

WATER RESOURCES ACT 1978

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WATER RESOURCES ACT 1978

ACT No. 22 OF 1978

LN 18 of
1979

[Date of Assent: 11.12.78]

[Commencement: 1-4-79]

ACT

To provide for the use and control, the protection and conservation of water resources, and for connected purposes.

Enacted by the Assembly

Short title
and Com-
mencement

1. This Act may be cited as the Water Resources Act 1978 and shall come into operation on a date to be fixed by the Minister by notice in the **Gazette**.

Interpreta-
tion

2. In this Act;

“domestic uses” means water for personal and household needs, for the watering of domestic animals, for agricultural production on a householder’s residential land not exceeding an area of 2 hectares;

“Minister” means the Minister for the time being responsible for the administration of this Act;

“person” includes any company or association or body of persons, corporate or unincorporate, a development project and any water associations whether constituted under this Act or not;

“pollution” means any alteration of the physical, chemical or biological properties of the waters, including change of temperature, taste, or odour of the waters, or the addition of any liquid, solid, radioactive, gaseous or other substance to the water or the removal of such substances from the waters which will render, or is likely to render the waters harmful to the public health, safety, or welfare, or harmful or substantially less useful or domestic, municipal, industrial, agricultural, recreational or other lawful uses, or for animals, birds or aquatic life;

“water” means the surface water flowing in channels and ground water, percolating ground water, flood, sewage and drainage waters, pluvial water and diffused surface water (which means water occurring generally upon the surface of the earth and not flowing in channels) springs and mineral water including thermal waters, atmospheric water, snowfall and glaciers, and water artificially contained in reservoirs, canals, pipelines, tanks, wells and boreholes, as well as the artificial recharge of underground aquifers;

“water officer” means an officer appointed in terms of section 5 (4);

"well or borehole" means every water well or borehole or test hole for mineral or seismic exploration or other purposes, whether or not it reaches or produces ground water.

3. (1) Subject to subsection (4) water uses, other than **Water uses** domestic uses, shall require a permit.

(2) Any person having lawful access to water may abstract and use such water for domestic purposes.

(3) Domestic uses and the supply of population centres shall have priority over all other uses.

(4) Water uses existing at the commencement of this Act may continue without a permit for three years in the same manner and amount as at the commencement of this Act.

(5) The conditions of water uses including the purpose and amount abstracted under permit may be varied by the water officer in accordance with the public interest.

4. (1) Any person requiring a water use permit in accordance with section 3 (1) shall apply in the prescribed form to the water officer having jurisdiction. **Acquisition and termination of water use permits**

(2) Upon receipt of an application under subsection (1) the water officer shall give notice thereof in the prescribed manner and any interested person may thereupon object to the grant of a permit stating fully the grounds for such objection and shall, if he so requires, have a right to be heard in support of his objection.

(3) Whenever two or more applications are received for one and the same water use and the resource is insufficient to justify the grant of any or all, the applications shall be judged on merit with priority being given in accordance with public interest.

(4) Water use permits shall be in the prescribed form and shall state the quantity granted and the purpose for which the water is to be used.

(5) A water use permit shall not be transferable or assignable except that a water use shall pass with an approved change in the occupancy of land and be subject to the conditions governing the permit.

(6) Whenever a water use requires the construction of water works the water officer shall grant the water use permit subject to the construction of such waterworks within a specified time under specified conditions:

Provided that any time specified for the completion of the construction of waterworks may be extended by the water officer.

(7) A water use permit shall not be granted for a period exceeding five years and may be renewed for periods not exceeding three years.

(8) The water officer shall include in a water use permit such terms and conditions as he may deem necessary in the public interest.

(9) A water officer may, subject to the right of compensation, grant a water use permit which will have the effect of transferring the use of water from one person to another.

(10) A water use permit shall not contain or imply any guarantee that the water referred to in the permit is or will be available and a water officer shall not be liable for any loss or damage sustained by reason of unavailability of water.

(11) A water use permit may be revoked in whole or in part for —

- (a) any statement in an application or in any report or statement of fact required to be furnished in terms of this Act which is false in a material respect;
- (b) contravening any of the provisions of this Act;
- (c) violating any of its terms or conditions;
- (d) non-use for one year.

(12) Whenever a water officer decides to revoke a water use permit in whole or in part he shall serve a notice, setting out the facts or the conduct alleged, on the permit holder and shall afford him an opportunity of being heard.

Water administration

5. (1) The ownership of all water within Lesotho is vested in the Basotho Nation.

(2) The power to control and regulate the use of water shall be exercised by the Minister.

(3) The Minister shall participate in the administration of Lesotho's water resources when by virtue of a treaty or agreement these become international resources.

(4) Subject to the laws governing the public service the Minister shall appoint water officers to carry out the duties and functions imposed by this Act.

(5) Whenever it is necessary to set aside land for the protection, conservation or distribution of water, the provisions of any applicable law relating to the setting aside of land for public purposes shall apply.

(6) Whenever water from any source is insufficient or likely to become insufficient through drought or other causes the Minister may by notice to users of water vary or suspend the amount of water used for any period he may deem necessary.

(7) Whenever a serious shortage of water for domestic purposes exists or is threatened in any area, the Minister may by notice in the Gazette, declare that a water emergency exists in that area and direct that any person who has a supply of water in excess of his domestic purposes shall make such quantity available as the Minister may specify.

6. (1) It shall be the duty of a water officer in the first instance to hear and determine any dispute as to water uses. **Water disputes**

(2) Any person aggrieved by a decision of the water officer given in terms of subsection (1) may appeal to the Minister whose decision shall be final.

7. (1) Compensation under this Act, other than compensation as between water users under section 8(8) or compensation arising from the setting aside of land under section 5 (5), shall be determined by agreement between the Minister and the holder of the water use permit. **Compensation**

(2) Failing an agreement under subsection (1) compensation shall be determined by a single arbitrator agreed upon between them or, in the absence of agreement, appointed by the Chief Justice.

(3) Appeal shall lie to the High Court from the decision of an arbitrator under subsection (2) and the procedure on such appeal shall follow that of an appeal from a Subordinate Court.

(4) The decision of the High Court on appeal under subsection (3) shall be final.

(5) If within a period of one year from the date of the Minister's offer of compensation arbitration proceedings have not been instituted, the holder of the water use shall be deemed to have accepted the offer.

8. (1) No person shall construct or cause to be constructed a well or borehole requiring the use of mechanical drilling equipment without the prior consent of the Minister. **Wells and boreholes**

(2) No person shall abstract water from a well or borehole (except for domestic purposes and for the purpose of testing) without a permit issued by a water officer.

(3) A water officer may for good cause determine the volume of water which may be extracted for domestic purposes from a well or borehole.

(4) Every person engaged in the activity of drilling boreholes or digging wells or in any other manner concerned with the abstraction of ground water is required to register with the water officer responsible.

(5) Users of wells or boreholes shall allow the water officer or any person authorized by the Minister, at all reasonable time—

(a) to have free access to any well or borehole in order to inspect such well or borehole and the material excavated therefrom; and

(b) to measure or to obtain information as to the water used.

(6) No permit for construction of a well or borehole or use of water in a well or borehole shall be granted when such construction or use would interfere substantially with the use of other wells or boreholes.

(7) If in the drilling or use of a well or borehole, the water of which is used exclusively for domestic purposes, adjacent wells or boreholes are substantially depleted, the water officer may prevent its drilling or reduce the amount of water used or close down the well or borehole as the case may be.

(8) Whenever, due to construction or use of a well or borehole, the water of adjacent wells or boreholes are depleted, the concerned users may agree, in consultation with the water officer, to arrange for the settlement of the dispute including, if necessary, provision for compensation.

(9) Users of wells or boreholes which are subject to natural overflow or wastage shall be required to install well covers and taps or other waste control devices.

Servitudes

9. (1) Anyone who applies for a water permit which if granted, would require the use of land occupied by another, shall apply at the time for a servitude over that land.

(2) The occupier of the land over which the servitude is sought shall be notified of the application for a permit in terms of sub-section (1) and he shall be entitled to be heard as to the terms and conditions of the proposed servitude.

(3) Any permit to which this section applies shall state the terms and conditions of the servitude.

(4) The holder of the servitude shall be liable for damage to the land over which the servitude is held and shall take the necessary measures to avoid occurrence of damage.

(5) Where the consent of the Minister of Interior is required for the creation of a servitude over land no servitude shall be granted under this section or, if granted, shall have effect, unless such consent has first been obtained.

Pollution

10. (1) Any person who wilfully or through negligence pollutes or fouls any water so as to render it harmful to man, beast, fish or vegetation is guilty of an offence and liable —

(a) in the case of first conviction to a fine of 100 rand and to six months' imprisonment.

(b) in the case of a second or subsequent conviction, to a fine of 500 rand and to two years' imprisonment.

(2) This section shall not apply to pollution resulting from the injection into water by a water officer or persons authorized by him of chemical or radio-active tracers for purposes of measurement.

Failure to prevent pollution

11. (1) Whenever a water officer is satisfied that water is being fouled or polluted, he shall, in the prescribed form, call upon the person responsible therefor to take adequate measures to prevent such fouling or pollution within a specified period:

Provided that on good cause being shown, the water officer may, on application, extend the period specified.

(2) Any person who when called upon to take steps in accordance with subsection (1), fails within the specified time to take such adequate steps to prevent the fouling or pollution of water, shall, in addition to any penalties to which he may be liable under section 10, be liable on conviction to a penalty not exceeding twenty rand a day until the matter is rectified.

12. Any person, who, without lawful right or authority — **Offences and penalties**

- (a) alters, enlarges, obstructs or tampers with any works, or destroys, defaces or moves any level marks, beacons or other structure or appliance erected or made in conjunction with such works;
- (b) uses water without a permit where such permit is required under section 3;
- (c) contravenes section 8 (1) or 8 (3), or fails to register in compliance with section 8 (4);
- (d) takes water for purposes other than those authorised under this Act;
- (e) interferes with or alters the flow of the water or of a stream or any works, or interferes with the distribution of such water, or, after notice to refrain from doing so, takes more water than he is entitled to or use it in a manner contrary to this Act or any regulations made thereunder;
- (f) while using or being liable for the maintenance of any works, to the prejudice of others, wastes or does not take due precaution to prevent the waste of water from such works, or fails properly to maintain the works and keep them in repair;
- (g) wastes water;
- (h) aids or abets or knowingly permits any such act or default in contravention of paragraphs (a) to (g), is guilty of an offence and liable:
 - (i) in the case of a first offence, to a fine of 50 rand and to six months' imprisonment.
 - (ii) in the case of a second or subsequent offence, to a fine of 200 rand and one year's imprisonment.

13. The Minister may make regulations generally for the better carrying out and giving effect to the provisions of this Act, and, without prejudice to the generality of the foregoing, such regulations may — **Regulations**

- (a) determine the duties and responsibilities of water officers;
- (b) prescribe the forms and permits to be used;
- (c) declare certain areas to be protected areas for the purposes of protection and development of water resources projects and provide for the conditions of use or entry or for restriction of use or entry in such areas;
- (d) provide for the formation of Water Users' Associations, their powers, functions and duties;

- (e) provide for establishing and maintaining hydrographic stations on any private land, erecting gauging weirs, staff gauges or any other devices for the measurement of water, obtaining and recording observations made at such hydrographic stations;
- (f) provide for inspecting any works on the course of any stream and ordering any person to do such acts and execute such repairs with respect to his works as may be deemed necessary in the public interest and, in default of compliance within the time specified in such order, executing the same and recovering the cost of such execution from the person making such default;
- (g) provide for the exercising of general supervision over all streams and aquifers in Lesotho, protecting the source of supply of any stream or spring, and, if he deems it necessary or expedient, causing the channels of such stream to be cleaned, deepened, widened or otherwise improved; preventing the leakage or flow of any stream from the surface into aquifers; preventing any waste or any unlawful diversion, abstraction, storage or use of water; causing to be removed any obstruction unlawfully placed in a stream, and preventing any unlawful act calculated to diminish the quantity of water in any part of a stream;
- (h) for the purpose of protecting any source of supply or any stream or spring by notice in the Gazette, define the area of such source and prohibit or restrict entry into the area;
- (i) require persons to whom the right to use water has been granted under this Act to erect adequate diversion sluices at their own expense, and to record and furnish measurements as to the volume of the water abstracted or allowed to pass at or near the point of abstraction by the use of instruments specified or supplied for the purpose.
- (j) provide for the division of Lesotho into areas for the purposes of water administration and for the assignment to water officers of responsibility over the areas.