be.

(2) Before a permit is granted to an occupier under subsection (1) —

(a) the occupier shall prove, to the satisfaction of the Authority, that the water works of the permit holder can be satisfactorily used for the purpose of the occupier and without material detriment to the permit holder; and

(b) such proportionate costs of the water works shall be paid by the occupier to the permit holder who intends to construct, is constructing or has constructed the water works, as may be agreed between the parties or, failing agreement, as may be determined by arbitration.

(3) A permit holder may require the occupier to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of the water works made use of until either party has, in writing, surrendered such entitlement and, in the event of disagreement, the matter shall be settled by arbitration.

(4) Where the water works, referred to in subsection (1), require modification to enable the occupier to enjoy their use, the occupier shall, unless the matter is otherwise agreed or settled, pay to the permit holder—

- (a) the entire cost of modifying them in the manner approved by the Board; and
- (b) the cost of constructing and maintaining the devices for apportioning the quantities of water, as the Board may approve.

139. Where water works have been excavated by a permit holder on another person’s land— Excavated material

- (a) any land used solely for the deposit of the excavated material from the water works executed shall, notwithstanding the payment of compensation and except in the case of an easement for drainage or reclamation, remain available to the occupier for the occupier’s own purposes; and
- (b) the occupier may remove the excavated material, except that no damage shall be done to the water works of the permit holder nor shall the water works be obstructed or interfered with by the removal.

140. (1) A deed or other instrument creating an easement acquired under this Part shall be registered against the title affected, in accordance with the Lands and Deeds Registry Act, and a survey diagram, which shall be approved in accordance with the Lands Survey Act, shall be attached to each document granting the easement. Easements to be registered

Cap. 185
Cap. 188

(2) Where an easement is to be effected on land in a customary area, the instrument creating an easement under this Part together with a plan, approved in accordance with the Lands Survey Act, of that particular piece of land to which the easement relates, and the written consent of the traditional authority under whose jurisdiction that land falls, shall be registered in the Miscellaneous Register in accordance with the Lands and Deeds Registry Act. Cap. 188

Cap. 185

141. (1) An easement acquired under this Part shall terminate where the permit for the exercise of the rights under which the easement is acquired is cancelled or lapses, as provided for in this Act. Termination of easement

(2) On the cancellation or lapse of a permit, any water works constructed by the permit holder on the land of an occupier shall become the property of the occupier unless removed, subject to subsection (3), by the permit holder —

- (a) voluntarily, within two years from the date of the cancellation or the lapse of the permit; or
- (b) on the request of the occupier.

(3) Notwithstanding subsection (2), the removal of any fixed assets to the land shall only be effected on the order of the Authority or by the mutual agreement of the parties.

Registration of termination, lapse or variation of easement

142. The Authority shall, on the termination, lapse or variation of an easement, notify the occupier over whose land the easement was granted, and the occupier may, at the expense of the person in whose name the easement is registered, take such action as is necessary to cause the occupier's title to be freed from the easement or to record the variation, as the case may require.

PART XIV

EMERGENCY SITUATIONS

Definitions

143. In this Part—

“early warning system ” in relation to water, means any system where information is obtained by, and transmitted to, the Authority and made available to the public, in an appropriate manner, in respect of an imminent emergency;

“emergency ” means a disaster or incident connected with water, resulting suddenly, either from natural causes or from human conduct, and which causes or poses an imminent threat or causes serious harm or damage to a water resource, the people, property or to an area, and includes—

(a) a flood which is likely to occur or has occurred;

(b) a drought which is likely to occur or has occurred;

(c) any water works which might fail or have failed;

(d) any risk posed by any dam; or

(e) any hazardous matter or harmful or toxic substance discharged into a water resource or ground water;

“national disaster” means an emergency which has been declared by the President under section *one hundred and forty-five* as a national disaster; and

“spillage ” means the discharge or seepage of any hazardous matter or harmful or toxic substance into a water resource or ground water, as the case may be.

Early warning system

144. The Authority shall, in collaboration with relevant appropriate authorities—

(a) establish an early warning system;

(b) provide, install and maintain apparatus required for the purposes of an early warning system; and

- (c) carry out any other engineering or building operations required for the efficient operation of an early warning system;

either directly, or by requesting any other person or appropriate authority to do so.

145. (1) The President shall, on the recommendation of the Authority, by statutory order, declare a national disaster due to any emergency arising in the country.

Declarations
of
emergencies

(2) The Minister shall, on the recommendation of the Authority, by statutory order, declare an emergency relating to a specific area of Zambia or the spillage of harmful or toxic substances.

146. (1) Where the Minister declares an emergency relating to a drought in a specific area or if the President declares a national disaster due to a general drought in Zambia, the Authority may, during the period of the declaration—

Measures
during
droughts

- (a) suspend or amend any permit granted under this Act;
- (b) determine the amount of water that may be used by any person for any purpose;
- (c) define places from which and times at which water may be used; and
- (d) give any necessary and practicable orders or take any action suitable to ensure equitable allocation and use of water.

(2) Where the President, on the advice of the Authority, is satisfied that, by reason of an emergency, a serious deficiency of water for essential domestic and noncommercial purposes exists or is threatened in any area, the President may, by statutory order, direct a person, who has a supply of water in excess of that person's needs for domestic and noncommercial purposes, to allow to be supplied, the excess of water to the area or to a specified person in the area, for such period, as the order may specify.

(3) A person who directed by the President, under subsection (2), fails to comply with the directive, commits an offence and is liable, upon conviction, to the general penalty provided under section *one hundred and seventy-two*.

(4) A statutory order made under section *one hundred and forty-five* or subsection (2) may require or authorise—

- (a) the construction of water works on any land;
- (b) the entry on to any land by any person authorised by the Authority; and
- (c) such other measures as the President may consider necessary for the equitable use of water.

(5) Where a person fails to comply with this section, the Authority or any person authorised by the Authority for the purpose—

- (a) may take possession of any water supply and operate any water works of the person; and
- (b) shall have and may exercise that person's rights in connection with the water works during the period of the declaration, subject to any conditions imposed by the statutory order.

(6) A person exercising any powers under this section shall do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

(7) A person who, without lawful authority, hinders or obstructs any person acting in accordance with this section or interferes with any water works constructed in accordance with this section, commits an offence and is liable, upon conviction, to the general penalty provided under section *one hundred and seventy-two*.

Measures
during floods

147. Where the Minister declares an emergency relating to a flood or impending flood in a specific area, or if the President declares a national disaster due to widespread floods in Zambia, the Authority may, during the period of the declaration—

- (a) use any land as is required;
- (b) compulsory purchase earth, stone or other materials;
- (c) use rolling stock or other vehicles or tools;
- (d) dispose of structures and other obstacles;
- (e) give such orders or instructions as may be required to reduce possible danger to life and property; and
- (f) take any other measures as may be required.

Emergency
water works

148. (1) The Authority shall take all practicable measures, necessitated by the circumstances, to prevent, mitigate and eliminate the harmful effects of any emergency.

(2) Where an emergency has been declared by the Minister or the President has declared a national disaster, and without derogating from the generality of subsection (1), the Authority may—

- (a) maintain existing water works by cleaning, repairing or otherwise maintaining in a state of efficiency any existing water resource or any water works;
- (b) improve any existing water works by—
 - (i) deepening, widening, straightening or otherwise improving any water resource;

- (ii) removing or altering any water works or any obstruction to any water resource; or
 - (iii) raising, widening or otherwise improving any existing water works; or
- (c) construct new water works, erect any machinery or do any other act required for the drainage of any land.
- (3) The Authority may enter into any agreement with any local authority, appropriate authority or conservancy authority for the carrying out, by that authority, of any water works authorised under subsection (2).
- (4) The Authority, a local authority, appropriate authority or conservancy authority may—
- (a) without making any payment, appropriate and dispose of any matter removed in the course of the carrying out of any water works for widening, deepening or dredging any water resource; and
 - (b) deposit any matter removed on the banks of the water resource or on such width of land adjoining the water resource as is required to carryout the water works.

149. (1) Where the Minister declares an emergency relating to the spillage of any hazardous matter or harmful or toxic substances or if the President declares a national disaster due to the wide-spread impact of the spillage, the responsibility for remedying the situation shall be with the person responsible for the spillage who shall, after knowing about the spillage, immediately—

Spillage of
harmful or
toxic
substances

- (a) report the spillage to the Authority, the police, an appropriate authority, a conservancy authority, the catchment council or sub-catchment council, local authority or any other relevant institution in the area;
 - (b) take all reasonable measures to contain and minimize the effect of the spillage;
 - (c) undertake clean-up procedures as the Authority may direct;
 - (d) remedy the effects of the spillage; or
 - (e) take such measures as the Authority, appropriate authority or conservancy authority may either, orally or in writing, direct.
- (2) An oral directive of the Authority, appropriate authority or conservancy authority, given under subsection (1), shall be confirmed in writing within twenty-four hours.

(3) Where a person who is responsible for a spillage fails to comply, or inadequately complies, or it is not possible for the Authority, appropriate authority or conservancy authority to give the directive to that person in time, the Authority may—

- (a) take all reasonable measures to contain and minimise the effect of the spillage;
- (b) inform the public by the most efficient means of communication of the spillage;
- (c) undertake any cleanup procedures that may be necessary;
- (d) remedy the effects of the spillage; and
- (e) recover all the reasonable costs incurred by the Authority as a result of any activity under this subsection from the person who caused the spillage.

(4) Any person who contravenes or fails to comply with any directive given under this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

PART XV

WATER USE CHARGES, FEES AND WATER DEVELOPMENT TRUST FUND

Pricing
strategy

150. Any charge or fee prescribed, charged or fixed under this Act shall be in accordance with a pricing strategy issued by the Minister, in consultation with the Authority, and shall be fixed so as to—

- (a) recover reasonable costs related to the management of the water resource;
- (b) recover the costs of administration of the licence and permit systems;
- (c) recover the costs of administration relating to the processing of data and information;
- (d) provide a reasonable rate of return upon any investment relating to water;
- (e) reflect the source from which the water has been used;
- (f) reflect the purpose for which the water will be used;
- (g) take into account—
 - (i) the costs involved in the construction of any water works or dam works;

- (ii) any investments made for the conservation of water resources;
- (iii) the strategic importance of the use of the water applied for in the national interest;
- (iv) any investment made that benefits a local community; and
- (v) any de-watering activities that need to be done, under any other law, for mining and industrial purposes.

151. (1) The Minister may prescribe charges for the use of water, other than for the purposes specified under section *seventy*. Water use charges

(2) Subject to subsection (1), the Minister may prescribe different charges for different purposes and categories of uses of water.

152. The Minister shall prescribe a fee for— Fees

- (a) any application for, or grant of, a permit, licence or certificate under this Act; or
- (b) the processing or provision of any data or information under this Act.

153. (1) The Authority shall recover any fee or charge due and payable to the Authority as provided under section *one hundred and seventy-six* or as may be prescribed. Recovery of water use charges and fees

- (2) Where any charge or fee prescribed is not paid—
- (a) interest shall be payable at a rate to be prescribed by the Minister, during the period of the default, not exceeding the Bank of Zambia base rate; and
 - (b) the permit, licence or certificate to which the charge or fee relates may be suspended or restricted until the charges or fees and the interest have been paid.

(3) A person whose permit is suspended or restricted under this section shall not claim the water or easement to which that person would otherwise have been entitled during the period of restriction or suspension.

154. (1) The Authority shall retain in a fund managed by it all of the revenue from water use charges and fees paid to the Authority, to be applied by the Authority in meeting costs incurred in the performance of its functions and that of a sub-catchment council and catchment council. Retention of charges and fees and application of Funds

(2) Without limiting subsection (1), funds retained by the Authority under that subsection, may be applied for the payment of compensation payable by the Authority under this Act.

Water
Development
Trust Fund

155. (1) There is hereby established the Water Development Trust Fund which shall be managed by trustees.

(2) The Minister shall draw up and register under the relevant law a trust deed to provide for the regulation and management of the Fund.

(3) A trust deed drawn up under subsection (2) shall provide for the tenure of office of the trustees, staff, finances, financial management and procedures of the trusteeship.

(4) There shall be ten trustees of the Fund appointed by the Minister who shall be representatives of the following:

- (a) the Zambia Institute of Chartered Accountants;
- (b) the Zambia Development Agency;
- (c) the Bankers Association of Zambia;
- (d) the Zambia Chambers of Commerce and Industry;
- (e) the Attorney-General; and
- (f) the Permanent Secretaries in the ministries responsible for agriculture, local government, finance, water and environment.

(5) The moneys in the Fund shall be used for the development, conservation and management of water resources.

(6) There shall be paid into the Fund—

- (a) such moneys as may be appropriated by Parliament for the purposes of the Fund;
- (b) such moneys as may be received by the Fund from donations, grants and bequests from whatever source; and
- (c) such other moneys as may, by or under any law, be payable to the Fund.

(7) The Minister, on the recommendation of the trustees, shall develop principles and guidelines governing the grant of moneys from the Fund and for achieving the objectives of the Fund.

(8) There may be paid from the Fund such grants as the trustees may authorise in furtherance of the objectives of the Fund.

Financial
matters of
Fund

156. (1) The financial year of the Fund shall be the period of twelve months ending on 31st December of each year.

(2) The trustees shall cause to be kept proper books of account and other records relating to the Fund accounts.

(3) The accounts of the Fund shall be audited annually by the Auditor-General or by independent auditors appointed by the Auditor-General.

(4) The auditor's fees shall be paid by the Fund.

(5) As soon as practicable, but not later than ninety days after the end of the financial year of the Government, the trustees of the Fund shall submit to the Minister a report concerning the activities of the Fund during the financial year.

(6) The report referred to in subsection (5), shall include information on the financial affairs of the Fund and there shall be appended to the report—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(7) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (5), lay the report before the National Assembly.

PART XVI

ENFORCEMENT AND GENERAL PROVISIONS

157. (1) Where no specific provision is specified under this Act providing for an appeal or the process for appeal by any person aggrieved by a decision of—

Appeals and
disputes

- (a) a catchment council, sub-catchment council or a water users association, that person may appeal to the Director-General;
- (b) the Director-General, that person may appeal to the Board;
- (c) the Board, that person may appeal to the Minister; or
- (d) the Minister, that person may appeal to a court of competent jurisdiction.

Act No. 19
of 2000

(2) The Board shall encourage and facilitate the resolution of disputes over water between users, users and the Board or users and a water users association by using alternative dispute resolution methods such as—

- (a) arbitration
- (b) mediation; or
- (c) conciliation;

(3) Dispute resolution over water in any area under the jurisdiction of a catchment council, sub-catchment council or water users association shall be undertaken by the community or a dispute resolution committee as may be prescribed.

Act No. 19
of 2000

(4) The Arbitration Act, 2000, shall, unless the context otherwise requires, apply to dispute resolution where a neutral person is appointed by the parties, to resolve any dispute or reconcile the parties, but shall not apply to dispute resolution as prescribed under subsection (3).

(5) The parties to a dispute that has been referred to an arbitrator shall bear the costs of the arbitral proceedings.

(6) The costs of arbitral proceedings for dispute resolution under subsection (3) shall be borne by the Board.

(7) For the purposes of this Act, “arbitral proceedings” means proceedings conducted for purposes of this Act, and as may be prescribed, for the settlement of disputes relating to the use of water.

(8) The Authority shall have the jurisdiction to hear and determine disputes relating to the use of water, and shall exercise such powers and functions, in relation to the determination of disputes, as may be conferred or imposed on it by, or under, this or any other law.

(9) An appeal made under this Act or any dispute to be determined by the Authority by, or under, this Act shall be heard and finalised within sixty days of its lodgement.

Time for
lodging
appeal

158. An appeal shall not be entertained by the sub-catchment council, catchment council, Director-General, the Board or the Minister unless it is lodged—

- (a) within the period provided under this Act for the lodgement of an appeal against the decision or order concerned; or
- (b) where no period is so provided, within thirty days after the date on which written notice was served on the person, notifying that person of the decision or order against which the person wishes to appeal;

except that the sub-catchment council, catchment council, Director-General, the Board or the Minister may, in any case, for good cause shown, admit an appeal after the time specified for lodgement of the appeal has expired.

159. (1) In determining an appeal, the Minister, Board, Director-General, a catchment council or sub-catchment council may affirm, quash or vary the decision or order concerned, as justice requires.

Determination
of appeals
and disputes

(2) In determining a dispute or in exercising any other quasi judicial function, an authority referred to under subsection (1), shall decide the matter on the merits of the case and make an order which shall do justice between the parties.

160. (1) Subject to this Act, a permit holder or any person, proposing to apply for a permit, who wishes to enter on to the land of another person, shall, if that permit holder or other person's proposal is opposed by the occupier—

Entry by
permit holder
or person
applying for
permit

(a) upon submitting in the manner prescribed—

- (i) a general description of the proposal;
- (ii) a schedule of land which may be affected by the construction and operation of any water works to be undertaken under the permit; and
- (iii) the names and addresses of the affected occupier;
and

(b) upon payment of the prescribed fee;

obtain from the Authority permission to enter on to the land concerned and to carry out any necessary survey or other preliminary investigations in connection with the location of any proposed water works.

(2) The Authority may stipulate a time limit within which the investigation, carried out under subsection (1), shall be completed.

(3) The Authority shall not give permission to any person to enter on any land until the Authority has notified each occupier concerned that an application to enter the land has been made under this section.

161. An inspector, agent of the Authority or any person authorised by the Authority for the purpose, may at all reasonable times, without warrant, enter on to any land and inspect any water resource located within, or accessible from, the land for the purpose of—

Entry by
inspectors or
other
authorised
persons

(a) conserving or regulating the water resource or protecting the bed over which it lies or flows;

(b) preventing the excessive or illegal diversion or waste of the water resource or interference with any bed;

- (c) ascertaining whether there is or has been any contravention of this Act;
- (d) preventing or detecting a contravention of this Act;
- (e) preventing water degradation by—
 - (i) ascertaining whether or not circumstances exist which would justify the Authority imposing a requirement to execute water works or take other action to prevent degradation; or
 - (ii) exercising any power conferred on the Authority under this Act to execute and maintain water works or take other action; or
- (f) protecting the rights and freedoms of other persons in respect of the use of water.

Manner of
entry

162. (1) In this section, “authorised person” means a person entering on to any land or premises under an authorisation or permission granted under this Act.

(2) Subject to subsection (3), an authorised person shall not enter on to the land or premises of any other person—

- (a) without first giving reasonable notice, whether written, verbal or otherwise, to the occupier or other person in charge of the land or premises; and
- (b) during unreasonable hours.

(3) Notwithstanding subsection (2), an inspector may enter, without giving notice, if the inspector—

- (a) has reason to believe that a provision of this Act or order made under this Act has been or is about to be contravened;
- (b) is unable to give notice within a reasonable time having regard to all the circumstances; or
- (c) has given reasonable grounds for not giving notice.

(4) Where so requested by the occupier of the land or premises, the authorised person shall produce evidence of the authorisation or permission, as the case may be, to enter on to the land.

(5) A person exercising any power under this section shall do so with reasonable care and in such a manner as to cause as little damage as possible in so doing.

Use water
without
permit
prohibited

163. (1) A person shall not, without a permit, use water from any water resource or negligently allow or cause any other person to use water from any water resource in contravention of this Act.

(2) A person who contravenes subsection (1), commits an offence and is liable, upon conviction, to the general penalty provided under section *one hundred and seventy-two*.

164. (1) A person shall not —

(a) wilfully obstruct, molest or hinder an inspector or other employee of the Authority or any person authorised or permitted by the Minister or the Authority, from exercising or performing their powers and functions under this Act;

(b) without the written permission of the Authority, knowingly or wilfully—

(i) deface, alter or remove; or

(ii) cause to be defaced, altered or removed;

any survey mark, water gauge, weir or measuring device or other water works, structure or appliance installed, by or with the approval of the Authority, for the purposes of control of water or investigations;

(c) wilfully hinder or interrupt, or cause to be hindered or interrupted, any permit holder or that permit holder's employee, contractor or agent, in the lawful exercise or performance of any power and function under this Act;

(d) without lawful authority, wilfully let off or discharge water from the water works of any permit holder so that the permit holder loses the use of that water;

(e) without lawful authority, lay, erect or construct, or cause to be laid, erected or constructed, any water works to connect with the water works of any permit holder which is capable of drawing water from the water works;

(f) unlawfully interfere with the water works or water supply of any permit holder; or

(g) neglect or fail to comply with any lawful order or directive given under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to the general penalty specified under section *one hundred and seventy-two*.

165. (1) Where by a person's act or omission that person contravenes any requirement or prohibition made or imposed by, or under, this Act and where no provision is made for the remedying of the default or contravention, without affecting any other liability of the person under this Act or otherwise in respect of the contravention or default, the Authority may, by order served on the person concerned, require that person, within a reasonable time specified in the order to—

Miscellaneous
offences

Remedy of
defaults
where not
provided

- (a) remedy the contravention or default;
- (b) make good any detriment identified in the order which was caused to any water resource by reason of the contravention or default; and
- (c) remove or destroy any water works, plant or machinery employed for the purposes of the contravention or default.

(2) The Authority, any appropriate authority, conservancy authority, catchment council, sub-catchment council or water users association may, if any person does not comply with an order issued under subsection (1), take such steps as are necessary to execute the order and the expenses incurred in doing so shall be recoverable as a debt owing to the Authority.

Duty to
provide
information
to inspector

166. (1) A permit holder and any employee or agent of a permit holder shall, on demand by an inspector appointed under this Act—

- (a) avail to the inspector such information as is within their knowledge in all matters relating to any investigation conducted under this Act; and
- (b) produce for inspection, any permit, licence, certificate, map, plan, specification, drawing or other document or record as the case may be, relating to—
 - (i) the permit, licence or certificate;
 - (ii) any water works constructed under the permit, licence or certificate; or
 - (iii) the flow of water in any water works or in any water resource affected by the water works.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to the general penalty provided under section *one hundred and seventy-two*.

Requirement
to state name
and address

167. (1) A person who has committed or has been alleged to have committed an offence under this Act and who—

- (a) refuses, on demand of an inspector or an authorised person, to give that person's name and place of abode and other particulars which the inspector or person may reasonably require; or
- (b) in purported compliance with any demand made by an inspector or authorised person, gives a name, place of abode or other particulars which the inspector or person has reason to believe to be false;

may be arrested by the inspector or authorised person, without warrant, and handed over to the nearest police officer.

(2) Where the true name and place of abode or other particulars of any person, specified in subsection (1), have been ascertained, that person shall be released on executing a bond, if so required, with or without sureties, to appear before a court of competent jurisdiction.

(3) Where a person's true name, place of abode or other particulars are not ascertained within twentyfour hours from the time of that person's arrest or should that person fail to execute a bond or, if so required, to furnish sufficient sureties, that person shall forthwith be brought before a court of competent jurisdiction.

168. (1) Any notice required to be served under this Act shall be served—

Service of notices

- (a) by delivering it personally to the person required to be served or, if the person is absent or cannot be found—
 - (i) by leaving it at the person's usual or last known place of abode in Zambia; or
 - (ii) by registered post, addressed to the person's usual or last known address in Zambia; or
- (b) in the case of a notice required to be served on a local authority, company or other corporate body, by delivering it to its principal officer, leaving it at the office with the employee or sending it through registered post.

(2) Where an occupier is not known and, after diligent inquiry, cannot be found, a notice may be served on the occupier by causing it to be put in a conspicuous position on a property in Zambia last known to have been occupied by that person.

(3) A notice required to be served on an occupier may be addressed to "the occupier" of the land or premises described in the address in respect of which the notice is given, without further name or description.

169. An order, notice, consent, approval, permission, demand, objection, application or other thing authorised or required by this Act to be given, made or issued by, or to, the Minister, the Authority, the Board, the Director-General, catchment council, subcatchment, water users association or any other person, shall be in writing.

Order, etc. to be in writing

170. (1) An order, notice, consent, approval, demand or other document which the Authority is authorised or required by, or under, this Act to give, make or issue may be signed on behalf of the Authority by—

Authentication of documents

- (a) the Chairperson, Vice-Chairperson, Director-General or Secretary; or

(b) any officer of the Authority authorised by the Director-General, in writing, to sign documents of the particular kind or to sign the particular document.

Protection of
Minister and
others from
liability

171. In the exercise of any power or duty under this Act, anything done or omitted to be done by—

(a) the Minister, Authority, Board, the Director-General, a catchment council, sub-catchment council or a water users association;

(b) any person acting on the direction of the Minister; or

(c) any member or employee of, or person acting on, the direction of the Authority, the Board or any catchment council, sub-catchment council or water users association;

shall not subject the Minister or any other person referred to in this section, in that person's personal capacity, to any action, suit, claim or demand whatsoever, if it was done or omitted to be done in good faith for purposes of executing this Act.

General
penalties for
offences

172. (1) A person who commits an offence under this Act is, if no other penalty is specified or prescribed in respect of the offence, is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

(2) In addition to the penalties specified under subsection (2), any contravention of this Act shall be a ground for refusing the grant of any permit or licence or the cancelling of any permit or licence.

Offences by
corporation

173. Where an offence under this Act is committed by a body corporate or an unincorporate body, every director or manager of the body corporate or an unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Prosecutions

174. (1) The Director of Public Prosecutions may, at the request of the Authority, appoint by name or rank an employee of the Authority as a prosecutor to prosecute any person for an offence committed by that person in contravention of this Act.

(2) A person appointed as a prosecutor, under subsection (1), shall—

- (a) have the powers of a prosecutor under the law; and
- (b) act in accordance with the general or special instructions of the Director of Public Prosecutions.

175. (1) Subject to subsection (2), if a person alleged to be an offender under this Act hereinafter called the alleged offender agrees to pay a specified fine proposed by the Authority, which does not exceed the maximum fine provided by this Act for the offence in question, the Director-General may impose that fine on the alleged offender.

Fine in lieu
of
prosecution

(2) Where criminal proceedings have been instituted against an alleged offender for an offence under this Act, the power conferred by this section shall not be exercised without the written consent of the Director of Public Prosecutions.

(3) The Director-General shall furnish an alleged offender with a certificate setting out the nature of the offence, the date of its occurrence and the fine imposed under subsection (1) and that certificate may be used by the alleged offender as *prima facie* proof of the facts stated in the certificate.

(4) Where any fine, imposed in terms of subsection (1), is not paid on demand, the Director-General may take steps for, or towards, its recovery in a manner permitted by this Act with respect to the recovery of unpaid charges, fees or debts due and owing to the Authority.

(5) The imposition of a fine, under subsection (1), shall not be treated as a conviction of the alleged offender of a criminal offence and prosecution for the offence in question shall not thereafter be instituted or maintained.

(6) Nothing in this section shall, in any way, affect a liability for the payment of any charge, fee, debt or interest due under this Act.

176. (1) An officer appointed for the purposes of this Act may, under warrant by the Director-General, levy distress upon the water works, goods and chattels of the person from whom any charge, fee or debt is recoverable.

Recovery by
distress

(2) A distress levied under this section shall be kept for ten days either at the premises at which such distress is levied for, or at such other place as the person authorised under warrant may consider appropriate at the cost of the person from whom any charge, fee or debt is recoverable.

(3) If the person from whom any charge, fee or debt is recoverable does not pay the charge, fee or debt due together with the costs incurred in levying the distress and all other costs incidental thereto within the period of ten days mentioned in subsection (2), the water works, goods and chattels upon which distress has been levied shall be sold by public auction and the proceeds realised from such sale shall be applied towards the payment of the costs and all further costs incurred in completing the sale and, the surplus, if any, shall be applied to the payment of any charge, fee or debt and, the balance, if any, shall be paid to the person.

(4) Civil or criminal proceedings shall not be instituted against an officer for any act or omission arising out of the levying of distress.

(5) Where the person upon whose water works goods or chattels distress is to be levied or has been levied, fraudulently removes and conveys away the water works, which are capable of being moved, goods or chattels to prevent the Director-General from distraining them or completing the distress so levied, or if any person wilfully and knowingly aids or assists the person in the fraudulent conveying away or carrying off of any or part of such waterworks, goods or chattels or in concealing them, every person so offending—

(a) shall forfeit to the Director-General a sum equal to double the value of the waterworks, goods or chattels carried off or concealed; and

(b) commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Public
consultation

177. Where this Act requires that there be public consultation on any matter, the consultation shall be undertaken in a manner and under a procedure prescribed by the Minister.

No warranty
implied by
inspection

178. An inspection, under this Act, of any water works or boreholes, shall not constitute or imply any guarantee to support or justify any claim against the Authority or the Government.

Regulations

179. (1) The Minister may make regulations for, or with respect to, any matter which by this Act is required or permitted to be prescribed or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this Act may make provision for, or with respect to—

- (a) abstraction of ground water and the water works so required;
- (b) safety of dams;
- (c) inspection of water works and dam works;
- (d) abandoned water works;
- (e) plans and specifications to be submitted under this Act;
- (f) forms to be used or the type of certificates, permits or licences to be issued under this Act;
- (g) dewatering of mines and quarries, drainage and reclamation of swamps;
- (h) protection of aquatic life, flora and fauna; and
- (i) Government schemes and community projects.

(3) Regulations made under this section may create offences in respect of any contravention of the regulations and may for any such offence impose penalties not exceeding one hundred thousand penalty units or imprisonment for a period not exceeding twelve months, or to both.

180. (1) The Water Act, 1949, is hereby repealed.

Repeal of
Cap. 198
Savings and
transitional
provisions

(2) Notwithstanding the repeal of the Water Act, the provisions of the Second Schedule relating to savings and transitional provisions shall apply.

FIRST SCHEDULE

(Section 7(2))

PART 1

ADMINISTRATION OF AUTHORITY

1. (1) The seal of the Authority shall be such device as may be determined by the Authority and shall be kept by the Secretary.

Seal of
Authority

(2) The Chairperson or the ViceChairperson and the Secretary or any other person authorised by a resolution of the Board to so act, shall authenticate the affixing of the seal.

(3) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Authority by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(4) Any document purporting to be a document under the seal of the Authority or issued on behalf of the Authority shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Tenure of
office and
vacancy

2. (1) Subject to this Act, a member of the Board shall hold office for a period of three years from the date of appointment and may be re-appointed for a further like period.

(2) Subject to the other provisions of this Act, a member shall, on the expiration of the period for which the member is appointed, continue to hold office until another member is appointed to succeed that member but in no case shall the further period exceed four months.

(3) The office of a member becomes vacant—

(a) upon the member's death;

(b) if the member is adjudged bankrupt;

(c) if the member is absent from three consecutive meetings of the Board of which the member has had notice, without the prior approval of the Board;

(d) upon the expiry of one month's notice of the member's notice to resign from office, given by the member in writing to the Board;

(e) if the member becomes mentally or physically incapable of performing the duties of a member of the Board;

(f) if the member ceases to be a member of the organisation which nominated the member; or

(g) if the member is convicted of an offence under this Act or any other law.

(4) The Minister shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

(5) A member may resign upon giving one month's notice, in writing, to the organisation which nominated the member and to the Minister.

Filling of
casual
vacancy

3. Whenever the office of a member becomes vacant before the expiry of the term of office the Minister may appoint in accordance with section eleven, another member in place of the member who vacates office but such member shall hold office only for the unexpired part of the term.

Proceedings
of the Board

4. (1) Subject to this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Chairperson may determine.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairperson and shall be called if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice being given by three members of the Board.

(4) Seven members of the Board shall form a quorum.

(5) There shall preside at any meeting of the Board—

(a) the Chairperson; and

(b) in the absence of the Chairperson, the Vice-Chairperson, and in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to the deliberative vote.

(7) Where a member is for any reason unable to attend any meeting of the Board, the member may, in writing, nominate another person from the same organisation to attend such meeting in that member's stead and such person shall be deemed to be a member for the purpose of that meeting.

(8) The Board may invite any person, including any representative of a catchment council or sub-catchment council, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meeting of the Board but such person and representative shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and every meeting of any committee established by the Board.

5. There shall be paid to members of the Board or any committee of the Board such allowances as the Board may, with the approval of the Minister, determine.

Allowances
for members

Disclosure
of interest

6. (1) If a member or person is present at a meeting of the Board or a committee of the Board at which any matter, in which that person or any member of the person's immediate family, is directly or indirectly interested in a private capacity, is the subject of consideration, that person or member shall, as soon as is practicable after the commencement of the meeting, disclose that interest and shall not, take part in any consideration or discussion of, or vote on any question relating to, that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Prohibition
of
publication
of, or
disclosure of,
information
to
unauthorised
persons

7. (1) A person shall not, without the consent in writing given by, or on behalf of, the Authority, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

PART II

FINANCIAL PROVISIONS

Funds of
Authority

8. (1) The funds of the Authority shall consist of such moneys as may—

- (a) be appropriated to the Authority by Parliament for the purposes of the Authority;
- (b) be paid to the Authority by way of fees, charges, grants or donations; and
- (c) otherwise vest in or accrue to the Authority.

(2) The Authority may—

- (a) accept moneys by way of grants or donations from any source in Zambia and subject to the approval of the Minister, from any source outside Zambia;

- (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions; and
- (c) in accordance with the regulations made under this Act, charge fees for services provided by the Authority.
- (3) There shall be paid from the funds of the Authority—
- (a) salaries, allowances, loans, gratuities and pensions of staff of the Authority, catchment councils, sub-catchment councils and water users associations and other payments for the recruitment and retention of staff;
- (b) such reasonable travelling and subsistence allowances for members, members of any committee of the Authority, and members of a catchment council, sub-catchment council and water users association, when engaged on the business of the Authority and at such rates as the Authority may, with the approval of the Minister, determine; and
- (c) any other expenses incurred by the Authority in the performance of its functions.
- (4) The Minister shall prescribe what proportion of the charges collected for water use by the Authority shall be given to sub-catchment councils and catchment councils for the management of water resources in the subcatchment and catchment.
- (5) The Authority may, after the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.
- 9.** The financial year of the Authority shall be the period of twelve months ending on 31st December of each year. Financial year
- 10.** (1) The Authority shall cause to be kept proper books of account and other records relating to its accounts. Accounts
- (2) The accounts of the Authority shall be audited annually by the Auditor-General or such independent auditors as the Auditor-General may approve.
- (3) The auditor's fees shall be paid by the Authority.
- 11.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Authority shall submit to the Minister a report concerning its activities during the financial year. Annual Report
- (2) The report referred to in sub-paragraph (1), shall include information on the financial affairs of the Authority and there shall be appended to the report—

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 180 (2))

SAVINGS AND TRANSITIONAL PROVISIONS

References
to Water
Board

1. On the appointed date, reference in any written law or any other legal document to the Water Board shall be read and construed as references to the Authority established by section *seven* of this Act.

Dissolution
of Water
Board

2. (1) The Water Board constituted under section *twenty three* of the repealed Act shall continue in office for a period of three months from the appointed date.

(2) Subject to sub-paragraph (1), from the appointed date the Water Board shall exist only for the purpose of winding-up the affairs of the Board and handing over, through the secretary, of all assets, files and pending work of the Board to the authority, and for no other purpose.

Vesting of
assets and
liabilities

3. (1) On or after the appointed date, there shall be transferred to, vest in and subsist against the Authority by virtue of this Act and without further assurance—

- (a) the affairs of the Board; and
- (b) subject to this Act, all property, rights and obligations which immediately before the appointed date were the property, rights and obligations of the Board.

(2) Except as provided in this Act, every deed, bond and agreement, other than an agreement for personnel service, to which the Government was a party immediately before the appointed date, whether or not of such a nature that rights, liabilities and obligations could be assigned, shall, unless its subject matter or terms make it impossible that it should have effect as modified, as provided under this paragraph, have effect as if—

- (a) the Authority had been party to it;

(b) for any reference to the Government there was substituted, with respect to anything falling to be done on or after the commencement of this Act, a reference to the Authority; or

(c) for any reference to any officer of the Board, not being a party to it and beneficially interested, there were substituted, as respects anything falling to be done on or after the commencement of this Act, a reference to such officer of the Authority as the Authority shall designate.

(3) Where under this Act, any assets, rights, liabilities and obligations of the Government are deemed to be transferred to the Authority in respect of which transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate registration authority for registration of the transfer.

(4) The registration authority, referred to in subparagraph (3), shall make such entries in the appropriate register as shall give effect to the transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register and shall endorse the deeds relating to the title, right or obligation concerned and no registration fees or other duties shall be payable in respect of the transaction.

4. (1) Where under this Act, any property, rights, liabilities and obligations of the Government incurred, held or vested by or in the Water Board are deemed transferred to the Authority in respect of which transfer a written law provides for registration, the Authority shall make an application in writing to the appropriate registration authority for registration of the transfer.

Registration of property to be transferred by Government

(2) The registration authority referred to in subparagraph (1), shall make such entries in the appropriate register as shall give effect to such transfer and, where applicable, issue to the transferee concerned a certificate of title in respect of the property or make necessary amendments to the register, as the case may be, and shall endorse the deeds relating to the title, right or obligation concerned, and no registration fees or other duties shall be payable in respect thereof.

5. (1) Without prejudice to the other provisions of this Act, where any right, liability or obligation vests in the Authority by virtue of this Act, the Authority and all other persons shall, as from the appointed date, have the same rights, powers and remedies and in particular the same rights as to the instituting or defending of legal

Legal proceedings

proceedings or the making or resisting of applications to any authority for ascertaining or perfecting that right, liability or obligations as they would have had if it had at all times been a right, liability or obligation of the Authority.

(2) Any legal proceedings or applications pending immediately before the appointed date by or against the Government in respect of the Water Board may be continued by or against the Authority.

(3) After the commencement of this Act, proceedings in respect of any right, liability or obligation which was vested in, held, enjoyed, incurred or suffered by the Government in respect of the Water Board may be instituted by or against the Authority.

Terms of
service of
employees
of Water
Board

6. (1) On or after the appointed date, the Authority shall, on such terms and conditions as it may, with the approval of the Minister, determine, appoint as officers of the Authority such employees of, or public officers from, the Water Board as may be necessary for the performance of the functions of the Authority.

(2) Where an officer from the Public Service is appointed to the service of the Authority under subparagraph (1)—

(a) the terms and conditions of service with the Authority shall not be less favourable than those the officer enjoyed in the Public Service; and

(b) the officer shall be deemed to have retired under section *thirty-nine* of the Public Service Pensions Act.

Act No. 35
of 1996

(3) On or after the appointed date employees of the Water Board who are not engaged by the Authority under subsection (2), shall be retained by the Government and shall—

(a) be re-deployed in the service of the Government; or

(b) be retired under section *thirty-nine* of the Public Service Pensions Act.

Act No. 35
of 1996

Existing
rights under
order of
Water Board

7. (1) Every person claiming any existing right granted under an order of the Water Board may, within twentyfour months from the appointed date, notify the Authority of the claim in accordance with subparagraph (3).

(2) Every existing right shall terminate if the person entitled to it fails to notify the Authority, in accordance with subparagraph (1), of the existence of that right before the expiration of the period specified in that subparagraph.

(3) Any person claiming an existing right, in accordance with subparagraph (1), shall, when notifying the Authority of the right, file a report with the Authority describing—

- (a) the volume of water abstracted under an order of the Water Board;
- (b) the water source from which the abstraction is made;
- (c) the use for which the abstraction is made;
- (d) the date upon which the abstraction commenced; and
- (e) any existing works constructed for the enjoyment of the right granted under the repealed Act.

(4) On receipt by the Authority of a notification under this paragraph the Authority shall—

- (a) carry out such investigations, through public consultations, with relevant stakeholders, in which the holder of the right shall have the right to be present and be heard, as may be necessary to establish the existence of the right and determine whether the holder of the right used the right in conformity with the repealed Act; and
- (b) if it is satisfied of the existence of that right and that the holder of the right used the right in conformity with the repealed Act, record the right and issue a permit under this Act for the same use of water, under conditions provided under this Act.

8. Notwithstanding any other law, all water works constructed or boreholes drilled prior to the appointed date shall be treated as if constructed or drilled under this Act and shall be subject to this Act.

Existing works

THIRD SCHEDULE

(Section 54)

PART 1

TREATIES, CONVENTIONS AND AGREEMENTS

1. Revised Southern African Development Protocol on Shared Watercourses, 2000;
2. Convention on Wetlands of International Importance Especially as Water Fowl Habitat, 1971;
3. Convention on Biological Diversity, 1992;
4. Convention on Sustainable Management of Lake Tanganyika, 2003,
5. United Nations Framework Convention on Climate Change, 1992;

6. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and Desertification, particularly in Africa, 1994;
7. African Convention on the Conservation of Nature and Natural Resources, 1968;
8. Agreement on the Action Plan for the Environmentally Sound Management of the Common Zambezi River System, 1987; and
9. Zambezi River Authority Agreement, 1987.

PART II

EXISTING REGIONAL INSTITUTIONS

1. Zambezi River Authority; and
 2. Lake Tanganyika Authority.
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