

CHAPTER 20:24

WATER ACT

Acts 31/1998, 22/2001 (s. 4), 13/2002 (s. 142), 14/2002 (s. 26), 6/2005 (s 27).

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AN ACT to provide for the development and utilisation of the water resources of Zimbabwe; to provide for the establishment, powers and procedures of catchment councils and subcatchment councils; to provide for the grant of permits for the use of water; to provide for the control of the use of water when water is in short supply; to provide for the acquisition of servitudes in respect of water; to provide for the protection of the environment and the prevention and control of water pollution; to provide for the approval of combined water schemes; to provide for matters relating to dam works; to repeal the Water Act [Chapter 20:22]; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement : 1st January, 2000]

PART I

PRELIMINARY

1 Short title and date of commencement

This Act may be cited as the Water Act [Chapter 20:24].

2 Interpretation

(1) In this Act—

“Agricultural and Rural Development Authority” means the Agricultural and Rural Development Authority established by section 3 of the Agricultural and Rural Development Authority Act [Chapter 18:01];

“agricultural purposes”, in relation to the use of water, means the use of water for—

- (a) the irrigation of land; or
- (b) fish farming purposes; or
- (c) animal husbandry, including the keeping of poultry, where the amount of water used exceeds ten thousand litres per day;

“appropriate Minister”, in relation to any particular matter means—

- (a) any Minister who, by or in terms of any enactment, is empowered or required to exercise any function in respect of the matter; or
- (b) a vice-president where, by or in terms of any enactment, the vice-president is empowered or required to exercise any function in respect of the matter;

“aquatic ecosystems” means riverine flora and fauna and aquatic life;

“aquifer” means any geological formation which absorbs, stores and transmits water;

“area under jurisdiction of a local authority” means—

- (a) in the case of a municipal council, the municipal area;
- (b) in the case of a town council, the town council area;
- (c) subject to paragraph (b) of subsection (2), in the case of rural district council, the rural district council area;
- (d) in the case of a local board, the area for which the board has been declared in terms of subsection (2);

“borehole” means a hole drilled or sunk into the ground for the purpose of the abstraction of ground water, the collection of ground water or rock samples, the monitoring of ground water levels, or other purposes;

[Definition inserted by section 26 of Act 14 of 2002]

“catchment area” means the area which naturally drains into a dam, lake, reservoir, river or watercourse and from which the dam, lake, reservoir, river or watercourse receives surface or ground flow which originates from rainfall;

“catchment council” means a catchment council established in terms of section *twenty*;

“catchment manager” means a person appointed as catchment manager in terms of section *twenty-eight*;

“Director of Physical Planning” means the Director of Physical Planning appointed in terms of section 63 of the Regional, Town and Country Planning Act [Chapter 29:12];

“electrical purposes”, in relation to the use of water, means the use of water for the purposes of an electricity undertaking;

“electricity undertaking” means any undertaking which generates and additionally, or alternatively, transmits, distributes or supplies electricity, with all the assets and liabilities appertaining thereto, whether such undertaking is under the control of the State, the Zambezi River Authority, the Zimbabwe Electricity Supply Authority, a local authority, a company or other association of persons or a private individual;

“existing permit” means an existing permit or right to use water granted in terms of this Act or of any enactment repealed by this Act or any predecessor of such enactment;

“feedlot” means one or more enclosures or other structures on any piece of land in which animals or poultry are confined within a restricted area and fed mainly or entirely by means other than natural browsing, grazing for the purpose of bringing them into slaughter condition or maintaining their condition;

“final permit” means a permit for the use of water granted in terms section *thirty-four*;

“ground water” means all water which is—

- (a) beneath the surface of the ground; and
- (b) not visible on the land concerned;

and includes water in boreholes and wells;

“hydrological station” means a place where measurements and observations of the flow or level of any surface or ground water are taken or made, as the case may be, and recorded;

“institutional purposes”, in relation to the use of water, means the use of such water for—

- (a) boarding-houses, guest farms, hotels and other like enterprises; or
- (b) recreational clubs; or
- (c) missions or boarding-schools; or
- (d) a permanent labour force which, excluding the dependants of the labourers concerned, exceeds one hundred workers;

“irrigable area” means an area of land under or capable of being brought under irrigation;

“irrigation” means the artificial application of water to land for agricultural purposes;

“local authority” means—

- (a) a municipal council, town council or rural district council; or
- (b) a local board declared in terms of subsection (2) to be a local authority;

“local authority purposes”, in relation to the use of water, means the use of water for the purposes of the community within the area under the jurisdiction of a local authority and of such other persons as may conveniently be supplied with water by the local authority;

“mining purposes”, in relation to the use of water, means the use of water for mining purposes;

“Minister” means the Minister of Rural Resources and Water Development or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“miscellaneous purposes”, in relation to the use of water, means the use of water for any purposes other than agricultural purposes, electrical purposes, institutional purposes, local authority purposes, mining purposes, primary purposes, railway purposes, road purposes or local authority purposes;

“National Water Authority” means the Zimbabwe National Water Authority established by section 3 of the Zimbabwe National Water Authority Act, 1998;

“non-riparian owner” means an owner of land which is not riparian land;

“officer” means an officer appointed in terms of subsection (1) of section *seven* and includes the Secretary;

“outline plan” means an outline water development plan prepared in terms of subsection (1) of section *twelve*;

“owner” in relation to land, includes—

- (a) the State; and
- (b) the person registered in the Deeds Registry as the owner of the land or in whom the land is vested by law; and
- (c) any person lawfully holding or occupying land in accordance with any agreement or enactment empowering the State to allot land on the promise of title subject to the fulfilment by the allottee of certain conditions; and
- (d) in the case of land owned or controlled and managed by the Forestry Commission, the Forestry Commission; and
- (e) in the case of Communal Land, the Minister responsible for administration of the Communal Land Act [*Chapter 20:04*]; and
- (f) the legal representative of an owner of land who has died or become insolvent or is a minor or of unsound mind or otherwise under disability; and
- (g) the liquidator of an owner of land which is a company;

“permit” means a permit for the use of water issued in terms of this Act;

“pollution”, in relation to water, means—

- (a) such contamination or other alteration of the biological chemical or physical properties of the water, including changes in colour, odour, taste, temperature or turbidity; or
- (b) such discharge of any gaseous, liquid, solid or other substances into any water or public stream; as will or is likely to create a nuisance or render the water, as the case may be, detrimental harmful or injurious to the health, safety or welfare of the public or any section thereof or any consumer or user of the water or any birds, fish or other aquatic ecosystems, livestock or wild life;

“primary purposes”, in relation to the use of water, means the reasonable use of water—

- (a) for basic domestic human needs in or about the area of residential premises; or
 - (b) for the support of animal life, other than fish in fish farms or animals or poultry in feedlots;
 - (c) for the making of bricks for the private use of the owner, lessee or occupier of the land concerned; or
 - (d) for dip tanks;
- “provisional permit” means a permit for the use of water granted in terms of section *fifty*;
- “public stream” means a water course of natural origin in which water flows, whether or not—
- (a) the watercourse or any portion thereof is dry during any period of the year; or
 - (b) the conformation of the watercourse has been changed by artificial means;
- “railway purposes”, in relation to the use of water, means the use of water by any person authorized to operate a railway system for the purpose of that operation;
- “Regional Water Authority” means the Regional Water Authority which was established under section 3 of the repealed Regional Water Authority Act [*Chapter 20:06*];
- “Registrar” means the Registrar of the Administrative Court;
- “riparian land” means land on which, or along the boundary of the whole or any portion of which, a public stream exists;
- “riparian owner” means the owner of riparian land;
- “river system” means a river system declared as such in terms of subsection (1) of section *eleven*;
- “Secretary” means the Secretary of the Ministry for which the Minister is responsible;
- “subcatchment council” means a subcatchment council established in terms of section *twenty-one*;
- “surface water” means all water found on or below the bed of a public stream, including marshes, springs, swamps or vleis forming the source of or found on the course of the public stream, and includes water in storage works, drainage works or permanent pools;
- “temporary permit” means a permit for the use of water granted in terms of section *fifty*;
- “water” includes—
- (a) surface water; and
 - (b) all water which rises naturally on any private land or drains or falls naturally on to any private land, even if it does not visibly join any public stream; and
 - (c) all ground water;
- “water development restriction area” means an area declared in terms of subsection (1) of section *fifty-eight* to be a water development restriction area;
- “water storage works” means a dam, reservoir or well;
- “water works” means—
- (a) a borehole, canal, channel, embankment, filter, filterbed, pipeline, pumping plant purification plant, plant for the generation of hydro-electric power, water storage works or well; or
 - (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 or the conservation of rainfall or the development of water power; or
 - (c) any land occupied for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water; or
 - (d) any gauge post, measuring weir or other appliance erected or used for undertakings authorised by or in terms of this Act;
- and includes any area held, occupied or required for the purpose of irrigation;
- “well” means a hole dug into the ground for the purpose of the abstraction of ground water and includes a mine shaft and any other subterraneous works other than a borehole used for such purpose.

[Definition substituted by section 26 of Act 14 of 2002]

(2) The Minister, by notice in the *Gazette*—

- (a) with the approval of the Minister to whom the administration of the Urban Councils Act [*Chapter 29:15*] has been assigned, may declare a local board to be a local authority for the purposes of this Act, and shall specify the area which shall be the area under the local board’s jurisdiction for the purposes of this Act
- (b) with the approval of the Minister to whom the administration of the Rural District Councils Act [*Chapter 29:13*] has been assigned, may declare a greater or lesser area than the council area to be the area under the jurisdiction of a rural district council for the purposes of this Act.

3 Water vested in President

Subject to this Act, all water is vested in the President.

4 No private ownership of water

(1) No person shall be entitled to ownership of any water in Zimbabwe and no water shall be stored, abstracted, apportioned, controlled, diverted, used or in any way dealt with except in accordance with this Act.

(2) Subject to this Act, a permit issued in terms of this Act shall confer upon its holder a right to the use of water in accordance with the permit.

5 Act not to affect certain rights of miners and prospectors to water

Nothing in this Act shall affect the rights conferred on holders of mining locations or prospectors by the Mines and Minerals Act [*Chapter 21:05*] in respect of the use of—

- (a) water for primary purposes; or
- (b) ground water.

6 General functions of Minister

(1) For the purposes of this Act, the functions of the Minister shall be—

- (a) to develop policies to guide the orderly and integrated planning of the optimum development, utilization and protection of the country's water resources in the national interest; and
 - (b) to ensure the availability of water to all citizens for primary purposes and to meet the needs of aquatic and associated ecosystems particularly when there are competing demands for water; and
 - (c) to ensure the equitable and efficient allocation of the available water resources in the national interest for the development of the rural, urban, industrial, mining and agricultural sectors.
- (2) In the performance of his functions in terms of subsection (1), it shall be the duty of the Minister—
- (a) to provide overall policy guidelines on the development, exploitation and utilization of water resources, ensuring that all components of the water cycle such as ground water surface water, evaporation, clouds and rainfall are recognized as being interdependent and forming part of a single water cycle;
 - (b) to ensure that water resources are managed, utilized and conserved in a manner consistent with national environmental approaches provided for in any enactment;
 - (c) to encourage participation by consumers in all the sectors referred to in paragraph (c) of subsection (1) and catchment councils in the development, exploitation and distribution of water resources;
 - (d) to secure the provision of affordable water to consumers in under-privileged communities;
 - (e) to ensure that water resources are utilized at all times in an efficient manner having special regard to its value and the economic and other benefits that may be derived from it;
 - (f) to give effect to any international agreement, to which Zimbabwe is a party, on shared water course systems in a spirit of mutual co-operation;
 - (g) to ensure that research is carried out and information is obtained and kept, on hydrological and hydrogeological matters such as—
 - (i) the quality and quantity of the country's water resources;
 - (ii) the utilization of the country's water resources;
 - (iii) resources needed to develop the country's water resources sufficient to meet the reasonable needs of the nation;
 - (h) to promote efficiency and economy in the utilization of water resources and to encourage the use of water-saving technologies;
 - (i) to regulate the supply of water by any person to consumers with respect to—
 - (i) the quality of the service provided to consumers; and
 - (ii) the protection of consumers from exploitation;without, however, impairing the efficiency of the person's operations;
 - (j) to fix criteria for water allocation and the issue of permits for the use of water by catchment councils;
 - (k) generally, to fix standards to be maintained in the exploitation, utilization, conservation and management of water resources in respect of environmental water quality standards as set by the Minister responsible for the administration of the Environmental Management Act [*Chapter 20:27*].

[Paragraph amended by section 142 of Act 13 of 2002 and by section 27 of Act 6 of 2005]

7 Secretary and other officers

(1) Subject to the Public Service Act [*Chapter 16:04*], there shall be appointed, in addition to the Secretary, such other officers as may be necessary to carry out the provisions of this Act.

(2) In the exercise of their functions under this Act, officers shall be subject to the directions and orders of the Minister.

8 Delegation of powers by Minister and Secretary

(1) The Minister may delegate to the Secretary or to the National Water Authority such of his functions under this Act as he thinks fit, other than the functions conferred on him by section *one hundred and nineteen*.

(2) The Secretary may delegate to any other officer or to the National Water Authority such functions—

- (a) conferred or imposed on him by or in terms of this Act; or
- (b) delegated to him in terms of subsection (1);

as he thinks fit:

Provided that he shall not so delegate any function delegated to him in terms of subsection (1) without the consent of the Minister.

(3) All functions delegated by the Secretary in terms of subsection (2) shall be exercised and carried out subject to the directions and orders of the Secretary.

9 Powers of officers

(1) Subject to this Act, an officer may, for the better conservation and use of the water resources of Zimbabwe or for the control or prevention of the pollution of water, do all or any of the things set out in the Schedule.

(2) A person to whom an order referred to in paragraph 5 of the Schedule has been given may, within a period of twenty-one days from the date on which the order was given to him, if aggrieved by the order, appeal against the order to the Administrative Court.

(3) Subject to subsection (2), a person who fails to comply with the order referred to in paragraph 5 of the Schedule within the period specified in the order shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

10 Powers in respect of hydrological stations

(1) If the Minister or the National Water Authority—

(a) wishes to construct or maintain a hydrological station on any land; and

(b) is unable to agree on reasonable terms with the owner of the land referred to in paragraph (a) concerning the construction or maintenance referred to in that paragraph;

the Minister or, as the case may be, the National Water Authority with the consent of the Minister, may, subject to subsection (2), compulsorily acquire such land or rights or interests over land as are necessary to construct or maintain a hydrological station on the land concerned.

(2) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the exercise by the Minister or the National Water Authority of powers in terms of subsection (1).

PART II

WATER RESOURCES PLANNING AND DEVELOPMENT

11 Declaration of river system

(1) The Minister, after consultation with the National Water Authority may, by statutory instrument, declare any catchment area, group of catchment areas and any aquifer in the area concerned to be a river system.

(2) A river system shall, subject to this Act, be under the control of a catchment council established in respect of it in terms of subsection (1) of section *twenty*, which shall be subject to the general supervision of the National Water Authority.

12 Preparation of outline plans

(1) For the purpose of ensuring the optimum development and utilization of the water resources of Zimbabwe, the National Water Authority, and the catchment council concerned, shall prepare an outline water development plan for every river system.

(2) In preparing an outline plan, the National Water Authority and the catchment council concerned shall—

(a) consult the authorities and bodies which in its opinion are likely to be concerned with the development of the catchment area or catchment areas of the river system concerned and the utilization of its water resources; and

(b) draw up an inventory of the resources of the catchment area or catchment areas of the river system; and

(c) have regard to any relevant regional plan prepared in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*], and to such other matters as may appear relevant to it.

13 Contents of outline plans

(1) An outline plan shall—

(a) indicate—

(i) the major water uses within the river system concerned, including those of the important public utilities, and any major amenity or recreation areas, areas for development and measures for the conservation and improvement of the physical environment; and

(ii) the extent to which the actual volumes or the relative proportions of the potential yield or total annual run off of any catchment area within the river system concerned should be apportioned between public and private development and the allocation within such apportionment of water for the respective uses of the different sectors of the economy referred to in paragraph (c) of subsection (1) of section *six*; and

- (iii) subject to quality standards as prescribed in terms of the Environmental Management Act [Chapter 20:27]; the maximum permissible levels of pollution within the catchment area concerned; and

[Subparagraph amended by section 142 of Act 13 of 2002 and by section 27 of Act 6 of 2005]

- (iv) the manner in which its proposals are justified by the inventory drawn up in terms of subsection (2) of section *twelve*; and
- (v) the phasing of any development and the order of priorities in respect of the proposals in the outline plan and the reasons therefor;

and

- (b) state the relationship of the proposals in the outline plan to such major proposals for the use of water as may be—

- (i) expected to affect the catchment area or catchment areas of the river system concerned; and
- (ii) set out in the outline plans in respect of any contiguous river systems;

and

- (c) specify—

- (i) any area comprising a potential dam site, dam basin or both which should be reserved against the doing of such acts referred to in subsection (1) of section *fifty-six* as may be specified in the outline plan; and
- (ii) the proportion of the available water in any catchment area within the river system concerned which should be reserved for an indefinite period for future use or for the benefit of the environment, subject to such conditions, if any, as may be specified in the outline plan;

and

- (d) deal with such matters, other than the matters referred to in paragraphs (a), (b) and (c), as the Minister may prescribe.

(2) The National Water Authority shall clearly indicate in an outline plan the priorities in the utilization and allocation of water, taking into account policy guidelines provided by the Minister.

(3) An outline plan shall make provision for changes in priorities for the use, development and allocation of water, where they are necessitated by changes in the availability of water or social or economic priorities.

(4) An outline plan shall consist of a statement in writing accompanied by such descriptive matter, diagrams, illustrations and maps as may be prescribed.

(5) The National Water Authority shall, after completing an outline plan, refer it to the Secretary for examination and recommendation.

14 Powers of Secretary with respect to outline plan

(1) The Secretary shall, having regard to any relevant regional plan prepared in terms of Part II of the Regional, Town and Country Planning Act [Chapter 29:12]—

- (a) examine and make recommendations to the Minister on an outline plan referred to him in terms of subsection (5) of section *thirteen*, including recommendations on the phasing of any development, the order of priorities in respect of the proposals in the outline plan and the allocation of water to the different sectors of the economy; and
- (b) assist generally in the consideration of matters relating to planning within the river system and, if appropriate, other contiguous river systems.

(2) The Secretary may consult or obtain evidence from any representative of any local authority, statutory body or association of persons engaged in any business, calling, profession or other activity of benefit to the public and from any other person who, in the opinion of the Secretary, possesses expert knowledge which would be of advantage to the Secretary, the National Water Authority and the catchment councils in the exercise of their functions under this Part:

Provided that the Secretary may direct the catchment council and the National Water Authority to consult or obtain evidence from any person specified by him.

15 Publication of outline plans

(1) After having examined an outline plan, the Secretary shall submit it, together with his recommendations on it, to the Minister.

(2) On receipt of the outline plan and recommendations submitted in terms of subsection (1) and after considering them, the Minister shall—

- (a) give notice in the *Gazette* and in a newspaper circulating in the area to which the outline plan relates of the places at which the outline plan will be publicly exhibited and the period within which objections or representations in connection with the outline plan may be made to the Minister; and
- (b) exhibit at the places and for a period of not less than thirty days copies of the outline plan.

16 Procedure after publication of outline plans

- (1) The Minister may, if—

- (a) no objections or representations referred to in subsection (2) of section *fifteen* have been made to him within the period specified in the notice referred to in that subsection, approve the plan and fix the date on which it shall come into operation; or
- (b) objections or representations referred to in subsection (2) of section *fourteen* have been made to him within the period specified in the notice referred to in that subsection, after considering such objections or representations—
 - (i) approve the outline plan and fix the date on which it shall come into operation; or
 - (ii) refer the outline plan concerned, together with the objections or recommendations, to the National Water Authority for further consideration.

(2) After further consideration of an outline plan referred to it in terms of subparagraph (ii) of paragraph (b) of subsection (1), the National Water Authority shall, after consultation with the Secretary, submit the outline plan, together with any further recommendations thereon, to the Minister.

(3) The further recommendations submitted in terms of subsection (2) shall include a report on the objections or representations made in connection with the outline plan concerned and on any changes made to the outline plan as a result of the objections or representations.

(4) After considering the outline plan and the further recommendations submitted to him in terms of subsection (2), the Minister shall, after taking into account—

- (a) any evaluation report furnished by the Secretary; and
- (b) any matters, other than those referred to in paragraph (a), which he considers to be relevant;

and making such changes to the outline plan as he thinks fit, approve the outline plan and fix the date on which it shall come into operation.

(5) The Minister shall give notice in the *Gazette* of his approval of an outline plan and of the date on which the outline plan will come into operation.

17 Changes to approved outline plans

(1) If it appears to the Minister, on the recommendation of the National Water Authority and the Secretary that, an approved outline plan should be changed, the Minister shall—

- (a) give notice in the *Gazette* and in a newspaper circulating in the area to which the approved outline plan relates of the proposal to change the approved outline plan and of the places at which the approved outline plan embodying the proposed changes will be publicly exhibited and the period within which objections or representations in connection with the proposal may be made to the National Water Authority; and
- (b) exhibit for a period of not less than thirty days at the places referred to in paragraph (a) copies of the approved outline plan embodying the proposed changes.

(2) The Minister—

- (a) may, if no objections or representations referred to in subsection (1) have been made within the period specified in the notice referred to in that subsection, confirm the proposed changes to the approved outline plan concerned and the approved outline plan shall thereafter incorporate such changes; or
- (b) shall, if objections or representations referred to in subsection (1) have been made within the period specified in the notice referred to in that subsection and if he still wishes the approved outline plan concerned to be changed, act in terms of subparagraph (ii) of paragraph (b) of subsection (1) of section *sixteen* and subsections (2) to (4) of section *sixteen* and section *seventeen* shall apply, *mutatis mutandis*, thereafter.

18 Effect of operative outline plans

(1) Any person, including the State, undertaking development within any catchment area of a river system shall in so doing, have regard to the operative outline plan relating to the catchment area.

(2) A catchment council shall not grant any application for a permit for the use of water within any area to which an operative outline plan relates if the permit would have the effect of granting rights to use more water in the sector of the economy concerned than could be satisfied by the allocation of water made by the operative outline plan to that sector:

Provided that a catchment council, with the approval of the Secretary, may grant temporary permits for the use of the water so allocated on such conditions as the catchment council may specify.

(2a) Until such time as an outline plan becomes operative in any river system a catchment council may, with the approval of the Secretary and subject to subsection (2b), grant provisional or temporary permits on such conditions as the catchment council may specify.

[Subsection substituted by section 26 of Act 14 of 2002]

(2b) As soon as practicable after the date when an outline plan becomes operative in any river system a catchment council which granted any provisional or temporary permit in terms of subsection (2a) shall review every such permit and cancel, renew or convert it into a final permit upon having regard to—

- (a) whether or not the permit is capable of being granted under the outline plan in terms of subsection (2) of section *eighteen* or its grant is otherwise consistent with the outline plan;
- (b) the principles to be observed by the catchment council in considering applications for permits for use of water in terms of section *twenty-three*.

[Subsection substituted by section 26 of Act 14 of 2002]

(3) Any area comprising a potential dam basin or potential dam site or both specified in terms of subparagraph (i) of paragraph (c) of subsection (1) of section *thirteen* shall, with effect from the date on which the approved outline plan concerned or any change thereto in terms of section *seventeen* comes into operation, be deemed to be reserved in terms of subsection (1) of section *fifty-six* against the doing of any act specified in the approved outline plan and section *fifty-six* shall apply, *mutatis mutandis*:

Provided that—

- (i) it shall not be necessary to publish any notice in terms of subsection (1) of section *fifty-six*;
- (ii) the reference in subsection (4) of section *fifty-six* to the publication in the *Gazette* of a notice shall be read and construed as a reference to the approval in terms of subsection (3) of section *sixteen* of such approved outline plan.

(4) The proportion of the potential yield, total annual runoff or available water specified in terms of subsection (1) of section *thirteen* shall, with effect from the date on which the approved outline plan concerned or any change thereto in terms of section *seventeen* comes into operation, be deemed to be reserved in terms of subsection (1) of section *fifty-seven* for an indefinite period for future use subject to such conditions, if any, as may be specified in the approved outline plan, and subsections (1), (2) and (9) of section *fifty-seven* shall apply, *mutatis mutandis*:

Provided that—

- (i) it shall not be necessary to publish any notice in terms of subsection (1) of section *fifty-seven*;
- (ii) the reference in subsection (9) of section *fifty-seven* to the publication in the *Gazette* of a notice shall be read and construed as a reference to the approval in terms of subsection (5) of section *sixteen* of such approved outline plan.

19 Review of operative outline plans

(1) The National Water Authority shall, within a period of not more than ten years from the date on which an approved outline plan came into operation or such other period as the Minister may specify and thereafter at intervals of not more than ten years or such other intervals as the Minister may specify, review the operative outline plan and decide whether or not a new outline plan should be prepared in terms of subsection (1) of section *twelve*.

(2) An operative outline plan shall cease to have force on the date on which an approved outline plan replacing the operative outline plan comes into operation.

PART III

ESTABLISHMENT, FUNCTIONS AND PROCEDURES OF CATCHMENT COUNCILS

20 Establishment of catchment councils

(1) The Minister, in consultation with the Zimbabwe National Water Authority may, by statutory instrument—

- (a) establish a catchment council in respect of an area of a river system specified in that instrument; and
- (b) fix the number of members representing water users in the river system who shall constitute the catchment council and the manner in which they shall be elected or appointed; and
- (c) assign a name to the catchment council; and
- (d) prescribe the procedure at the meetings of or to be followed by the catchment council in the discharge of its functions; and
- (e) fix the remuneration, if any, and allowances payable to members of a catchment council from funds allocated for that purpose from the Water Levy Fund to meet the reasonable expenses incurred by members in connection with the business of the catchment council.

(2) A catchment council shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing such functions as a body corporate may by law perform.

(3) The Minister may, by statutory instrument—

- (a) abolish a catchment council; or
- (b) subject to subsection (1) of section *eleven*, alter the area of jurisdiction of a catchment council; or
- (c) alter the membership or the name of a catchment council.

21 Functions of catchment council

(1) Subject to this Act, a catchment council shall—

- (a) in conjunction with the National Water Authority, prepare an outline plan for its river system in accordance with this Act; and
- (b) determine applications made and grant permits required in terms of this Act; and
- (c) regulate and supervise the exercise of rights to, and use of, water in respect of the river system for which it is established; and
- (d) to supervise the performance of functions by subcatchment councils; and
- (e) ensure proper compliance with this Act; and
- (f) perform any other function conferred or imposed upon it in terms of this Act.

(2) The Minister may, by written notice to a catchment council, confer all or any of the powers of officers upon a catchment manager or on all or any of the members of a catchment council, and may at any time amend or revoke any such notice.

(3) For the better exercise of its functions, a catchment council may delegate to subcatchment councils, either absolutely or subject to conditions, such of its functions as it thinks fit:

Provided that —

- (i) the power to grant permits shall not be delegated to a subcatchment council;
- (ii) the delegation shall not prevent the catchment council from exercising the functions concerned;
- (iii) the catchment council may amend or withdraw any decision of a subcatchment council in the exercise of its delegated functions.

22 Powers of catchment councils

(1) A catchment council may, subject to this Act and in regard to water within the area of the river system for which it is established—

- (a) grant an application for—
 - (i) a permit; or
 - (ii) a provisional permit; or
 - (iii) a temporary permit;
 for the use of water subject to such conditions as it thinks fit to impose or may refuse the application;
- (b) on an application by any person to whom an existing permit has been granted for a revision of an existing permit, investigate the matter and make an appropriate order on the matter;
- (c) on an application by any person in regard to—
 - (i) a dispute concerning the abstraction, appropriation, control, diversion or use of water; or
 - (ii) any matter which may be brought before a catchment council in terms of this Act;
 investigate the dispute or matter and make an appropriate order;
- (d) at the request of the Minister or the Administrative Court, investigate any matter concerning the abstraction, appropriation, control, diversion or use of water and report on the matter;
- (e) at the request of the Minister—
 - (i) investigate, define and record the right to the use of the water of any channel, reservoir or public stream, aquifer or other source of supply;
 - (ii) in the case of any watercourse the character of which has not already been defined by the catchment council, decide whether such watercourse is a public stream or not;
 - (iii) report for his information on—
 - A. the use or waste of water abstracted from any public stream;
 - B. the advisability of interference with or the removal of any dam, weir or other structure in the course of a public stream and, if such interference or removal is recommended, the compensation, if any, to be paid to any affected person;
 - C. any matter arising out of this Act;
- (f) at the direction of the Minister, terminate any investigation requested by him in terms of paragraph (d) or (e);
- (g) on its own motion, terminate any investigation referred to in paragraph (b) or (c);
- (h) do anything which may be done by a catchment council in terms of this Act or any other enactment.

(2) In the exercise of any power referred to in subsection (1), a catchment council may—

- (a) make all such inspections as may be necessary; and
- (b) call and take expert advice on any matter; and
- (c) without derogation from section *ninety-three*, revise or cancel any existing permit.

23 Principles to be observed by catchment council in considering applications for permits for use of water

(1) Subject to section *sixty-two* and to the priorities in the utilization and allocation of water set out in an outline plan in terms of section *thirteen*, in considering applications for permits for the use of water, a catchment council shall—

- (a) 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 distribution of the available water resources;
 - (ii) the needs of each applicant; and
 - (iii) the likely economic and social benefits of the proposed use;
 - (b) in granting a permit for the use of water for agricultural purposes, have regard to—
 - (i) the extent and nature of all land, wherever situated, irrigable by the water concerned; and
 - (ii) the suitability for irrigation of the land concerned; and
 - (iii) the efficiency of the proposed method or possible methods of using the water concerned;
 - (c) have regard to the economic aspects of the proposed scheme, undertaking or work;
 - (d) 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 VI;
 - (e) take into consideration such matters, other than the matters referred to in paragraphs (a) to (d), as may appear to be relevant to its investigations.
- (2) Subject to this Act, the Minister, after consultation with the National Water Authority and any catchment council concerned, may prescribe—
- (a) the matters which shall be taken into account in considering the respective priority of different uses of water; and
 - (b) the manner of allocating water between consumers who have competing needs for water; and
 - (c) the methods of allocating water.

24 Establishment and functions of subcatchment councils

- (1) The Minister may, by statutory instrument—
- (a) establish a subcatchment council for any part of a river system specified in the notice; and
 - (b) fix the number of members who shall constitute a subcatchment council and the manner in which they shall be elected; and
 - (c) assign a name to the subcatchment council.
- (2) The Minister may, by a statutory instrument—
- (a) abolish a subcatchment council; or
 - (b) alter the area for which a subcatchment council was established; or
 - (c) alter the membership or the name of a subcatchment council.
- (3) A subcatchment council shall be a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing such functions as a body corporate may by law perform.
- (4) Subject to this Act and without derogation from the powers of a catchment council, a subcatchment council shall—
- (a) regulate and supervise the exercise of rights to water within the area for which it was established; and
 - (b) perform such other functions as may be conferred or imposed upon it in terms of this Act.
- (5) With the approval of the Minister, a subcatchment council may -
- (a) levy rates upon persons who hold permits within the area for which the subcatchment council was established; and
 - (b) charge fees for any service rendered by it.
- (6) Any rates levied or fees charged by a subcatchment council in terms of subsection (5) shall be held by the subcatchment council in a fund for which proper accounts shall be kept and maintained.
- (7) A subcatchment council shall apply the moneys in the fund referred to in subsection (6) on expenses of the subcatchment council in the performance of its functions.
- (8) In the performance of its functions, a subcatchment council may require any holder of a permit within the area for which it was established to take such steps as it may specify to maintain in efficient repair any water works connected with his permit.
- (9) Any holder of a permit who is aggrieved by a requirement of a subcatchment council in terms of subsection (8) may, within thirty days of the requirement, appeal to the Administrative Court in terms of Part X.
- (10) If any person fails to comply with a requirement in terms of (8) which has not been set aside in terms of subsection (9), the subcatchment council may itself take the steps concerned and recover the cost of doing so from such person in any court of competent jurisdiction.
- (11) The Minister may, by written notice to the subcatchment council concerned, confer all or any of the powers of officers upon all or any of the members of the subcatchment council, and may at any time amend or revoke any such notice.

25 Persons interested in matters before catchment council

- (1) Before proceeding to the determination of any matter submitted to it, a catchment council shall satisfy itself that all persons who, in its opinion, have an interest which is reasonably likely to be adversely affected by the determination have been duly notified of the proceedings.
- (2) Any person who has an interest in the determination of any matter submitted to a catchment council may—

- (a) appear before the catchment council; and
 - (b) present such argument or produce such evidence before the catchment council as he thinks fit.
- (3) An irrigation company shall, if any matter before a catchment council arises wholly or partly within the area of the combined water scheme concerned, be taken as having an interest referred to in subsection (2).

26 Costs

The costs payable in respect of any proceedings before a catchment council shall be as prescribed.

27 Orders of catchment council

(1) Subject to this Act, a catchment council may make such award or order on any proceedings brought before it as it thinks fit.

(2) An award or order of a catchment council—

- (a) shall be reduced to writing and a copy thereof, certified by the chairman of the catchment council, shall, if such award or order is made on the hearing and determination of a dispute or application, be served on each party to the dispute or application, as the case may be; and
- (b) shall be binding on each party to the dispute or application concerned, if any, unless the award or order is set aside on appeal.

(3) An award or order of a catchment council for the payment of a sum of money by a party to a claim, dispute, appeal or application shall have the same effect as an order of the High Court for such payment unless such award or order is set aside on appeal:

Provided that an appeal against the decision of a catchment council shall not suspend the decision, order, award or finding appealed against.

28 Catchment manager

(1) For the day to day management and administration of the affairs of a catchment council, there shall be a catchment manager who shall be an employee of the National Water Authority.

(2) In the performance of his functions, a catchment manager shall act on the advice of the catchment council and shall be supervised by the National Water Authority.

(3) A catchment council may delegate to the catchment manager any of its functions imposed upon it in terms of section *twenty-one or twenty-two*.

29 Powers of catchment managers

(1) Subject to this Act, a catchment manager may, if the catchment council is not meeting—

- (a) on an unopposed application or claim—
 - (i) grant permits for the use of water;
 - (ii) extend the duration of a temporary permit or provisional permit;
 - (iii) grant interdicts in respect of matters cognizable by a catchment council;
 - (iv) cancel existing permits;
 - (v) subject to section 11 of the Communal Land Act [*Chapter 20:04*], award servitudes;
 - (vi) grant an application made in terms of section *forty-one, forty-six or fifty-three*;
- and

(b) on an opposed or unopposed application—

- (i) postpone or further postpone the consideration of the matter;
- (ii) cause any investigation which he considers necessary for the determination of the matter to be carried out;
- (iii) authorize the proof of all or any of any facts in a matter by affidavit;
- (iv) on such conditions as to costs or otherwise as he thinks fit, authorize an applicant to withdraw his application:

Provided that a catchment manager may not exercise any of the powers set out in this paragraph on an opposed application unless the applicant has given notice of his application to the person opposing the application;

(c) exercise, *mutatis mutandis*, the powers referred to in paragraphs (f) and (g) of subsection (1) of section *twenty-two*.

(2) Notwithstanding anything in this Act, the parties to a dispute may, if they so wish, state the dispute in writing signed by or on behalf of each party and submit the dispute to the catchment manager for consideration and decision.

(3) Any decision made by a catchment manager on a dispute submitted to him in terms of subsection (2) shall—

- (a) have the same force; and
- (b) be subject to appeal in the same manner;

as if it were a decision of a catchment council.

30 Services by National Water Authority to catchment councils

The National Water Authority shall provide secretarial, administrative, clerical and technical services to catchment councils.

[Section substituted by section 26 of Act 14 of 2002]

31 Inspections

(1) Any member of a catchment council may, for the purpose of—

(a) enforcing this Act in circumstances where there are reasonable grounds for believing that the search or entry is necessary for the prevention, investigation or detection of a criminal offence; or

(b) protecting the rights and freedoms of other persons;

at all reasonable times enter upon any land and, after having informed the person who is for the time being in charge of the land of the purpose of his visit, make such inspection and inquiry as he may consider necessary for the proper enforcement of this Act.

(2) If any person without just cause refuses to permit a member of a catchment council to conduct any inspection or inquiry in terms of subsection (1), or hinders or obstructs a member of a catchment council in the exercise of his powers in terms of subsection (1), he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) In addition to the penalties specified in subsection (2), the refusal, hindering or obstruction of a member of a catchment council in the exercise of his powers in terms of subsection (1) shall afford a ground for refusing the grant of any permit in terms of this Act or the rescinding of any existing permit.

(4) A catchment council may delegate its functions in terms of this section to an officer, the catchment manager or any other employee of the National Water Authority, and subsections (2) and (3) shall apply *mutatis mutandis*.

PART IV

USE OF WATER

32 Use of water for primary purposes

(1) Subject to section *thirty-three* and Part IX, any person may abstract water for primary purposes:

Provided that this subsection shall not be construed as conferring on any person a right, which he would not otherwise possess, to enter or occupy any land for the purpose of abstracting the water.

(2) A person who intends to construct water storage works capable of storing not more than five thousand cubic metres of water on a public stream for the storage of water for primary purposes shall in writing notify the catchment council, every other owner, lessee or occupier of riparian land which is contiguous to the proposed water storage works that—

(a) he intends to construct the proposed water storage works; and

(b) such owner, lessee or occupier may, on payment of an agreed proportion of the cost of construction and maintenance of the proposed water storage works, participate in the benefit of them.

(3) Any dispute concerning—

(a) the quantity of water abstracted, used or stored or the method of abstracting, using or storing water for primary purposes in terms of subsection (1); or

(b) the cost referred to in paragraph (b) of subsection (2) or the proportion of such cost to be paid by the respective owners, lessees or occupiers concerned;

shall be determined by a catchment council.

(4) Notwithstanding this section, no person shall construct in a public stream water storage works capable of storing more than five thousand cubic metres of water for primary purposes except in terms of a permit issued in terms of this Part.

33 Power of catchment council to limit quantity of water abstracted for primary purposes

(1) Notwithstanding anything contained in this Act, a catchment council may, if it thinks it necessary in the public interest to ensure the equitable distribution and use of water, by notice in the *Gazette*—

(a) a limit the quantity of water which may be abstracted for primary purposes by any person or class of persons within any area from any source of water;

(b) specify the maximum number of livestock an individual owner is entitled to water for the primary purposes.

(2) A person who abstracts water for primary purposes in contravention of a limitation imposed in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

34 Application for permit

(1) No person shall abstract water for any purpose other than primary purposes except in terms of a permit.

(2) An application for a permit shall be made in the prescribed form and lodged, subject to subsection (3), with the catchment council for the area concerned.

(3) Any person who requires a permit to use water for mining purposes shall lodge with the mining commissioner of the mining district in which the permit is required an application for the permit.

(4) A mining commissioner with whom an application has been lodged in terms of subsection (4) shall transmit the application, together with a report thereon by a Government mining engineer, to the appropriate catchment council.

(5) On an application lodged in terms of this section, a catchment council may, subject to this Act, grant a permit for the use of water subject to such conditions, including conditions relating to the rate of abstraction of the water, as it may impose, or may refuse such application.

(6) Before granting an application for a permit relating to water which is being beneficially used by another person, a catchment council shall require the applicant to pay to the person beneficially using the water concerned such compensation as may be agreed by the applicant and such person or failing such agreement, as may be fixed by the catchment council.

(7) A catchment council may, if—

(a) compensation is payable to a person deprived wholly or partly of the right to use water for agricultural or institutional purposes; and

(b) it considers that the deprivation will render the piece of land to which the right relates unsuitable for the purpose for which it is being used or is *bona fide* intended to be used immediately prior to the date of the application;

direct the applicant to purchase the piece of land at such price as may be agreed or, failing such agreement, as may be fixed by the catchment council.

(8) Any person who is aggrieved by any decision of a catchment council in terms of this section may appeal to the Administrative Court in terms of Part X.

(9) The Minister may, in respect of ground water, exempt any area from any provisions of this section.

35 Authority to sink boreholes for any purpose or wells for purposes other than primary purposes

(1) The written authority of the catchment council to sink, alter or deepen—

(a) a borehole for any primary purposes shall be obtained;

(b) a borehole or well for any purposes other than primary purposes shall be obtained before making an application for a permit in terms of subsection (1) of section *thirty-four* in respect of ground water.

(2) Within thirty days of the completion of the sinking, altering or deepening of the borehole or well, the owner or occupier of the land on which the borehole or well has been sunk, altered or deepened shall notify the catchment council in the prescribed manner of the fact and furnish the council such particulars as may be prescribed, and, if ground water has been found, the catchment council shall, in the case where an application is made therefor, issue a permit to the owner or occupier in terms of section *thirty-four*.

[Section substituted by section 26 of Act 14 of 2002]

36 Period of validity of permit

(1) Subject to this Act, a permit shall be valid for a period of twenty years or such shorter or longer period as a catchment council, with the approval of the Secretary, may fix.

(2) Subject to section *twenty-three*, on the expiry of the period referred to in subsection (1), a permit may, upon application in the prescribed form, be renewed for such period as the catchment council may fix.

(3) If, for a continuous period of three years, the holder of a permit —

(a) fails to make use of the permit, the catchment council may cancel the permit;

(b) makes partial use of the permit, the catchment council may amend the permit by reducing the quantity of water allocated under the permit.

(4) Any person who is aggrieved by the decision of a catchment council in terms of this section may, within thirty days of the decision, appeal to the Administrative Court in terms of Part X.

37 Permits to pass to new owner

A permit shall, on the transfer of the piece of land to which it relates, pass to the new owner of the piece of land concerned.

38 Permit not transferable except with consent of council

Subject to subsection (1) of section *forty-four*, no person shall cede, sell or otherwise alienate a permit except with the consent of the catchment council concerned, granted after consultation with the Secretary.

39 Minister may direct National Water Authority to apply for permit

(1) Whenever he considers it desirable in the public interest to do so, the Minister may direct the National Water Authority to apply to a catchment council for a permit —

- (a) to conserve or use water for any purpose whatsoever;
- (b) to construct any water works and to supply, on such terms and conditions as may be agreed with the Minister, water from such water works to any person requiring the water; and
- (c) to acquire any water works or a right to the use of water which has been granted to any person by virtue of a permit in terms of this Act or any other enactment, whether or not such right is being beneficially used.

(2) The catchment council may accede to an application in terms of subsection (1) and grant the permit applied for subject to such conditions as it thinks fit to impose or refuse such application.

(3) Subject to subsection (5), the National Water Authority may—

- (a) for the purposes of operating, inspecting or maintaining any water works referred to in subsection (1), enter upon the premises of any person in order to inspect those premises or anything thereon in order to carry out work connected with any property of the National Water Authority;
- (b) take and use gravel, rock, sand, soil, stone, wood and other materials from, or drain, excavate or tunnel, any land.

(4) Subject to subsection (5), the Minister may acquire any land capable of being irrigated from any water works referred to in subsection (1) and such other land as he may consider necessary to ensure sound and economic farming methods to be practised on the land capable of being so irrigated.

(5) Parts III, V and VII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the exercise by the National Water Authority of its powers in terms of this section.

(6) Whenever a catchment council has granted to the National Water Authority in terms of this section the permit to acquire or construct any water works and the National Water Authority has exercised the right granted by the permit, the sole right to allocate water from the water works shall—

- (a) vest in the National Water Authority; and
- (b) not be subject to control by the catchment council.

notwithstanding that such water may be passed down a public stream from the water works to the consumers of the water.

(7) Notwithstanding any agreement to the contrary entered into before the date of commencement of this Act concerning the allocation of any water works acquired or constructed by the former Regional Water Authority in accordance with right granted in terms of any previous enactment, the Minister may, in consultation with the National Water Authority, authorize the reallocation of any such water in terms of this Act and fix a tariff of charges in respect of that water.

(8) The Minister or, with the consent of the Minister, the National Water Authority, may—

- (a) cede to the Agricultural and Rural Development Authority; or
- (b) authorize any person to exercise;

any right granted in terms of this section on such conditions as he may fix.

(9) Where a cession is made in terms of paragraph (a) of subsection (8)—

- (a) the permit issued in terms of subsection (2) shall be binding on the Agricultural and Rural Development Authority, in so far as is applicable; and
- (b) subsection (6) shall apply, *mutatis mutandis* in relation to the right as if the reference to the National Water Authority in that subsection were a reference to the Agricultural and Rural Development Authority.

40 Construction of works necessary for enjoyment of rights to use water

(1) Subject to subsection (2), a person to whom a permit has been granted may abstract from the public stream, borehole or well concerned such quantity of water as he considers necessary for the construction of works required for the enjoyment of the right granted under the permit.

(2) Water shall be abstracted in terms of subsection (1) subject to the rights granted to any other person in terms of this Act or any other enactment.

41 Amendment of permits to abstract, control, divert, store or use water

(1) Subject to subsection (5) of section *fifty*, any person to whom a permit has been granted shall, if he wishes—

- (a) the quantity of water he is authorized to abstract, control, divert, store or use to be amended; or
- (b) the point on the course of the public stream concerned from which water is abstracted, controlled, diverted or used to be amended; or
- (c) to abstract, control, divert or use water at an additional point on the course of the public stream concerned; or
- (d) the conditions on which the right to use water was granted to be amended;

lodge with the catchment council an application in the prescribed form for such amendment.

(2) The catchment council may, on an application lodged in terms of subsection (1), grant the application subject to such conditions as it thinks fit to impose, or refuse the application.

42 Reporting of existing storage works, boreholes and wells

(1) A catchment council may require the owner, lessee or occupier of any land to notify the catchment manager in writing, within such period as may be specified, of such particulars as the catchment manager may specify, in respect of any existing storage works, borehole or well on such land.

(2) Any person who fails or refuses to comply with a requirement in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

43 Records of amount of water abstracted to be maintained

(1) A catchment council may require the holder of a permit issued in terms of this Part—

- (a) to provide and install a meter or other measuring device for measuring and recording the amount of water abstracted; and
- (b) to submit to the catchment council in the prescribed form at such intervals as the catchment council may require, returns indicating the amount of water abstracted.

(2) Any officer or other person authorized by a catchment council may inspect any meter or other measuring device, take readings therefrom and seal such device in order to prevent interference with its working.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

44 Restrictions on cession of right to use water, or sale or use of, water

(1) Subject to subsection (2) of section *thirty-two*, *thirty-nine* and subsections (2) and (3) of section *seventy-nine*, no person other than—

- (a) the Minister shall cede a right to use water to any person; or
- (b) the Minister, the National Water Authority or a local authority or a body corporate established directly by any enactment or by an Order in Council made in pursuance of the Rhodesia and Nyasaland Act, 1963, of the United Kingdom shall sell to any person water for the use of which he holds a permit unless he or it is authorized by the Minister to do so; or
- (c) the holder of a right to use water conferred by subsection (1) of section *thirty-two* or granted in terms of section *thirty-four* shall use water stored by virtue of such right unless authorized to do so by the holder and in terms of a right to the use of water conferred by or granted in terms of this Act.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

45 Change of course of public stream

(1) Whenever a public stream which forms the boundary between two or more pieces of land changes its course the boundaries of such pieces of land shall not thereby be changed.

(2) An owner of land may, after a change of course referred to in subsection (1), apply to the catchment council to fix—

- (a) on the changed course of the public stream concerned a point or points—
 - (i) to which he shall have a right of access; and
 - (ii) at which he may take the water;

and

- (b) the line along which the water of the public stream may be abstracted or diverted.

(3) A catchment council may grant an application made in terms of subsection (2) subject to such conditions as it thinks fit to impose, or refuse the application.

(4) Whenever a riparian owner has been adversely affected by a change of course referred to in subsection (1), he may apply to the catchment council for a permit to construct works necessary to restore the public stream concerned to its former course.

(5) A catchment council may, on an application lodged in terms of subsection (4)—

- (a) if it is satisfied that the applicant has been adversely affected by the change of course concerned and subject to any rights lawfully acquired in respect of the changed course of the public stream concerned, grant the application subject to such conditions, if any, relating to the nature of the works to be constructed and the time within which the construction shall be completed as it thinks fit to impose; or
- (b) refuse the application.

(6) The Minister may, whenever he thinks it necessary in the public interest to do so, apply or authorize any other person in writing to apply to the catchment council for the right -

- (a) to change the course of a public stream; and
- (b) to construct such works or to do such acts in and along the course of a public stream, including the bed and banks thereof, as may be necessary.

(7) A catchment council may grant an application made in terms of subsection (6) subject to such conditions as it thinks fit to impose, or refuse the application.

(8) A catchment council shall, in determining whether or not to grant an application in terms of subsection (5) or (7), take into account the extent to which existing permits may be affected by its decision.

(9) A person to whom a right has been granted in terms of subsection (5) or (7) may—

- (a) exercise all or any of the powers conferred on an officer by subsection (1) of section *nine*; and
- (b) acquire, enter, lease or use any land:

Provided that he shall not enter any premises without the consent of the owner, lessee or occupier thereof; and

- (c) take and use gravel, rock, sand, soil, stone, wood and other materials from, or drain, excavate or tunnel, any land;

to the extent that may be necessary or incidental to the exercise of the right.

(10) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the exercise by a person referred to in subsection (9) of the powers referred to in that subsection.

(11) Whenever the course of a public stream which forms the boundary between two or more pieces of land is changed in terms of a right granted in terms of this section, subsections (1), (2) and (3) shall apply, *mutatis mutandis*.

46 Application for permit to conduct operations in public streams

(1) In this section—

“Mining Affairs Board” has the meaning given by the Mines and Minerals Act [*Chapter 21:05*]

(2) Subject to subsection (5) and to subsections (4) to (11) of section *forty-five*, a person who wishes to conduct operations which will interfere with—

- (a) the banks, bed or course of a public stream; or
 - (b) any marshes, springs, swamps or vleis forming the source, or found along the course, of a public stream;
- shall apply to the catchment council for a permit to conduct such operations.

(3) A catchment council may grant an application in terms of subsection (2) subject to such conditions as it thinks fit to impose, or refuse the application.

(4) A catchment council shall, in determining whether or not to grant an application in terms of subsection (3), take into account the extent to which existing rights may be affected by its decision.

(5) This section shall not apply to—

- (a) the construction of water works in terms of a right conferred by or granted in terms of this Act; or
- (b) the construction, maintenance or repair of an aqueduct, bridge, culvert, road, crossing or hydrological station or ancillary works; or
- (c) any mining or prospecting operations carried on in terms of the Mines and Minerals Act [*Chapter 21:05*] if the Mining Affairs Board certifies to the catchment council that the operations will be carried on in such manner that there will be no interference with the quality or quantity of water; or
- (d) the cultivation or use of wet land as defined in the Natural Resources Act [*Chapter 20:13*] or the banks of a public stream if the cultivation or use has been authorized in terms of any regulations made in terms of section 65 of that Act; or
- (e) the abstraction of sand by a riparian owner from any portion of the bed of the public stream concerned lying within the boundaries of the riparian land of the riparian owner for the purpose of building operations within such boundaries; or
- (f) any activities carried on by or on behalf of the State for the National Railways of Zimbabwe or a road authority as defined in the Roads Act [*Chapter 13:12*]; or
- (g) a person extracting, with the permission of the appropriate rural district council, sand within Communal Land for the purpose of building operations therein.

(6) A person aggrieved by a decision of the Mining Affairs Board in terms of paragraph (c) of subsection (5) may appeal to the Administrative Court in terms of Part X against the decision.

47 Consent of Minister to be obtained for water storage works of certain size

(1) Subject to Part IX, no person shall apply for a permit to construct in a public stream water works capable of storing in excess of five million cubic metres of water or abstracting more than one hundred litres of water per second without first obtaining the consent in writing of the Minister.

(2) On an application for the consent referred to in subsection (1), the Minister may, if he thinks it desirable in the public interest to do so, grant his consent subject to such conditions as he thinks fit to impose, or refuse the application.

(3) If the Minister has imposed conditions in granting the consent referred to in subsection (1), the catchment council shall, in granting the permit to construct water storage works referred to in that subsection, make the conditions binding on the person to whom the permit is granted.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

48 Safeguarding interests of occupants of Communal Land

(1) The Minister shall, in exercising the powers conferred on him by this Act, have due regard to the interests of occupants of Communal Land.

(2) The Minister responsible for the administration of the Communal land Act [*Chapter 20:04*] may nominate any fit person to represent the interests of the occupants of any Communal land before the catchment council on the hearing of—

- (a) any matter affecting the water supply of the Communal Land; or
- (b) any claim for the grant of a servitude in terms of Part VIII over any portion of Communal Land.

49 Decisions of catchment council affecting water supply for primary purposes in Communal land

Whenever an order or other decision of a catchment council in respect of an application for a permit to use water for an irrigation scheme or any other matter is likely, in the opinion of the catchment council, substantially to affect the supply of water for primary purposes of the occupants of any Communal Land, the order or other decision shall not take effect unless the approval of the Minister responsible for the administration of the Communal Land Act [*Chapter 20:04*], has first been obtained.

50 Grant of final, provisional or temporary permits

(1) A catchment council may grant a provisional permit or a temporary permit to use water for such period and subject to such conditions as may be specified in the provisional permit or temporary permit.

(2) A person who wishes the period for which a provisional permit or temporary permit was granted to him to be extended may lodge with the catchment council an application for such an extension.

(3) On an application in terms of subsection (2), a catchment council may extend the period for which the provisional permit or temporary permit concerned was granted for such further period or periods as it thinks fit, or refuse to make such an extension.

(4) On the expiry of the period for which a provisional permit was granted, the holder of the provisional permit shall, if he has not already done so, forthwith submit to the catchment council a report issued by the catchment manager certifying whether or not the conditions imposed on the grant of the provisional permit have been fulfilled.

(5) If the catchment manager certifies that the conditions of the provisional permit have—

- (a) been fulfilled, the catchment council shall issue a final permit on such conditions as it may fix; or
- (b) been partially fulfilled so as to permit partial use of the provisional permit concerned, the catchment council shall notify the holder of the provisional permit that he may lodge an application in terms of subsection (6), and of the consequences of his failure to do so; or
- (c) not been fulfilled or partially fulfilled, the catchment council may record the provisional permit as having lapsed.

(6) If the holder of a provisional permit referred to in paragraph (b) of subsection (5)—

- (a) within a period of ninety days of being notified by the catchment council in terms of that paragraph or such longer period as it may authorize, lodges with the catchment council an application for the extension of the period of his provisional permit or for a final permit to the extent of the partial use so certified, the catchment council may—
 - (i) extend the period of the provisional permit on such conditions as it thinks fit; or
 - (ii) issue a final permit to the extent of the partial use certified in terms of subsection (4); or
 - (iii) refuse to extend the period of the provisional permit or to issue a final permit and record the provisional permit as having lapsed.

(7) If the holder of a provisional permit does not, within a period of ninety days of the expiry of the period fixed for the fulfilment of the conditions imposed on the grant of a provisional permit or such longer period as the catchment council may authorize in terms of subsection (3), submit to the catchment council the report referred to in subsection (4), the catchment council may record the provisional permit as having lapsed.

(8) Notwithstanding anything contained in this section, the catchment council may—

- (a) on the application of the holder of a provisional permit, record the provisional permit as having lapsed;

- (b) extend the period for which—
 - (i) a provisional permit which has been recorded in terms of this section as having lapsed; or
 - (ii) a temporary permit which has expired;was granted as if such provisional right or temporary right had not been so recorded or had not expired, as the case may be.

51 Certain permits to enjoy preference over other rights to use water

(1) No permits granted by a catchment council, other than permits for the use of water granted to a local authority for primary purposes, shall have the effect of depriving—

- (a) persons of the use of water for primary purposes; or
- (b) an owner of land on which there is a permanent pool of the use for primary purposes of water in the permanent pool.

(2) For the purposes of paragraph (b) of subsection (1)—

“permanent pool” means a pool—

- (a) in which water is normally present; and
- (b) which is in a portion of a public stream which does not form a boundary between two or more pieces of land;

but does not include a pool from which water flows visibly on to, or into which water flows visibly from, some other piece of land otherwise than as a direct result of rainfall.

52 Disposal of water after use

(1) Subject to the conditions imposed on the grant of a permit for the use of the water concerned and to subsection (2), water which has been used for electrical purposes, mining purposes or miscellaneous purposes shall be allowed to return to the bed of the public stream from which it was abstracted at the nearest convenient point.

(2) A person who has abstracted water for any of the purposes referred to in subsection (1) over a watershed or from a borehole or well shall return any water which he has used or which is surplus to his requirements in terms of a right conferred by or granted in terms of this Act -

- (a) to the public stream from which it was abstracted; or
- (b) to a public stream, specified by the catchment council at a point fixed by the catchment council.

(3) Part VI shall apply to water returned to a public stream in terms of this section.

(4) A person who wishes to use any water during the course of its return to a public stream in terms of this section may lodge with the catchment council an application for a permit so to use the water.

(5) On an application in terms of subsection (4), the catchment council may grant the application subject to such conditions as it may impose, or refuse the application.

53 Allocation or apportionment of rights to use water on consolidation or subdivision of land

(1) Whenever a piece of land in respect of which a permit has been granted is to be consolidated with another piece of land or subdivided, the owner of the first-mentioned piece of land shall, prior to the consolidation, lodge with the catchment council an application for the allocation, apportionment or revision of the permit.

(2) On an application in terms of subsection (1), the catchment council may grant the application and make an allocation, apportionment or revision subject to such conditions as it may impose, or refuse the application.

(3) The catchment council may, whenever—

- (a) there is a consolidation or subdivision of land to which, prior to the consolidation or subdivision, a permit existed; and
- (b) no application is lodged in terms of subsection (1) for the allocation or apportionment of the right referred to in paragraph (a);

of its own motion or on the application of an interested party allocate or apportion the right referred to in paragraph (a).

(4) In considering an application lodged in terms of subsection (1) or an allocation or apportionment in terms of subsection (3), the catchment council shall have due regard to—

- (a) the economic aspects of the application and the soil conditions of the land concerned; and
- (b) the need to achieve, as far as possible, an equitable distribution of the available water resources; and
- (c) any other matter which appears to the catchment council to be relevant;

and may revise any permit for the use of the water concerned.

54 Rights to use water when volume thereof insufficient to satisfy demand

Whenever the volume of water in any river system or part thereof for the use of which permits have been granted proves insufficient to satisfy all the permits, the catchment council shall, subject to section *forty-one*, revise, reallocate or reapportion the permits upon such conditions and in such manner as will ensure the equitable distribution and use of the available water.

55 Responsibility for maintenance of water works

- (1) The holder of any permit shall maintain in efficient repair all water works connected with the permit.
- (2) If a permit—
 - (a) is relinquished by the holder thereof; or
 - (b) is cancelled by the catchment council; or
 - (c) lapses;

the owner of the land on which any water works connected with the permit exist shall maintain such water works in efficient repair, unless authorized in writing by the catchment council to breach or demolish them.

- (3) Any person who—
 - (a) contravenes subsection (1); or
 - (b) breaches or demolishes any water works connected with a permit to use water without the authority referred to in subsection (2);

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(4) Nothing in this section shall be construed as prohibiting the breaching or demolishing of any water works in pursuance of an order or variation thereof—

- (a) which is referred to in paragraph (c) of subsection (6) of section 28 of the Natural Resources Act [Chapter 20:13]; and
- (b) to which the Secretary has consented.

56 Reservation of areas likely to be required for dam basins or dam sites

(1) Subject to subsection (3) of section *eighteen*, the Minister may, in consultation with the catchment council concerned, whenever he considers it necessary in the public interest to do so, by notice in the *Gazette* and in a newspaper circulating in the area concerned, reserve any area comprising a potential dam basin or a potential dam site or both against any one or more of the following—

- (a) subdivision in terms of the Regional, Town and Country Planning Act [Chapter 29:12];
- (b) the construction of permanent improvements therein or thereon;
- (c) the carrying on of any activity which may have the effect of—
 - (i) enhancing the value of any land in such area; or
 - (ii) interfering with—

A. such dam basin or dam site of both;

B. any water works that may be constructed in the future; in such area:

Provided that the Minister shall not reserve any area against the carrying on of any prospecting or mining activity except with the consent of the Minister responsible for the administration of the Mines and Minerals Act [Chapter 21:05].

(2) A notice referred to in subsection (1) shall specify—

- (a) the area reserved in terms of that subsection; and
- (b) the acts against the doing of which the area referred to in paragraph (a) is reserved.

(3) The Minister shall by registered letter give notice of a reservation in terms of subsection (1) to every owner, lessee or occupier of land in the area in respect of which the reservation is made.

(4) Publication in the *Gazette* of a notice referred to in subsection (1) shall have the effect of prohibiting the doing of the acts specified in such notice on the land in the area reserved in terms of that subsection:

Provided that the Minister may, on such conditions as he may impose, permit such use of the land as he sees fit.

(5) The Minister shall, subject to subsection (6), pay compensation to any person who is injuriously affected by a reservation made in terms of subsection (1).

(6) Any person who wishes to claim compensation payable in terms of subsection (5) shall, within sixty days from the date of publication of the notice referred to in subsection (1) or such longer period as the Minister may, on good cause shown allow, submit a claim in writing to the Minister specifying in detail the nature of the loss or damage caused to him by the reservation concerned.

(7) If the claimant for compensation and the Minister cannot agree on the right to compensation or the amount of compensation payable in terms of subsection (5), either of them may refer the matter to the Administrative Court and Parts V and VIII of the Land Acquisition Act [Chapter 20:10] shall apply, *mutatis mutandis*, in respect of such matter.

(8) The Minister may permit such use of the land in the area reserved in terms of subsection (1) as he considers appropriate.

(9) The Minister shall cause—

- (a) the area reserved in terms of subsection (1) to be surveyed and beaconed by a land surveyor as defined in the Land Survey Act [Chapter 20:12]; and

(b) survey diagrams of the area referred to in paragraph (a) to be prepared.

(10) As soon as possible after survey diagrams have been prepared in terms of subsection (9), the Minister shall lodge—

(a) two copies thereof with the Registrar of Deeds; and

(b) one copy thereof with the Director of Physical Planning.

(11) Subject to subsection (14), the Registrar of Deeds shall, on the lodging with him of survey diagrams in terms of subsection (10), note the reservation concerned on the title deeds of the pieces of land affected thereby and in the appropriate registers.

(12) A note made in terms of subsection (11) shall not prevent the transfer of the land concerned.

(13) The Minister, in consultation with the catchment council concerned may, at any time, by notice in the *Gazette*—

(a) modify a reservation made in terms of subsection (1) and this section shall apply, *mutatis mutandis*, to such modification; or

(b) withdraw a reservation made in terms of subsection (1) and cause the Registrar of Deeds and the Director of Physical Planning to be informed of the withdrawal.

(14) The Registrar of Deeds shall, on the lodging with him of survey diagrams in terms of subsection (10) relating to a modified reservation or on being informed in terms of subsection (13) of the withdrawal of a reservation made in terms of subsection (1), cause the note made in terms of subsection (11) to be altered or cancelled accordingly.

(15) If in terms of subsection (13) the Minister modifies or withdraws a reservation made in terms of subsection (1), the Minister shall reassess any compensation payable to any person in terms of subsection (5) or (8) and subsections (5) to (8) shall apply, *mutatis mutandis*, to such reassessment.

(16) If a person does on any land in an area reserved in terms of subsection (1) any act the doing of which is prohibited in terms of subsection (4), the Minister may by notice in writing, direct the person to restore the land, at his own expense within such period as is specified in the notice, to the condition in which it was immediately before the doing of the act.

(17) If a person against whom a direction has been made in terms of subsection (16) fails to comply with the direction within the period specified in the notice concerned, the Minister may cause to be carried out such work as may be necessary to restore the land concerned to the condition in which it was immediately before the doing of the act concerned and recover from the person by action in a court of competent jurisdiction the cost of the work.

(18) Section *thirty-nine* shall apply to any land which is acquired for the construction of any water works while the area within which the land is situated is reserved in terms of subsection (1).

(19) If the powers conferred by this section are exercised at the request of the National Water Authority or the Agricultural and Rural Development Authority, any compensation payable in terms of or costs incurred in complying with this section shall, subject to any right of recovery in terms of subsection (17), be paid from the funds of the National Water Authority or the Agricultural and Rural Development Authority, as the case may be.

(20) Any person who—

(a) on any land in an area reserved in terms of subsection (1), does anything which is prohibited in terms of subsection (4); or

(b) fails to comply with a direction in terms of subsection (16);

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

57 Reservation of water

(1) Subject to subsection (4) of section *eighteen* and to this section, the Minister may, by notice in the *Gazette* and in a newspaper circulating in the area concerned—

(a) reserve for an indefinite period for future use any specified quantity of water from, or a portion of, the potential yield or total annual runoff of any catchment area; or

(b) amend the quantity or portion reserved for future use in terms of paragraph (a) or withdraw the reservation subject to such conditions as the Minister may specify in such notice:

Provided that such reservation or amendment shall take into account any existing outline plans or permits.

(2) A permit which would have the effect of reducing the specified quantity of water from, or portion of, the potential yield or total annual runoff reserved for future use in terms of subsection (1) shall not be granted by a catchment council to any person other than the Minister:

Provided that the Minister may authorize the catchment council to grant temporary permits for the use of the water so reserved on such conditions as he may specify.

(3) The Minister shall publish a notice in the *Gazette* and in a newspaper circulating in the area concerned stating his intention to make a reservation or amendment in terms of subsection (1) and the purpose for which the reservation or amendment is intended to be made.

(4) Any interested person may, within a period of thirty days from the date of publication of a notice in terms of subsection (3), lodge with the Secretary objections or representations in writing, together with a full statement of the grounds for, and technical data and evidence supporting, the objections or representations.

(5) If no objections or representations referred to in subsection (4) have been lodged within the period referred to in that subsection, the Minister may act in terms of subsection (1).

(6) If objections or representations referred to in subsection (4) have been lodged within the period referred to in that subsection, the Minister shall, after considering the objections or representations —

(a) act or decline to act, as the case may be, in terms of subsection (1); or

(b) refer the objections or representations to the catchment council or a person appointed in writing by the Minister for investigation and recommendation.

(7) The catchment council or a person appointed in terms of paragraph (b) of subsection (6) shall, on receipt of the objections or representations concerned, investigate them and make a recommendation to the Minister.

(8) The Minister shall pay due regard to any recommendation made in terms of subsection (7) before acting in terms of subsection (1).

(9) If the Minister has published a notice in terms of subsection (3), no application for a right to use water lodged with the catchment council concerned after the date of such publication, which application would, if it were granted, have the effect of reducing the quantity or portion of water intended to be reserved, shall be considered by the catchment council until the Minister has acted or declined to act in terms of subsection (1).

58 Water development restriction areas

(1) Subject to this section, if the Minister, on the recommendation of the National Water Authority and in consultation with the catchment council concerned, is of the opinion that the use of water in any catchment area is approaching the limit of the potential of the catchment area and that it is necessary or desirable in the public interest to make a declaration in terms of this section, he may, by notice in the *Gazette* and in a newspaper circulating in the area concerned declare the area to be a water development restriction area.

(2) The Minister may at any time, by notice in the *Gazette* and in a newspaper circulating in the area concerned, amend the boundaries of a water development restriction area, and this section shall apply, *mutatis mutandis*, to any such amendment.

(3) No permit shall be granted by a catchment council in a water development restriction area:

Provided that—

(i) the Minister may authorize a catchment council to grant such permits to develop water resources in a water development restriction area as he may specify;

(ii) this subsection shall not apply to application referred to in subsection (1) of section *thirty-nine*.

(4) The Minister shall publish a notice in the *Gazette* and in a newspaper circulating in the area concerned stating his intention to declare or to amend the boundaries of the water development restriction area and the purpose for which such declaration or amendment is intended to be made.

(5) Any interested person may, within a period of thirty days from the date of publication of a notice in terms of subsection (4), lodge with the Secretary objections or representations, together with a full statement of the grounds for, and technical data and evidence supporting, the objections or representations.

(6) If no objections or representations referred to in subsection (5) have been lodged within the period referred to in that subsection, the Minister may act in terms of subsection (1).

(7) If objections or representations referred to in subsection (5) have been lodged within the period referred to in that subsection, the Minister shall, after considering the objections or representations -

(a) act or decline to act, as the case may be, in terms of subsection (1); or

(b) refer the objections or representations to the catchment council, authority or person appointed in writing by the Minister for investigation and recommendation.

(8) A catchment council or the authority or person in terms of paragraph (b) of subsection (6) shall, on receipt of the objections or representations concerned, investigate them and make recommendations to the Minister.

(9) The Minister shall pay due regard to any recommendation made in terms of subsection (8) before acting in terms of subsection (1).

(10) If the Minister has published a notice in terms of subsection (4), no application for a permit in the intended water development restriction area lodged with the catchment council after the date of the notice shall be considered by the catchment council concerned until the Minister has acted or decided not to act in terms of subsection (1).

59 Investigation of use of water by National Water Authority

The National Water Authority—

- (a) shall, when required to do so by the Minister, investigate and report to him on the abstraction, appropriation, control, diversion or use of water in any catchment area;
- (b) may, at its own instance, investigate the abstraction, appropriation, control, diversion or use of water in any area and thereafter direct the catchment council to issue, cancel or revise any permit issued in terms of this Part in the area concerned.

60 Conferring of powers of catchment councils on urban councils

The Minister may, after consultation with the Minister responsible for local government and the urban council concerned, and after considering the financial resources available to that council—

- (a) subject to such conditions as he thinks fit to impose, confer on the urban council any of the powers of a catchment council in terms of this Part; and
- (b) amend or withdraw the powers conferred in terms of paragraph (a).

PART V

WATER SHORTAGE AREAS

61 Declaration of water shortage areas

(1) If the Minister, acting on the recommendation of the National Water Authority and in consultation with the catchment council concerned, is of the opinion that—

- (a) the flow of water in any public stream has at any time ceased or if the flow of water or the level of water in the storage works has fallen or is likely to fall below the level of the usual flow or acceptable level of storage works in the public stream; or
- (b) it appears that the abstraction of water from boreholes and wells in any area is likely to diminish unduly the ground water resources in the area or affect adversely the flow of any surface water in any public stream;

he may, by notice in the *Gazette*, declare any area specified in the notice to be a water shortage area for such period, not exceeding twelve months, as may be specified in the notice.

(2) The Minister may, in consultation with the catchment council concerned, by notice in the *Gazette*, cancel a declaration made in terms of subsection (1).

62 Powers of catchment council in respect of water shortage areas

(1) Notwithstanding anything contained in this Act, a catchment council may, in respect of a water shortage area within its area—

- (a) suspend or amend any permits; or
- (b) make orders in relation to the abstraction, appropriation, control, diversion or use of any water; or
- (c) upon an order of the Administrative Court on application by a catchment council, authorize the Minister or any other person to enter on any land for the purpose of—
 - (i) abstracting water from any storage works, borehole, well or mine on the land;
 - (ii) sinking boreholes and wells on the land and abstracting water therefrom and conserving, diverting or using such water;

for such purposes and in such quantities as the catchment council may authorize, and may make all such other orders as may be necessary in relation to subparagraph (i) and (ii); or

- (d) determine the priority in the use of water in the water shortage area.

(2) Any action taken or order made in terms of subsection (1) shall lapse—

- (a) after such period as the catchment council may determine; or
- (b) after the expiry of the period for which the area was declared a water shortage area; or
- (c) on the cancellation of the declaration of the water shortage area concerned;

whichever is the earliest.

(3) Any person who is aggrieved by any decision of a catchment council in terms of this section may appeal to the Administrative Court in terms of Part X.

63 Sinking, deepening or altering of boreholes and wells in water shortage areas restricted

(1) No person shall, in a water shortage area, commence to sink, deepen or alter a borehole or well for any purpose otherwise than in accordance with a permit issued by the catchment council, and the provisions of Part IV relating to boreholes and wells shall apply, *mutatis mutandis*.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

64 Maximum volume and rate of abstraction of water in water shortage areas

(1) Subject to section *sixty-three* and on the recommendation of the National Water Authority, a catchment council may, by notice in the *Gazette* and in a newspaper circulating in the area concerned, fix a maximum volume of water which may be abstracted from any public stream or storage works and the maximum rate per month at which water may be abstracted from any borehole or well in a water shortage area.

(2) The rate or volume referred to in subsection (1) may be fixed in relation to the area of land owned by any person in the water shortage area concerned or to any other circumstance which the catchment council considers relevant to the fixing of such rate or volume.

(3) Subject to subsection (11), no person shall, after the publication of a notice referred to in subsection (1), in any month abstract water from any public stream, storage works, borehole or well in the water shortage area concerned at a rate exceeding the maximum rate fixed in terms of subsection (1).

(4) A catchment council may cause to be investigated the use being made of water in a water shortage area, and may, after having given the owner or occupier of land on which the public stream, water works, borehole or well is located not less than fourteen days' notice of its intention to do so, amend the conditions of, or suspend, any permit relating to any such water.

(5) Any person who—

- (a) abstracts or desires to abstract water within a water shortage area for the purpose of his occupation or trade; or
- (b) has carried out water conservation measures or works, the nature and extent of which are approved by the catchment council and which are likely to result in an improvement in the water resources in a water shortage area;

may apply to the catchment council for a permit to abstract water within the water shortage area at a rate higher than the maximum rate fixed in terms of subsection (1).

(6) A local authority may, whether the area under the jurisdiction of the local authority is within or outside a water shortage area, apply to the catchment council concerned for a permit to abstract water within a water shortage area at a rate higher than the maximum rate fixed in terms of subsection (1).

(7) The catchment council may, on an application in terms of subsection (5) or (6)—

- (a) issue a permit authorizing the abstraction of water at a rate higher than the maximum rate fixed in terms of subsection (1), subject to such conditions as it thinks fit to impose; or
- (b) refuse the application.

(8) Any person to whom a permit has been issued to sink, deepen or alter a borehole or well in a water shortage area may, in the course of sinking, deepening or altering, abstract ground water at a rate higher than the maximum rate fixed in terms of subsection (1).

(9) Any person who is aggrieved by—

- (a) the maximum rate of abstraction of water fixed in terms of subsection (1) may, within a period of thirty days from the date of publication of the notice referred to in that subsection; or
- (b) any decision of a catchment council in terms of subsection (7) may, within a period of thirty days from the date of such decision;

appeal to the Administrative Court in terms of Part X.

(10) On an appeal in terms of subsection (9) —

- (a) relating to the maximum rate of abstraction of water fixed in terms of subsection (1), the Administrative Court may direct the catchment council to amend the rate or may confirm it; or
- (b) relating to any decision of the catchment council in terms of subsection (7), the Administrative Court may direct the catchment council—
 - (i) to issue or reissue the permit applied for, subject to such conditions as the Administrative Court may specify in such direction; or
 - (ii) to refuse the application concerned.

(11) Any person who contravenes subsection (3) shall be guilty of an offence and liable a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

65 Measuring and recording of water abstracted in water shortage areas

(1) A catchment council may, by notice in writing served on the person concerned, require any person who is abstracting water in a water shortage area for any purpose—

- (a) to provide and install a meter or other measuring device for measuring and recording the amount of water abstracted; and
- (b) to submit at such intervals as may be specified in the notice and in the prescribed manner, returns of the water so abstracted.

(2) An officer or any person authorized by the catchment council may read and inspect any meter or other measuring device installed in terms of subsection (1) and seal such device in order to prevent interference with its working.

(3) Any person who fails to comply with a requirement in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

66 Minister may authorize delegation of powers under this Part to local authorities

The Minister may, after consultation with the local authority concerned and the Minister responsible for local government and after considering the financial resources available to such local authority, by notice in the *Gazette*—

- (a) authorize the delegation of any of the powers conferred on a catchment council by this Part to a local authority subject to such conditions as he thinks fit to impose; and
- (b) amend or withdraw the powers delegated to a local authority in terms of paragraph (a).

PART VI

WATER QUALITY CONTROL AND ENVIRONMENTAL PROTECTION

67 Water resource management to be consistent with environmental approaches

Without in any way limiting the generality paragraph (b) of subsection (2) of section *six*, in considering, formulating and implementing any proposal for the use, management or exploitation of water resources, due consideration shall be given to—

- (a) the protection, conservation and sustenance of the environment; and
- (b) the right of access by members of the public to places of leisure or natural beauty related to water or water bodies.

68 - 71

[Sections 68 – 71 repealed by section 142 of Act 13 of 2002]

PART VII

SERVITUDES IN RESPECT OF WATER

72 Interpretation in Part VII

In this Part—

“interested party” means every owner of, and every holder of a real right in or lease of, land within the area on or over which a servitude is claimed in terms of section *seventy-four*;

“permanent servitude” means a servitude other than a temporary servitude;

“real right” means a real right registered in terms of the Deeds Registries Act [*Chapter 20:15*] or the Mines and Minerals Act [*Chapter 21:05*];

“servitude” means a servitude of abutment, a servitude of passage, a servitude of purification or a servitude of storage;

“servitude of abutment” means the right to occupy and use by means of water works, and the necessary appurtenances and structures, the banks or bed of a public stream or land adjacent thereto or any other land belonging to another and includes the right of access to and over the area subject to such right of occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of constructing, inspecting, maintaining and operating the water works and the necessary appurtenances and structures concerned or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“servitude of passage” means the right to occupy and use so much land belonging to another as may be necessary for or incidental to the passage of water and includes the right—

- (a) to construct such water works as may be necessary for such passage on such land and over, under or alongside other water works or to enlarge and extend existing water works; and
- (b) of access to and over the area subject to such right of occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of constructing, inspecting, maintaining and operating water works referred to in paragraph (a) or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“servitude of purification” means the right to occupy and use so much land belonging to another as may be necessary for or incidental to the filtration and purification of water and processes incidental thereto and includes the right—

- (a) to construct such water works as may be necessary for such filtration and purification; and

- (b) of access to and over the area subject to such right or occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof for the purpose of constructing, inspecting, maintaining and operating water works referred to in paragraph (a) or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“servitude of storage” means the right to occupy and use land belonging to another by inundating it with water by means of water storage works, together with such land—

- (a) contiguous to the land so inundated as may be required to be occupied and used by the holder of the servitude of storage for the purpose of preventing the pollution of the water stored by or in the water storage works; and
- (b) adjacent to or near the land so inundated as may be required to be occupied and used for the purpose of passage, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of cleansing and maintaining the water storage works or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

“temporary servitude” means a servitude with a duration of—

- (a) a fixed number of years; or
- (b) the period for which it is used for the purpose for which it is granted, with or without further specification of such duration.

73 Acquisition of servitudes otherwise than in terms of Part VIII

Nothing in this Part shall be construed as preventing any person from acquiring in accordance with any other law a servitude required in connection with any water works.

74 Certain persons may claim servitudes and enter on land

(1) Subject to this Part, any person—

- (a) who holds a permit; or
- (b) who is entitled to control or supervise the use of any water; or
- (c) to whom the Minister, the National Water Authority or the Agricultural and Rural Development Authority has agreed to supply water from any water works acquired or constructed or to be acquired and constructed by the Minister, the National Water Authority or the Agricultural and Rural Development Authority;

may, in terms of section *seventy-five*, claim a permanent or temporary servitude.

(2) Any person who wishes to claim a permanent or temporary servitude in terms section *seventy-five* may, after giving such notice as is reasonable in the circumstances to the occupier of the land concerned, enter upon the premises, other than a dwelling-house thereon, for the purpose of obtaining the information required for compliance with that section.

75 Method of claiming servitudes

(1) Subject to this Part, a servitude shall be claimed by serving on every interested party notice in writing—

- (a) requesting the servitude, which request shall specify—
 - (i) the locality and nature of any water works which it is proposed to construct; or
 - (ii) the line of passage along which water is to be conducted or the locality in which water is to be stored or both such line and such locality; and
 - (iii) the duration of the proposed servitude; and
 - (iv) the quantity of gravel, rock, sand, soil, stone or wood, if any, required from the land concerned for the purpose of constructing water works or works incidental thereto; and
 - (v) that it is intended to register the proposed servitude against the title deeds of the land concerned; and
 - (vi) that any agreement to such claim is required to be in writing;
- (b) inviting him, if he wishes to seek compensation in respect of any loss or deprivation of rights likely to result from the grant of the proposed servitude, to submit to the claimant, within a period of sixty days from the date of service of the notice or such longer period as a president of the Administrative Court may for good and sufficient reason allow, a statement in writing specifying in detail the nature of the loss or deprivation of rights likely to be caused to the interested party as a result of the grant.

(2) If an interested party referred to in subsection (1)—

- (a) does not, within a period of sixty days from the date of service of the notice referred to in that subsection or such longer period as a president of the Administrative Court may for good and sufficient reason have allowed—
 - (i) agree in writing to the request referred to in paragraph (a) of that subsection for the registration of the proposed servitude against the title deeds of the land concerned; or
 - (ii) agree in writing with the claimant on the right to compensation, if any, or the amount of compensation payable by the claimant or both, as the case may be;

or

(b) lacks full legal capacity to agree to the request referred to in paragraph (a) of that subsection; the claimant shall lodge with the Registrar his claim or the issue of compensation or both his claim and the issue of compensation.

76 Rights, privileges and obligations of interested parties at hearings of claims or issues of compensation

An interested party shall—

- (a) have the right to appear as a party before the Administrative Court on the hearing of a claim or an issue of compensation or both; and
- (b) if he appears in terms of paragraph (a)—
 - (i) have all the privileges belonging to; and
 - (ii) be subject to all the obligations which are or may be imposed on a party to proceedings before the Administrative Court.

77 Powers of Administrative Court in regard to claims or issues of compensation

(1) Subject to this section, the Administrative Court may, on a claim lodged in terms of subsection (2) of section *seventy-five*—

- (a) grant the servitude claimed, with or without modifications and subject to such conditions as it thinks fit; or
 - (b) dismiss the claim on the ground that—
 - (i) the servitude claimed does not fall within this Part; or
 - (ii) the object for which the servitude is claimed—
 - A. could better be attained by other means; or
 - B. is not of sufficient agricultural or other utility to justify the acquisition of the proposed servitude;
- or
- (iii) the claim is not made in good faith; or
 - (iv) the water works concerned are likely to cause more loss or damage or interference with development in the area concerned than would be justified by the benefits that would be derived therefrom;

and shall dismiss the claim if, in the case of a servitude referred to in section 11 of the Communal Land Act [*Chapter 20:04*], the Minister responsible for the administration of that Act has not consented to the granting of the servitude claimed or a condition fixed by that Minister in giving his consent cannot be made binding on the claimant.

(2) Subject to this section, the Administrative Court may, on an issue of compensation lodged in terms of subsection (2) of section *seventy-five*, award or refuse to award compensation to the interested party concerned in respect of any loss or deprivation of rights likely to result from the grant of the proposed servitude.

(3) Whenever any diagram showing the land affected by, and the situation thereon of, the servitude claimed is sought to be adduced or received in evidence at the hearing of a claim or issue of compensation lodged in terms of subsection (2) of section *seventy-five* or of both the claim and the issue, the diagram shall not be admissible in evidence before the Administrative Court unless it has been prepared in accordance with the Land Survey Act [*Chapter 20:12*].

(4) Compensation awarded by the Administrative Court in terms of subsection (2) in respect of a proposed—

- (a) temporary servitude shall not exceed an annual sum equal to the amount by which the rental value of the land affected by the temporary servitude is diminished; or
- (b) permanent servitude shall not exceed a sum equal to the amount by which the market value of the land affected by the servitude is diminished;

together with an amount representing compensation for any expense or loss which may reasonably be incurred or suffered directly as a result of the grant of the temporary servitude or permanent servitude, as the case may be.

(5) In paragraph (b) of subsection (4)—

“market-value” means the market value of the land affected by the proposed servitude immediately prior to the service of the appropriate notice referred to in subsection (1) of section *seventy-five*, which value shall be taken to be the amount which the land would have realized if sold on the open market by a willing seller to a willing buyer, regard being had, when appropriate, to the nature of the land, its location and quality and any other fact which may, in the circumstances, be relevant.

78 Rights of owners of land subject to servitudes of passage

(1) The owner of land subject to a servitude of passage may pass along the water works concerned any water to which he is entitled on—

- (a) payment of such proportion of the cost of constructing, enlarging, maintaining or repairing the water works; and

(b) such other conditions;
as may be agreed or, failing agreement, as may be fixed by the Administrative Court:

Provided that, if the servitude of passage has been acquired by—

- (a) the State or a local authority; or
- (b) any statutory body—
 - (i) established or re-established directly by or under any enactment; and
 - (ii) empowered or required by the enactment referred to in subparagraph (i) to acquire the servitude of passage;

the owner shall not be entitled so to participate in the benefit of the water works.

(2) A person who in terms of this Part constructs water works for the passage of water, which water works—

- (a) prevent any owner of land from passing freely over or on to his land; or
- (b) obstruct the free circulation of water in the drainage or irrigation of any land or interfere with any mining operations thereon;

shall construct, maintain and repair—

- (i) such bridges and other works as will make it convenient and safe to pass over or on to the land referred to in paragraph (a); or
- (ii) such aqueducts, culverts and other works as are necessary to secure the free circulation of water referred to in paragraph (b) or prevent interference with the mining referred to in that paragraph;

unless he is exempted from the duty to do so by agreement or otherwise.

(3) In exercising a servitude of passage across a road, the holder of the servitude of passage shall, after having obtained the consent of the road authority concerned, construct, maintain and repair such works as will prevent inconvenience or danger to members of the public using the road in accordance with the instructions of the Secretary.

(4) In subsection (3)—

“road” and “road authority” have the respective meanings given by section 3 of the Roads Act [*Chapter 13:12*].

79 Rights of owners of land subject to servitudes of storage

(1) Subject to any agreement or award by which the servitude concerned was acquired, a servitude of storage shall not deprive the owner, lessee or occupier of the land subject to the servitude of the use of any part of the land, whether submerged or unsubmerged:

Provided that such use is not detrimental to the enjoyment of the servitude of storage

(2) The holder of a servitude of storage shall, before commencing the construction of the water storage works concerned, notify the owner of the land subject to the servitude of storage in writing of—

- (a) his intention to construct the water storage works; and
- (b) the provisions of subsection (3).

(3) The owner of land subject to a servitude of storage may, before the construction of the water storage works concerned is commenced and on—

- (a) payment to the holder of the servitude of storage of such share of the costs of constructing, enlarging, maintaining or repairing the water storage works; and
- (b) fulfilment of such conditions, other than the payment referred to in paragraph (a);

as may be agreed or, failing agreement, as may be fixed by the Administrative Court, participate in the benefit of the water storage works in proportion to the share of the cost:

Provided that, if the servitude of storage has been acquired by—

- (a) the State or a local authority; or
- (b) any statutory body—
 - (i) established or re-established directly by or under an enactment, including; and
 - (ii) empowered or required by the enactment referred to in subparagraph (i) to acquire the servitude of storage;

the owner shall not be entitled so to participate in the benefit of such water storage works.

80 Rights included in servitudes

(1) Every servitude shall include a right to take gravel, rock, sand, soil, stone or wood from the land subject to the servitude for the purpose of maintaining or repairing any water works thereon on payment to the owner of such land of such compensation as may be agreed or, failing agreement, as may be fixed by the Administrative Court:

Provided that no gravel, rock, sand, soil, stone or wood shall be taken from -

- (a) within a distance of five hundred metres of any afforested or cultivated lands, premises or other structures, mining works or quarries; or
- (b) forest land as defined in the Forest Act [*Chapter 19:05*];

without the permission of the owner thereof.

(2) Notwithstanding anything contained in subsection (1), the Administrative Court—

- (a) may, if it considers that the permission of the owner concerned is being unreasonably withheld, authorize the taking of gravel, rock, sand, soil, stone or wood from—
 - (i) within the distance referred to in paragraph (a) of the proviso to subsection (1); or
 - (ii) forest land as defined in the Forest Act [Chapter 19:05]; and
- (b) shall determine what compensation, if any, is to be paid by the holder of the servitude concerned to the owner referred to in paragraph (a) in respect of any loss or damage which may result from any taking authorized in terms of that paragraph.

81 Lapse of servitudes

(1) A servitude shall lapse—

- (a) if the water works specified in the relevant request in terms of subsection (1) of section *seventy-five* are not constructed within a period of three years from the date of acquisition of the servitude or such longer period as may be agreed or, failing agreement, as may be fixed by the Administrative Court;
- (b) if the Administrative Court so orders on the ground of non-use for a continuous period of three years; or
- (c) where the servitude has been granted in respect of a use of water to which a permit relates, if the permit lapses and is not renewed.

(2) Nothing in subsection (1) shall be construed as derogating from any law relating to the lapse of servitudes.

82 Holders of servitudes to construct, maintain and repair water works

Subject to this Part, the holder of a servitude shall construct, maintain and repair all water works required for the enjoyment of the servitude.

83 Registration of servitudes awarded by Administrative Court

(1) The holder of a servitude awarded by the Administrative Court shall cause the servitude to be registered against the title to all pieces of land against and, in the case of a praedial servitude, in favour of which the servitude has been awarded.

(2) If within a period of ninety days from the date of the award referred to in subsection (1) the servitude concerned has not been registered in terms of that subsection, the Registrar may apply to a president of the Administrative Court for an order compelling the owner of the land subject to the servitude to produce his title deed in respect of such land to the Registrar of Deeds within such period as may be specified in the order.

(3) Any person who fails to comply with an order in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection amended by section 4 of Act 22 of 2001]

(4) The owner of land or any other person in whose favour a servitude has been awarded by the Administrative Court shall bear all the costs of registration of the servitude and of preparing documents required therefor.

84 Registration of servitudes acquired by agreement

(1) Whenever a servitude has been claimed and every interested party has agreed to the claim, the agreement shall not be binding on any person other than the parties to agreement unless the servitude has been registered against the title to all pieces of land against which and, in the case of a praedial servitude, in favour of which the servitude has been so acquired.

(2) If any party to an agreement referred to in subsection (1) wishes to register the servitude acquired thereunder and another party to the agreement fails to produce the relevant title deed, the party wishing so to register may apply to a president of the Administrative Court for an order compelling the other party to produce his title deed in respect of the land to the Registrar within such period as may be specified in the order.

(3) Any person who fails to comply with an order in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level four.

[Subsection amended by section 4 of Act 22 of 2001]

(4) The person acquiring the servitude concerned under an agreement referred to in subsection (1) shall bear all the costs of registration of the servitude and of preparing documents required therefor.

85 Registration of servitudes in Deeds registry

(1) For the purpose of registration of a servitude, there shall be lodged with the Registrar of Deeds the necessary registration fees together with—

- (a) in the case of a servitude awarded by the Administrative Court, two copies of the award duly certified by the Registrar:

Provided that no such copies shall be lodged with the Registrar of Deeds until after the expiry of the period within which notice of appeal to the Supreme Court from such award may be given or, if

notice of appeal has been given, until the award of the servitude has been confirmed on appeal or the appeal concerned has not been prosecuted or has been dismissed; or

- (b) in the case of a servitude acquired under an agreement referred to in subsection (1) of section *eighty-four*, the copies of the agreement and such other documents as may be required by the Registrar of Deeds for the registration of the servitude.

(2) On receipt of the fees and documents referred to in subsection (1), the Registrar of Deeds shall, if satisfied that the fees and documents are in order, cause the servitude concerned to be registered on the title deeds of all pieces of land affected by it and in the appropriate registers in accordance with the terms of the award or agreement concerned:

Provided that the Registrar of Deeds may refuse to register a servitude referred to in paragraph (b) of subsection (1) if, in his opinion, the agreement is not reasonably free from ambiguity.

(3) If the owner of land subject to a servitude fails to produce his copy of the title deed of the land for the purpose of registration, the Registrar of Deeds shall note the servitude on the title deed in the Deeds Registry and in the appropriate registers.

(4) After making a note in terms of subsection (3), no other act of registration shall be made in respect of the piece of land concerned until the servitude has been registered on the title deed of the owner of the land.

(5) If the title deed referred to in subsection (4) is for any reason lodged with the Registrar of Deeds he shall retain the title deed until the servitude concerned has been registered thereon.

(6) Whenever a formal or other minor alteration in the wording of a servitude awarded by the Administrative Court is required for the purpose of registering the servitude, the alteration may be made under the signature of the president of the Administrative Court.

(7) For the purpose of registering a servitude which, in the opinion of the Registrar of Deeds, cannot adequately be defined by description, a diagram prepared in accordance with the Land Survey Act [*Chapter 20:12*] shall be submitted to him showing the land subject to, and the situation thereon of, the servitude.

PART VIII

COMBINED WATER SCHEMES

86 Interpretation in Part VIII

In this Part—

“petition” means a petition made in terms of section *eighty-seven*;

“petitioner” means an owner of land referred to in section *eighty-seven*;

“scheme” means a combined water scheme referred to in section *eighty-seven*.

87 Petitions for schemes

(1) If any two or more owners of land consider that—

(a) there should be a combined water scheme for the area comprising the land owned by them; and

(b) recourse should be had to artificial means of storing or supplying water in the area referred to in paragraph (a);

they shall address to the catchment council a petition in the prescribed form stating—

(i) the reasons why the proposed combined water scheme is desirable; and

(ii) the nature of the proposed combined water scheme; and

(iii) the boundaries and approximate extent of the area of the proposed combined water scheme; and

(iv) specific uses to which the water is intended to be put by the persons participating in the proposed combined water scheme;

and setting out the names of not less than two and not more than four petitioners who are able and willing to serve on an investigatory committee referred to in section *eighty-eight*.

(2) A petition referred to in subsection (1) shall be accompanied by such fee as may be prescribed.

88 Investigation and report on petition

(1) The catchment council shall, on receipt of a petition referred to in section *eighty-seven*—

(a) appoint such persons as it considers appropriate to be members of an investigatory committee whose chairman shall be a civil engineer appointed by the catchment council; and

(b) refer the petition to the investigatory committee and require the civil engineer to prepare a report on the petition.

(2) The civil engineer referred to in paragraph (b) of subsection (1) shall—

(a) set out in his report the nature, scope and approximate cost of the proposed scheme, together with such other information as the catchment council may specify; and

(b) furnish copies of the report to each of the owners of land within the area which may be affected by the proposed scheme within such period as the catchment council may fix; and

- (c) request the owners referred to in paragraph (b) to notify the catchment council within a period of thirty days of receiving such report whether or not they consent to participate in the proposed scheme and, if they do not consent, whether or not they are opposed to the proposed scheme.

(3) On the receipt of the notifications referred to in paragraph (c) of subsection (2), the catchment council shall, before considering the petition, ascertain that the owners of not less than two-thirds of the land within the area of the proposed scheme consent to participate in the proposed scheme.

89 Consideration of petition by catchment council

In considering a petition, a catchment council shall have regard to—

- (a) the extent and nature of all irrigable land in the area capable of being irrigated by the water which it is proposed to use; and
- (b) the extent and nature of any other industrial or commercial activity intending to participate in the scheme;
- (c) the economic aspects of the proposed scheme; and
- (d) such other matters, as appear to the catchment council to be relevant.

90 Powers and duties of catchment council in relation to petitions

(1) A catchment council may, having considered a petition in terms of section *eighty-nine*, approve the petition subject to such modifications as it thinks fit, or reject the petition.

(2) In approving a proposed scheme, a catchment council may—

- (a) require the petitioners concerned to form, within such period as the catchment council may specify, a company limited by shares in terms of Part II of the Companies Act [*Chapter 24:03*] for the purpose of administering the scheme; and
- (b) allocate the quantity of water to be used for any agricultural, institutional or miscellaneous purposes within such scheme and impose on holders of individual permits for the use of water the obligation to surrender the permits for the benefit of the scheme as a condition of their participation in the scheme; and
- (c) state the quantity of water allocated in respect of each activity in the scheme and the maximum expenditure that may be incurred in carrying out the scheme unless a higher maximum expenditure is agreed by the owners of the pieces of land; and
- (d) subject to this section, issue a permit in respect of the scheme.

(3) A catchment council may, in allocating the quantity of water to be used within a scheme, allocate for primary purposes such quantity of water as it thinks fit.

(4) A catchment council shall, if water is allocated for use in terms of subsection (3)—

- (a) specify, in respect of each piece of land to which a quantity of water has been allocated in terms of paragraph (c) of subsection (2), the maximum quantity of water which may be so used; and
- (b) in the case of a piece of land referred to in paragraph (a) which has been or is consolidated or subdivided, revise the maximum quantity referred to in that paragraph in respect of the consolidation or apportion such maximum quantity of water or a quantity of water greater than the maximum quantity between the subdivisions concerned and the remaining extent of the piece of land.

91 Allocation of water by catchment council for use in schemes

A catchment council may within an existing scheme allocate water for use for primary purposes, agricultural purposes, institutional purposes or miscellaneous purposes on land within the area of the scheme for the benefit of the participants in the scheme.

92 Alteration of areas within, or quantities of water allocated in respect of, schemes

(1) A catchment council may, at the request of any occupier of land affected by an existing scheme who wishes to participate in the scheme—

- (a) authorize the alteration of the area within, or of the quantity of water allocated in respect of, the scheme; and
- (b) fix the proportion of the cost of the alteration referred to in paragraph (a) to be paid by the occupier of land benefiting by such alteration.

(2) In ascertaining the cost referred to in paragraph (b) subsection (1), the catchment council shall have regard to—

- (a) the cost of the alteration concerned; and
- (b) the amount of capital expended on the original scheme;

and may, on good cause shown, allow the incurring of expenditure in excess of the maximum expenditure referred to in paragraph (c) of subsection (2) of section *ninety*.

93 Allocation of water in combined water schemes may be cancelled or revised

A catchment council may, if the user of water allocated in terms of paragraph (c) of subsection (2) of section *ninety* fails without sufficient cause to make full beneficial use of such allocation, of its own motion or at the request of any interested party, cancel or revise such allocation.

94 Liability of owners of land benefiting from schemes

(1) Any occupier of land which is affected by a scheme and to which the water from the scheme may be available shall, unless exempted by the catchment council from doing so for good and sufficient reason, be liable to pay to the company referred to in paragraph (a) of subsection (2) of section *ninety* a portion of the moneys which may have been expended on the scheme.

(2) The liability of the occupier referred to in subsection (1) shall, if not at once discharged, be a first charge or mortgage on his land:

Provided that, if such land is already mortgaged and the mortgagee does not assent to the scheme concerned such liability shall rank as a preferent charge next after such first charge or mortgage.

(3) The proportion of the moneys referred to in subsection (1) to be paid by each occupier of land shall be determined in accordance with the quantity of water allocated to his piece of land in terms of paragraph (c) of subsection (2) of section *ninety*.

95 Allocation or apportionment of rights to use water on consolidation or subdivision of land in scheme area

(1) Whenever a piece of land within the area of an existing scheme is to be consolidated with another piece of land or subdivided, the owner of the first mentioned piece of land shall, prior to the consolidation or subdivision, lodge with appropriate catchment council an application for the allocation or apportionment of his entitlement to the use of water and section *fifty-three* shall apply, *mutatis mutandis*.

(2) An allocation or apportionment resulting from an application in terms of subsection (1) shall form part of the scheme concerned.

(3) In the event of the proposed transfer of a subdivision of land within the area of a scheme, the transferor shall, before such transfer takes place, construct to the satisfaction of the catchment council such water works as may be necessary for the supply of water to the subdivision.

(4) The company concerned shall—

(a) maintain; and

(b) obtain and conserve a supply of water for; and

(c) arrange for an equitable distribution of any water diverted or stored by; any waterworks constructed in terms of subsection (3).

PART IX

SAFETY OF DAMS

96 Interpretation in Part IX

(1) In this Part—

“advisory panel” means an advisory panel appointed in terms of subsection (3) of section *ninety-eight*.

“approved civil engineer” means a civil engineer who has been declared to be an approved civil engineer in terms of subsection (5) of section *ninety-eight*;

“approved civil engineering technician” means a civil engineering technician who has been declared to be an approved civil engineering technician in terms of subsection (4) of section *ninety-eight*;

“appurtenant works” means any works which contribute directly or indirectly to the functioning, operation or safety of a small dam or large dam and includes—

(a) outlet works and penstocks, pipelines, tunnels and other water conduits, whether running through the structure of the small dam or large dam or the abutments thereof; and

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

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

(d) devices or works for measuring flow, movement, pore water pressure, seepage, strain, temperature or uplift pressure, whether in the structure of the small dam or large dam or separate therefrom; and

(e) such other works as may be declared in terms of subsection (2) to be appurtenant works;

“board of consultants” means a board of consultants appointed in terms of subsection (1) of section *one hundred and six*;

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

“design flood”, in relation to a small dam or large dam, means the estimated maximum flow of water resulting from floods or other causes, which flow—

- (a) is required to pass through the spillway or other discharge facilities; and
- (b) is approved or fixed in relation to the small dam or large dam concerned in terms of subsection (3);

“dry freeboard” means the vertical distance between the water level attained when the design flood is being passed and the level of the non-overflow crest of the wall of the small dam or large dam concerned;

“full supply level” means that water level which pertains immediately prior to the release of excess flood water through the spillway;

“high flood level” means the maximum level of water which can safely be contained by a small dam or large dam without encroaching on the dry freeboard thereof;

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

- (a) has a vertical height of fifteen metres or more measured from the non-overflow crest of the wall of the structure to the lowest point on the downstream face of the wall; or
- (b) is capable of storing one million or more cubic metres of water at full supply level; or
- (c) has foundations which, in the opinion of the Secretary as notified to the owner of the structure, may or causes special or unexpected difficulties; or
- (d) in the opinion of the Secretary as notified to the owner of such structure, is a small dam of unusual design; or
- (e) is declared in terms of subsection (2) to be a large dam;

“owner”, in relation to a small dam or large dam—

- (a) means the person entitled to divert or store water by means of the small dam or large dam; and
- (b) includes the legal representative of any person referred to in paragraph (a) 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;

“registration certificate” means a registration certificate issued in terms of subsection (2) of section *one hundred*, subsection (2) of section *one hundred and one* or subsection (2) of section *one hundred and four*;

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

- (a) has a vertical height of more than eight metres but less than fifteen metres measured from the non-overflow crest of the wall of such structure to the lowest point on the downstream face of such 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; or
- (c) is declared in terms of subsection (2) to be a small dam.

(2) The Minister, on the recommendation of the National Water Authority and in consultation with the catchment council concerned, may, by notice in writing given to the owner of the small dam or large dam concerned—

- (a) declare any works, other than works referred to in paragraphs (a) to (d) of the definition of “appurtenant works” in subsection (1), to be appurtenant works;
- (b) declare any structure, other than a structure referred to in paragraphs (a) to (c) of the definition of “small dam” in subsection (1) or in paragraphs (a) to (e) of the definition of “large dam” in that subsection, which, together with its abutments, appurtenant works and foundations, is capable of diverting or storing water to be a small dam or large dam, as the case may be;

for the purposes of this Part.

(3) The Secretary, in consultation with the catchment council concerned, may approve or fix, in relation to a small dam or large dam, a flow of water as the design flood thereof.

97 Minister may grant exemptions

(1) The Minister may, in consultation with the catchment council and the National Water Authority, may, by notice in writing and subject to such conditions as he may impose, exempt any person from compliance with all or any of the provisions of this Part in respect of any large dam, small dam, dam works or appurtenant works proposed to be constructed in respect of any public stream which forms any part of the international boundary of Zimbabwe.

(2) The Minister may at any time, on the recommendation of the National Water Authority in consultation with the catchment council, withdraw or amend any exemption granted in terms of subsection (1).

98 Approved civil engineers and approved civil engineering technicians

(1) Any person who wishes to become an approved civil engineer or an approved civil engineering technician shall apply in the prescribed manner to the Secretary to be declared an approved civil engineer or approved civil engineering technician, as the case may be, in terms of subsection (4).

(2) On receipt of an application in terms of subsection (1), the Secretary shall refer the application to an advisory panel for consideration and recommendation:

Provided that the Secretary may, if he considers that the application does not provide sufficient information concerning the applicant, require the applicant to furnish the Secretary with such additional information concerning the applicant as the Secretary may specify before so referring the application.

(3) An advisory panel shall—

- (a) be appointed by the Secretary; and
- (b) consist of two or more civil engineers who have wide experience of the design and construction of dams and large dams or such other experience as the Secretary may approve; and
- (c) consider and make recommendations on applications or matters referred to it in terms of subsection (2) or (6), as the case may be.

(4) Members of any advisory panel shall be paid from moneys appropriated for the purpose by Act of Parliament such remuneration or allowances as the Minister, after consultation with the Minister responsible for finance, may fix.

(5) On receipt of a recommendation from an advisory panel on an application in terms of subsection (1), the Secretary shall—

- (a) if he considers that the applicant possesses the necessary qualifications for and experience of dam works and is a fit and proper person, by notice in the *Gazette*, declare the applicant to be an approved civil engineer or an approved civil engineering technician, as the case may be, subject to such conditions as he thinks fit to impose; or

(b) refuse the application:

Provided that the Secretary shall, before refusing an application, afford the applicant an opportunity to satisfy the Secretary that he does possess the necessary qualifications for or experience of dam works or is a fit and proper person, as the case may be.

(6) The Secretary may, if he thinks that—

- (a) the declaration of an approved civil engineer or approved civil engineering technician should be withdrawn; or
- (b) the conditions subject to which the declaration of an approved civil engineer or approved civil engineering technician was made should be amended;

refer the matter to an advisory panel for consideration and recommendation.

(7) On receipt of a recommendation from an advisory panel on a matter referred to it in terms of subsection (6), the Secretary shall—

- (a) if he considers that the declaration of the approved civil engineer or approved civil engineering technician concerned should be withdrawn or that the conditions subject to which the declaration was made should be amended, by notice in the *Gazette*, withdraw the declaration or amend the conditions:

Provided that, if the withdrawal or amendment will or is likely to prejudice the approved civil engineer or approved civil engineering technician, the Secretary shall, before withdrawing the declaration or amending such conditions, afford the approved civil engineer or approved civil engineering technician an opportunity to satisfy the Secretary that the declaration should not be withdrawn or that the conditions should not be amended; or

(b) take no action in the matter.

99 When dam works in respect of small dams may be commenced

(1) Subject to Part IV, no person shall commence any dam works in respect of a small dam other than action referred to in section *one hundred and nine* or *one hundred and ten*, until the expiry of a period of thirty days after—

(a) an approved civil engineer or approved civil engineering technician has—

- (i) prepared a design, together with 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 small dam, that the adequacy and safety of the small dam will not be prejudiced; and
- (b) the owner of the small dam has submitted to the Secretary in the prescribed manner, together with such fee as may be prescribed, such details of the design, plans and specifications prepared in terms of paragraph (a) as may be prescribed, together with the certificate of adequacy and safety referred to in subparagraph (ii) of that paragraph.

(2) The Secretary may require the owner of the small dam concerned—

- (a) to provide the additional information; and

(b) to modify such design, plans and specifications in such manner; and
(c) to provide such additional certificates of adequacy and safety;
as, and within such period as, the Secretary may specify.

(3) A person who—

- (a) commences dam works in contravention of subsection (1); or
- (b) fails without reasonable excuse to comply with a requirement made in terms of subsection (2); or
- (c) being the owner of the small dam concerned, fails to ensure that the dam works in respect of the dam are completed in accordance with the details submitted in terms of subsection (1) and to the satisfaction of an approved civil engineer or approved civil engineering technician;

shall be guilty of an offence.

(4) If during the execution of any dam works the owner of the small dam concerned wishes to modify the details submitted in terms of subsection (1), subsections (1), (2) and (3) shall apply, *mutatis mutandis*, in respect of such modification.

100 Duties of owners on completion of small dam works in respect of dams and registration

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

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

(2) On receipt of the report, plans and completion certificate and any registration certificate or further information submitted to him in terms of subsection (1), the Secretary shall, in consultation with the National Water Authority—

- (a) in the case of the construction of a small dam, register the small dam and issue to the owner a registration certificate in the prescribed form; or
- (b) in the case of dam works other than the construction or removal of a small dam, amend the registration of the small dam;
- (c) in the case of the removal of a small dam, cancel both the registration of the small dam and the registration certificate concerned.

(3) The owner of a small dam who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

101 Reporting of small dams in certain areas

(1) If the Secretary, on the recommendation of the National Water Authority and in consultation with the catchment council, considers it necessary or desirable to do so, he may, by notice in the *Gazette* and in a newspaper circulating in the area concerned, require the owners of existing small dams within the area specified in the notice to notify him in writing, within such period as may be specified in the notice, of such particulars as he may specify in the notice in respect of the small dams, whether or not section *one hundred* has been complied with in respect of the small dams.

(2) On receipt of the details submitted to him in terms of subsection (1), the Secretary shall, in the case of a small dam in respect of which no registration certificate has been issued, register the small dam and issue to the owner a registration certificate in the prescribed form:

Provided that the Secretary may, in registering the small dam, require the owner to comply within such period as the Secretary may specify and subject to such conditions as the Secretary may consider necessary for the protection of persons and property.

(3) A person who fails to comply with a requirement made in terms of subsection (1) or the proviso to subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

102 When dam works in respect of large dams may be commenced

(1) Subject to Part IV, no person shall commence any dam works in respect of a large dam, other than action referred to in section *one hundred and nine* or *one hundred and ten*—

(a) until—

(i) an approved civil engineer, assisted by such qualified engineers, geologists and other specialists as the Secretary in consultation with the National Water Authority may require, has—

A. prepared a design, together with plans and specifications, of the proposed dam works; and

B. certified the adequacy and safety of the proposed dam works and, in the case of modifications to an existing small dam or large dam, that the adequacy and safety of the small dam or large dam will not be prejudiced; and

(ii) the owner of the large dam has submitted to the Secretary in the prescribed manner, together with such fee as may be prescribed, such details of the design, plans and specifications prepared in terms of subparagraph (i) as may be prescribed, together with the certificate of adequacy and safety referred to in that subparagraph, and the Secretary has approved the details in writing; and

(iii) the expiry of a period of ten days after the owner of the large dam has given notice in writing to the Secretary of the proposed commencement of the dam works; or

(b) after the expiry of a period of twelve months from the date on which the Secretary approved the details referred to in subparagraph (ii) of paragraph (a):

Provided that the Secretary may, on the application in writing of the owner concerned, extend the period for such further period or periods in aggregate not exceeding thirty-six months as the Secretary may specify.

(2) The Secretary may, before approving the details referred to in subparagraph (ii) of paragraph (a) of subsection (1), require the owner of the large dam concerned—

(a) to cause such further investigations to be made; and

(b) to provide such additional information; and

(c) to modify the design, plans and specifications concerned in such manner; and

(d) to provide such additional certificates of adequacy and safety;

as, and within such period as, the Secretary may specify.

(3) A person who commences dam works in contravention of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

103 Supervision of dam works in respect of large dams

(1) The owner of a large dam referred to in section *one hundred and two* shall cause an approved civil engineer—

(a) to arrange for the adequate supervision of the progress of the dam works concerned for the purpose of securing compliance with the design, plans and specifications approved in respect of the dam works; and

(b) to maintain up-to-date drawings of the dam works concerned; and

(c) if so required by the Secretary, the National Water Authority and the catchment council, to submit to the Secretary, the National Water Authority and the catchment council such progress reports on the dam works concerned within such periods as the Secretary, the National Water Authority or the catchment council may specify.

(2) The owner referred to in subsection (1) shall, if the approved civil engineer concerned considers that modifications to the details approved in respect of the dam works concerned are necessary—

(a) notify the Secretary in writing; and

(b) obtain his approval in writing;

of the modifications before causing the modifications to be made.

(3) The Secretary, the National Water Authority, the catchment council or any person authorized thereto in writing by them may, at any time during the progress of any dam works in respect of a large dam, have access to the dam works for the purpose of inspection.

(4) The Secretary, the National Water Authority or the catchment council may, as a result of information received during the progress of dam works in respect of a large dam, require the owner of the dam to cause the approved civil engineer concerned to modify any design, plans or specifications relating to the dam works.

(5) The owner of a large dam who contravenes subsection (1) or (2) or fails to comply with a requirement made in terms of subsection (4) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

104 Duties of owners on completion of dam works in respect of large dams and registration

- (1) The owner of a large dam shall, within a period of—
- (a) thirty days from the completion of any dam works in respect of the large dam, notify the Secretary and the catchment council in writing of the completion; and
 - (b) one hundred and twenty days from the completion of dam works in respect of the large dam or such longer period as the Secretary may allow, submit to the Secretary, the National Water Authority and the catchment council—
 - (i) a report in the prescribed form; and
 - (ii) such plans certified as true and correct by the approved civil engineer concerned of the completed dam works as may be prescribed; and
 - (iii) a completion certificate in the prescribed form of the adequacy, safety and completion of the dam works, signed by the approved civil engineer concerned; and
 - (iv) in the case of dam works other than the construction of a large dam, the registration certificate, if any, issued in respect of the small dam or large dam.

(2) On receipt of the report, plans and completion certificate and any registration certificate submitted to him in terms of subsection (1), the Secretary shall, if he is satisfied that the dam works concerned are adequate and safe—

- (a) in the case of the construction of a large dam, register the large dam and issue to the owner a registration certificate in the prescribed form; or
- (b) in the case of dam works other than the construction or removal of a large dam, register the large dam and issue to the owner concerned a registration certificate in the prescribed form or amend the registration certificate concerned and return it to the owner, as the case may be;
- (c) in the case of the removal of a large dam, cancel both the registration of the large dam and the registration certificate concerned.

(3) The owner of a large dam who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

105 Periodic inspections of large dams

- (1) The owner of a large dam shall—
- (a) cause an approved civil engineer to prepare instructions relating to the maintenance and operation of the large dam; and
 - (b) cause the large dam to be maintained and operated in accordance with instructions prepared in terms of paragraph (a) and with such additional instructions as the Secretary or the catchment council may from time to time give to him; and
 - (c) cause detailed measurements and observations of the large dam to be made by such person in such manner and at such intervals as the Secretary or the catchment council may require; and
 - (d) whenever requested to do so by the Secretary or the catchment council and, in addition, before the end of the month of June or of such other month as the catchment council may specify immediately following—
 - (i) the first season during which water was diverted or stored by the large dam; and
 - (ii) the first season during which water spilled from the large dam; and
 - (iii) each successive period of five years reckoned from the date of completion of construction of the large dam;cause a detailed engineering inspection of the large dam to be carried out by an approved civil engineer; and
 - (e) within a period of thirty days from the date of completion of—
 - (i) any measurements and observations made in terms of paragraph (c), submit to the Secretary and the National Water Authority such report thereon as the Secretary and the National Water Authority may specify; and
 - (ii) any detailed engineering inspection carried out in terms of paragraph (d), submit to the Secretary and the National Water Authority such report thereon as the National Water Authority may specify, together with a summary of the maintenance measures carried out since the date of completion of the large dam or of the previous such detailed engineering inspection, as the case may be.

(2) The Secretary, the National Water Authority or any person authorized by them in writing may at any time carry out a detailed engineering inspection of a large dam.

(3) The owner of a large dam shall provide the Secretary, the National Water Authority or any person authorized in terms of subsection (2), with such assistance and facilities in the carrying out of the inspection referred to in that subsection as the Secretary, the National Water Authority or such person may reasonably require.

(4) If, as a result of any measurements and observations made in terms of paragraph (c) of subsection (1) or of a detailed engineering inspection carried out in terms of paragraph (d) of that subsection or in terms of subsection (2) or of a report submitted in terms of paragraph (e) of subsection (1), the Secretary in consultation with the National Water Authority considers that the large dam concerned is inadequate or unsafe, he may require the owner of the large dam to remedy, within such period as the Secretary may specify, the inadequacy or lack of safety concerned to the satisfaction of the Secretary.

(5) If the owner of a large dam fails to comply with a requirement made in terms of subsection (4)—

(a) without reasonable excuse the onus of proof of which lies on him, he shall be guilty of an offence;

(b) the National Water Authority may remedy the inadequacy or lack of safety concerned and recover the cost of so doing, together with interest on such cost, from the owner by—

(i) proceedings in a court of competent jurisdiction against the owner; or

(ii) if the owner is the owner of the piece of land on which the large dam or a portion thereof is situated, directing that the Registrar of Deeds make a note on the title deeds of the piece of land and in the appropriate register.

(6) On receipt of a direction made in terms of subparagraph (ii) of paragraph (b) of subsection (5), the Registrar of Deeds shall make the note specified in the direction.

(7) The owner of the piece of land referred to in subparagraph (ii) of paragraph (b) of subsection (5) shall, at the request of the Registrar of Deeds, produce his title deed in respect of the piece for the purpose of the noting referred to in subsection (6).

(8) If an owner referred to in subsection (7) fails to produce his title deed for the purpose of noting referred to in subsection (6), he shall be guilty of an offence.

(9) A note made in terms of subsection (6) shall constitute a hypothecation of the piece of land concerned—

(a) ranking from the date on which the note was made; and

(b) for the amount stated therein, together with interest thereon determined in terms of the Prescribed Rate of Interest Act [*Chapter 8:08*];

until such time as the amount and interest referred to in paragraph (b) have been paid to the catchment council.

(10) The Registrar of Deeds shall not pass transfer of a piece of land hypothecated in terms of subsection (9) unless the catchment council has, by notice in writing to the Registrar of Deeds, released the piece of land from hypothecation.

(11) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable to a fine not exceeding level six and to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

106 Secretary may appoint board of consultants

(1) The Secretary in consultation with the catchment council may, if—

(a) in his opinion the safety considerations relating to a small dam or large dam so require; or

(b) the owner of the large dam concerned has failed to comply with a requirement made in terms of subsection (4) of section *one hundred and five*;

or shall, if he is requested to do so in writing by the owner of a small dam or large dam and the owner gives security for the remuneration, allowances and costs referred to in subsection (3), appoint a board of consultants to report to him on any action to be taken in relation to the small dam or large dam concerned or to any design, drawings, plans, records, reports or specifications relating to the dam.

(2) A board of consultants shall consist of two or more engineers who have—

(a) had wide experience of the design and construction of small dams and large dams; and

(b) not previously been associated with any dam works in respect of the small dam or large dam concerned.

(3) If the Minister decides that the owner of the small dam or large dam concerned should pay the whole or any part of the remuneration and allowances and of any costs so incurred, together with the costs incurred by the State or the National Water Authority in connection with the exercise by the board of consultants of the functions specified by the Minister, he may deduct the whole or part thereof from the security given in terms of subsection (1) or recover the same from the owner by action in a court of competent jurisdiction.

107 Secretary may require owner to carry out dam works

(1) On receipt of a report made by a board of consultants, the Secretary may require the owner of the small dam or large dam concerned to carry out such dam works as the Secretary in consultation with the National Water Authority considers to be necessary within such period as he may specify.

(2) If the owner of a dam or large dam—

- (a) carries out the small dam works concerned in accordance with a requirement made in terms of subsection (1), the Secretary shall register or amend or cancel the registration of, as the case may be, the dam or large dam concerned and issue a registration certificate or amend or cancel the registration certificate concerned accordingly; or
- (b) fails, without reasonable excuse the onus of proof of which lies on him, to carry out any dam works concerned in accordance with a requirement made in terms of subsection (1), he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; or

[Subsection amended by section 4 of Act 22 of 2001]

(c) fails to carry out the dam works concerned in accordance with a requirement made in terms of subsection (1), the National Water Authority may cause the dam works to be carried out and recover the cost of so doing, together with interest on the cost, from the owner by doing either or both of the following—

- (i) proceedings in a court of competent jurisdiction against the owner; or
- (ii) if the owner is the owner of the piece of land on which the small dam or large dam or a portion thereof is situate, directing that the Registrar of Deeds make a note on the title deeds of the piece of land and in the appropriate registers, and subsections (6) to (10) of section *one hundred and five* shall apply, *mutatis mutandis*;

and shall register or amend or cancel the registration, as the case may be, of the small dam or large dam concerned and issue a registration certificate or amend or cancel the registration certificate concerned accordingly.

108 Rights of access, inspection, investigation and survey

(1) The Secretary, the National Water Authority, the catchment council or any person authorized thereto by the Secretary, the National Water Authority or the catchment council in writing may—

- (a) have access to the site of any dam works, whether proposed or in progress, or to any existing small dam or large dam for the purpose of inspection; and
- (b) if, in their opinion, it is necessary to do so in order to establish the adequacy and safety or otherwise of any dam works referred to in paragraph (a), carry out surveys and conduct investigations, whether by drilling, excavating, mining or otherwise.

(2) The provisos to paragraph 12 of the Schedule shall apply, *mutatis mutandis*, in relation to the exercise of any powers in terms of subsection (1).

109 Procedure in emergencies

(1) If the owner of a small dam or large dam learns of any sudden or unprecedented flood or alarming or unusual circumstance or occurrence, whether anticipated or existing, which may adversely affect the small dam or large dam, he shall, in addition to discharging any duty, liability or obligation imposed on him by or under any other law—

- (a) forthwith take all such steps as may be reasonable and practicable for dealing with the flood, circumstance or occurrence, as the case may be; and
- (b) as soon as practicable and by registered letter notify the Secretary and the National Water Authority, as fully as possible, of the flood, circumstance or occurrence, as the case may be, and of the action he has taken or proposes to take in terms of paragraph (a).

(2) If the Secretary, whether or not he has been notified in terms of subsection (1), considers that a small dam or large dam is in any way endangered he may require the owner of the small dam or large dam to take such action as he may specify to deal with the situation either forthwith or within such period as may be specified by the Secretary.

(3) If the Secretary after being notified by the owner of a small dam or large dam in terms of subsection (1) considers that the steps taken or proposed to be taken by the owner are inadequate or not sufficiently timely for dealing with the situation he may require the owner to take such action as he may specify to deal with the situation either forthwith or within such period as may be specified by the Secretary.

(4) An owner who has been required by the Secretary in terms of subsection (2) or (3) to take any action shall—

- (a) by registered letter notify the Secretary immediately after commencing to take the action; or
- (b) report to the Secretary within a period of forty-eight hours after commencing to take the action on the progress and results of the action; and

(c) comply with such other instructions as the Secretary may from time to time give to him.

(5) If the owner of a small dam or large dam fails to comply with a requirement made in terms of subsection (2) or (3) or to notify or report to the Secretary in contravention of, or to comply with any requirement made by the Secretary in terms of, subsection (4)—

- (a) without reasonable excuse the proof of which lies on him, the owner shall be guilty of an offence; and
- (b) the Secretary shall direct the National Water Authority to take such action as it thinks fit and recover the cost of so doing, together with interest on the cost, from the owner by—
 - (i) proceedings in a court of competent jurisdiction against the owner; or
 - (ii) if the owner is the owner of the piece of land on which the small dam or large dam or a portion thereof is situate, directing that the Registrar of Deeds make a note on the title deeds of the piece of land and in the appropriate registers, and subsections (6) to (10) of section *one hundred and five* shall apply, *mutatis mutandis*.

(6) An owner of a small dam or large dam who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven and to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

110 Procedure in emergencies arising during execution of dam works

(1) If, during the execution of any dam works in respect of a small dam or large dam, any sudden danger is posed to any works or structure connected therewith, and such danger renders it necessary to carry out immediate dam works otherwise than in accordance with the details submitted in terms of section *ninety-nine* or *one hundred and two* in respect of the small dam or large dam, as the case may be, the owner of the small dam or large dam—

- (a) shall immediately commence the latter dam works notwithstanding that he has not complied with subsection (4) of section *ninety-nine* or subsection (2) of section *one hundred and two*; and
- (b) shall, within fourteen days after taking any action in terms of paragraph (a), notify the Secretary and the National Water Authority by registered letter as fully as possible of such action and of the circumstances necessitating it.

(2) Any owner of a small dam or large dam who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

111 Exemption from liability

(1) Without prejudice to any defence or limitation which may be available in terms of any law, no liability shall attach to the State, the Minister, a catchment council or the National Water Authority or any agent or employee of the State, a catchment council or National Water Authority in respect of any loss, damage or injury sustained by any person as a result of the exercise or performance or purported exercise or performance of or the omission to exercise or perform any power or duty conferred or imposed on the Secretary, a catchment council or the National Water Authority or any person authorized by them by or in terms of this Part unless the act or omission to act concerned was in bad faith or negligent.

(2) Nothing done in terms of this Part shall be construed as relieving the owner or person in charge of a small dam or large dam of any duty, liability or obligation imposed on him by or under any other law in respect of the small dam or large dam.

PART X

APPEALS

112 Interpretation in Part XI

In this Part—

“authority” means the Minister, the Secretary, a catchment council or the National Water Authority, as the case may be.

113 Composition of Administrative Court for purposes of this Act

(1) For the purpose of hearing any appeal or matter referred to it in terms of this Act, the Administrative Court shall consist of a president of the Court and at least two assessors appointed in terms of subsection (2).

(2) Subject to subsection (3), of the assessors referred to in subsection (1)—

- (a) one shall be appointed from a list of persons approved by the Chief Justice who are or have been Government water engineers for a period of not less than five years; and
- (b) one shall be appointed from a list of persons who are not members of the Public Service nominated by the Presidents of the Administrative Court and approved by the Chief Justice.

(3) Whenever the Administrative Court is required to hear and determine any matter the determination of which may require special knowledge not ordinarily possessed by an assessor referred to in paragraph (b) of

subsection (2), the president of the Administrative Court may, after consultation with the Chief Justice, appoint a special assessor in lieu of or in addition to the assessor referred to in paragraph (b) of subsection (2).

114 Appeals against decisions of authority

(1) Any person who is aggrieved by any decision, direction, order or action of any authority in terms of this Act may appeal against the decision, direction, order or action to the Administrative Court in terms of this Part.

(2) A notice of appeal in terms of this section shall be lodged with the Registrar of the Administrative Court and the authority concerned within thirty days of the date of the decision, direction, order or action appealed against.

(3) On an appeal in terms of this section, the Administrative Court may confirm, vary or set aside the decision, direction, order or action appealed against or give such other decision as in its opinion the authority concerned ought to have given, and make such order as to costs as it thinks fit.

(4) The authority concerned shall comply with any decision of the Administrative Court made in terms of this section.

(5) The Administrative Court Act [*Chapter 7:01*], shall apply in relation to the procedure and powers of the Administrative Court on an appeal in terms of this Part.

(6) Where an appeal has been noted in terms of this Act, the decision, direction, order or action appealed against shall, notwithstanding the noting of the appeal, remain valid pending the determination of the matter by the Administrative Court.

PART XI

GENERAL

115 Maintenance of registers and other records

Every catchment council shall—

- (a) maintain or cause to be maintained such registers in the prescribed form in which shall be recorded such particulars as may be prescribed of every permit issued in terms of this Act;
- (b) maintain or cause to be maintained such other registers or records as may be prescribed;
- (c) on the payment of a prescribed fee, produce any register or record referred to in this section for inspection on demand by any person.

116 Service of notices, orders and other documents

(1) Subject to subsection (3)—

- (a) any notice, order or other document required by or in terms of this Act to be given to or served on any person shall be deemed to be effectively served if—
 - (i) delivered personally to him; or
 - (ii) left at his abode or place of business; or
 - (iii) sent by registered letter to his address; or
 - (iv) in the case of a person who is absent from and has left no known representative in Zimbabwe, published in the *Gazette*;
- (b) service of a notice, order or other document referred to in paragraph (a) on a person authorized to represent another shall be deemed to be service of the notice, order or other document on the person represented.

(2) In the case of a body corporate or partnership having no domicile or office in Zimbabwe, any person in charge of the property of the body corporate or partnership in Zimbabwe shall be deemed to be authorized to represent it for the purpose of paragraph (b) of subsection (1).

(3) Nothing in this section shall prevent any person to whom a notice, order or other document referred to in subsection (1) has not been delivered personally from proving that, through no fault of his own or of his representative, as the case may be, the notice, order or other document never came to his knowledge.

117 Validity of defective notices, orders and other documents

Any notice, order or other document authenticated or issued by any officer in terms of this Act shall be valid from the date of its authentication or issue, notwithstanding any—

- (a) defect of form therein; or
- (b) absence of authority on the part of the officer if the requisite authority is subsequently conferred on the officer.

118 Offences and penalties

(1) Any person who, without lawful excuse the onus of proof of which lies on him—

- (a) alters, enlarges or obstructs any water works or defaces, destroys or moves any beacon, lawful mark or other appliance or structure made or erected in connection with the water works; or
- (b) abstracts, diverts, stores or uses any water, including water—
 - (i) to which the National Water Authority has obtained a right; or

- (ii) which is subject to the control of the National Water Authority; in terms of section *thirty-nine*; or
- (c) alters or interferes with the flow of the water of any water works or of a public stream or interferes with the distribution of the water or, after service on him of a notice requiring him to refrain from doing so, abstracts more of the water than he is entitled to abstract or uses the water in a manner prohibited by this Act; or
- (d) while liable for the maintenance of or using any water works, to the prejudice of others—
 - (i) fails properly to maintain and to keep the water works in repair; or
 - (ii) wastes or does not take due precaution to prevent the waste of water from the water works; or
- (e) wastes the water of a public stream; or
- (f) being the owner of any land, fails, after service on him of notice of the failure, to put an end to waste of water resulting from the act or omission of a lessee or occupier or other person deriving rights from the owner and no longer present on the land; or
- (g) constructs any borehole, shaft, well or other work or does any other thing which is intended to have the effect of abstracting water lawfully diverted or stored by another person; or
- (h) interferes with the banks, bed or course of a public stream or any marshes, springs, swamps or vleis forming the source of a public stream or found along its course; or
- (i) contravenes section *fifty-two* or Part V; or
- (j) hinders or obstructs any officer or authorized person in the exercise of any power conferred on him by this Act;

shall be guilty of an offence and liable, subject to subsection (2)—

- (i) to a fine of—
 - A. not exceeding level eight; or
[Subparagraph amended by section 4 of Act 22 of 2001]
 - B. an amount equivalent to twice the amount of any profit or advantage unlawfully gained or acquired or any prejudice caused by the convicted person as a result of the offence; whichever is the greater; or
 - (ii) to imprisonment for a period not exceeding two years; or
 - (iii) to both such fine and such imprisonment.
- (2) Any person who—
- (a) has been convicted of an offence in terms of subsection (1) or of Part VI or IX; and
 - (b) persists, after a conviction referred to in paragraph (a), in the course of conduct which constituted the offence concerned;

shall be guilty of a continuing offence and liable, in the case of a conviction of an offence referred to in subsection (1), to a fine not exceeding level three for every day or part thereof during which he so persists.

[Subsection amended by section 4 of Act 22 of 2001]

(3) Any person who places any poison in any water shall be guilty of an offence and liable to a fine not exceeding level twelve or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment and the court may order the person concerned to—

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

119 Regulations

(1) The Minister may, in consultation with the National Water Authority, make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out, or giving effect to, this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the manner of issue, amendment or withdrawal, and the form of any permit and the fees to be charged in connection therewith;
- (b)

[Paragraph repealed by section 142 of Act 13 of 2002]

- (c) in consultation with the Minister responsible for environment, the manner in which samples of any gas, liquid or solid shall be taken by any person for the purposes of Part VI;
[Paragraph amended by section 142 of Act 13 of 2002 and by section 27 of Act 6 of 2005]
- (d) the manner and form in which registers of permits and other records relating to the general management of the water resources of a river system shall be maintained by catchment councils;
- (e) the methods of testing any borehole or well;
- (f) the hire of drills and mechanical equipment belonging to the State;

- (g) the drilling of boreholes, sinking of wells and construction of water works for any person and the fees payable in respect thereof;
 - (h) engineering and advice and assistance by officers and any fees payable in respect thereof;
 - (i) combined water schemes;
 - (j) the functions and procedure of catchment councils, the election or appointment of members of catchment councils and the levying and collection of water charges, rates and fees for any service rendered by catchment councils.
- (3)

[Subsection repealed by section 142 of Act 13 of 2002]

(4) Any person who contravenes any regulations made in terms of subsection (1) shall be guilty of an offence.

120 Savings in relation to Zambezi River Authority

Notwithstanding this Act, the Zambezi River Authority referred to in section 4 of the Zambezi River Authority Act [*Chapter 20:23*] may continue to perform its functions and exercise its rights in relation to the use, extraction and storage of water in or from the Zambezi river in respect of the Kariba dam, the Kariba hydro-electric scheme and any other undertakings which are conferred upon it by or in terms of that Act.

PART XII

REPEALS AND SAVINGS

121 Interpretation in Part XIII

In this Part—

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;

“repealed Act” means the Water Act [*Chapter 20:22*];

“river board” means a river board which was established under the repealed Act and was in existence immediately before the fixed date.

122 Repeal

Subject to this Part, the Water Act [*Chapter 20:22*] is repealed.

123 Continuation of river boards and succession by catchment councils

(1) Until a subcatchment council has been established under this Act, any river board established in respect of any area in terms of the repealed Act shall continue in existence and the relevant provisions of the repealed Act shall continue to apply in respect of the river board.

(2) Any proceeding or matter which was pending or existing by or against a river board immediately before the fixed date or the date on which the successor subcatchment council is established, whichever is the later, may be continued or be enforced by or against the successor subcatchment council as it might have been by or against the river board had this Act not been passed.

(3) Every river board shall transfer or take such steps as are appropriate to effect the transfer of its assets, liabilities and employees to the successor subcatchment council:

Provided that no employee shall be transferred without his consent.

(4) For the purpose of any transfer under subsection (3), any agreement, instrument, working arrangement or contract of employment giving rise to any asset or liability transferred under subsection (3) shall have effect as if references therein to the river board were references to the successor subcatchment council.

(5) If any person transferred to the employment of a successor subcatchment council in terms of subsection (3) was, immediately before his transfer, serving a period of notice of discharge, resignation or retirement which period terminates after his transfer, the notice of discharge, resignation or retirement, as the case may be, shall be treated as if it had been given to or by the successor subcatchment council.

(6) The Minister may make regulations providing, subject to this Part, for all matters which, in his opinion, will bring about or facilitate—

(a) the transfer of assets, liabilities and employees of any river board to a successor subcatchment council; and

(b) the proper and effective operation of any successor subcatchment council.

and the Minister may give directions to any river board as to the distribution and transfer of any assets, liabilities or obligations, and the river board concerned and every member, officer or employee thereof shall comply with every such direction.

124 Continuation of existing water rights

(1) Any right to use water in terms of the repealed Act or any other previous Act and subsisting immediately before the fixed date shall, on or after the fixed date, continue in existence until amended or revised in terms of this Act and shall be deemed to have been granted in terms of a permit issued under this Act.

(2) Notwithstanding any other provision of this Act, this Act shall not affect any right to private water, as defined in section 2 of the repealed Act, which existed immediately before the fixed date.

125 Matters pending before Administrative Court

(1) Any application for the grant of any right or permit for the use of water shall, on or after the fixed date, be determined by the Administrative Court in terms of this Act until a catchment council whose responsibility it is to determine or deal with the matter concerned in terms of this Act has been established.

(2) Notwithstanding the establishment of a catchment council whose responsibility it is to determine or deal with the matter concerned in terms of this Act, any matter pending of before the administrative Court in terms of subsection (1) shall be determined by the Administrative Court.

126 Saving of regulations, etc.

(1) Any regulations, rules, by-laws, notices, orders or awards which, immediately before the fixed date were in force under the repealed Act shall remain in force as if they were made or granted by the appropriate authority under this Act.

(2) Any matter or thing lawfully done, made or commenced under the repealed Act which matter or thing immediately before the fixed date was of or capable of acquiring force shall, subject to this Act, continue to have or acquire force, as the case may be, and shall be deemed to have been made, done or commenced under this Act.

SCHEDULE (SECTION 9)

POWERS OF OFFICERS

1. To construct, control, establish, maintain and supervise water works.
2. To do the acts referred to in paragraph 1 at the request of any person on -
 - (a) such conditions as may be prescribed; and
 - (b) payment of such charges as may be agreed on between the Secretary and the person.
3. To make estimates, investigations, plans and surveys for water works or hydro-electric power works and to record information obtained by means of such investigations and surveys.
4. To examine and advise on any scheme for the alteration, establishment, maintenance or repair of water works submitted by irrigation companies involved in combined water schemes, local authorities, owners, lessees or occupiers of land, catchment councils or other persons on payment of such fees as may be fixed by the Minister in consultation with the National Water Authority.
5. To inspect the courses of public streams and water works and, subject to the approval of the Minister, to order any person to do such acts and execute such repairs with respect to water works as the officer concerned may consider necessary in the public interest.
6. To obtain and record information concerning the extent of land under irrigation in Zimbabwe, the quantity of water used for irrigation and the amount, nature and value of crops obtained through irrigation.
7. To establish and maintain hydrological stations and record the observations made at the stations.
8. Generally to obtain and record information and statistics relating to the hydrological conditions of Zimbabwe in respect of both surface and ground water.
9. To abstract from any public stream water required for the construction of water works.
10. To sink boreholes and wells and obtain and conserve supplies of ground water—
 - (a) on State land or Communal Land; or
 - (b) at the request of any person under such conditions and on the payment of such fees as may be fixed by the Minister in consultation with the National Water Authority.
11. While engaged in the construction or repair of any water works—
 - (a) to erect huts, tents or other temporary buildings; and
 - (b) to park vehicles and any vehicles used by the officer concerned in such construction or repair; and
 - (c) to store any equipment, machinery or supplies to be used by him in connection with such construction or repairs;on any site convenient to him:
Provided that—
 - (i) the officer concerned shall cause as little damage as possible to the site or premises;
 - (ii) before the exercise of any power conferred by this paragraph, the person in charge of the construction or repair shall give reasonable notice to the owner, lessee or occupier of any land which will be affected by the intended exercise of the power;
 - (iii) no hut, tent or other temporary buildings shall be erected within three hundred metres of any premises;
 - (iv) if the owner, lessee or occupier referred to in proviso (ii) objects to any site chosen for the erection, parking or storage referred to in subparagraph (a), (b) or (c), the objection shall be referred to the Administrative Court, which may make such order thereon as it thinks fit;

- (v) the Minister shall pay to the owner of land affected by the exercise of power conferred by this paragraph in respect of any damage caused thereto such compensation from moneys appropriated by Act of Parliament for the purpose as the Minister and such owner may agree or, failing agreement, as the Administrative Court may fix.
12. To enter at all reasonable times on any land, premises or works, with such animals, appliances, instruments, machinery, men and vehicles, and to do all such acts thereon as are necessary for or incidental to the exercise of the powers of the Minister or of the officer concerned or of any other officer or the discharge of any duty imposed on him by this Act:
- Provided that—
- (i) the officer concerned shall cause as little damage as possible to the land, premises or works;
 - (ii) the officer concerned shall not enter any premises without the consent of the owner, lessee or occupier of the premises;
 - (iii) the Minister shall pay to the owner of the land, premises or works in respect of any damage caused thereto such compensation from moneys appropriated by Act of Parliament for such purpose as the Minister and the owner may agree or, failing agreement, as the Administrative Court may fix.
13. To exercise any power, other than a power referred to in paragraphs 1 to 12, conferred on the officer concerned by or under this Act or any other enactment.

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