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## CHAPTER 72:03

## WATER RESOURCES

15 of 1969 An Act to make provision for the control, conservation, ~~appropriation~~  
 29 of 1970 ment and use of the water resources of Malawi and for purposes  
 9 of 1979 incidental thereto and connected therewith

[3RD NOVEMBER, 1979]

## PART I

## PRELIMINARY

- Short title      1. This Act may be cited as the Water Resources Act.
- Interpreta-      2. In this Act, unless the context otherwise requires--  
 tion
- “domestic purposes” includes the provision of water for household and sanitary purposes and for the watering and dipping of stock;
- “easement” means a right to enter on the land of another for the purpose of constructing or maintaining works thereon, or storing the water thereon or carrying water under, through or over such land, or for all or any of such purposes;
- “existing right” means any right to public water--
- (a) which at the commencement of this Act has been lawfully acquired, is possessed by, and is being beneficially exercised by, any person; or

"public water" means all water flowing over the surface of the ground or contained in or flowing from any river, spring or stream or natural lake or pan or swamp or in or beneath a watercourse and all underground water but excluding any stagnant pan or swamp wholly contained within the boundaries of any private land;

"underground water" means water naturally stored or flowing below the surface of the ground and not necessarily apparent on the surface of the ground;

"water right" subject to the provisions of section 8 includes any existing right;

"works" includes canals, channels, reservoirs, embankments, weirs, diversions, dams, wells (other than hand operated wells), boreholes, pumping installations, pipelines, sluice gates, filters, sedimentation tanks or other works constructed for or in connexion with the impounding, storage, passage, drainage, control, use or abstraction of public water, or the development of water power, or the filtration or purification of public water, or the protection of rivers and streams against erosion or siltation, or the protection of any work or in connexion with or for flood control or the conservation of rain water.

## PART II

### OWNERSHIP OF AND INHERENT RIGHT TO THE USE OF WATER

(1) The ownership of all public water is vested in the resident. Ownership and control of public water

(2) The control of all public water is vested in the Minister and such control shall be exercised in accordance with the provisions of this Act.

4--(1) There is hereby established a Board, to be known as the Water Resources Board, which shall, subject to any special or general directions of the Minister, exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as the Minister may, for the better carrying out of the purposes of this Act, by writing under his hand, delegate to it. Water Resources Board

(2) Any of the powers conferred or duties imposed on the Water Resources Board under this Act, may, unless the Minister otherwise directs, by resolution of the Board, be delegated to any member of the Board or to any committee, body, authority or person.

Cap. 72:03

Water Resources

Schedule (3) The provisions of the Schedule hereto shall have effect as to the constitution and proceedings of, and otherwise in relation to the Board.

Prohibition of use of water except with lawful authority 5.--(1) Subject as hereinafter provided, no person shall dam, store, abstract or use public water or for any such purpose construct or maintain any works except in accordance with water right granted or deemed to be granted under this Act;

Provided that nothing in this section shall prevent the taking of public water for lighting fires.

(2) Any person who diverts, dams, stores, abstracts or uses public water or who, for any such purpose constructs or maintains any works except under and in accordance with the provisions of this Act and of any other written law shall be guilty of an offence.

Right to public water for domestic purposes 6.--(1) Subject to the provisions of subsection (2) any person having lawful access to public water may abstract and use the same for domestic purposes:

Provided that nothing in this subsection shall authorize the construction of any works.

(2) Where in the opinion of the Board the use of public water for domestic purposes at any place is causing damage to the natural resources of the area in the vicinity of that place, it may, by notice in writing served on any person making use of the water at that place, direct that such person takes such measures as may be specified in the notice for the purpose of avoiding or mitigating such damage.

(3) Without derogating from the generality of the provisions of subsection (2) a notice given in accordance with that subsection may direct that any user of water at any place shall not water more than the number of stock specified in the notice or that no more than a stated number of stock may be watered at that place or that not more than a stated gallonage may be abstracted.

(4) Any person failing to comply with a notice given in accordance with subsection (2) shall be guilty of an offence.

No prescriptive rights to use of water 7. No person shall, after the commencement of this Act, acquire or be deemed to have acquired any right, property, privilege or interest to divert, dam, store, abstract or use any public water by reason of length of use or elapse of time, and no conveyance, lease or other instrument shall be effectual to convey, assure, demise, transfer or vest in any person any such right or interest.

8.—(1) Every person claiming an existing right may, within six months from the day on which this Act comes into operation, notify the Minister of such claim. Notification of existing rights

(2) Every existing right shall determine if the person entitled thereto fails to notify the Minister in accordance with subsection (1) of the existence of that right before the expiration of the period allowed for notification:

Provided that such notification shall not be required in the case of a subsisting water licence issued by the Minister since the 1st April, 1967, which licence shall be deemed to be a water right issued under this Act.

9.—(1) On the receipt by the Minister of a notification under section 8 he shall, after making such investigation as he considers advisable, and if he is satisfied that an existing right has been proved to exist, record such right and issue a certificate in respect thereof. Minister to record existing rights

(2) On the recording of an existing right in accordance with subsection (1) the existing right shall be deemed to be a water right granted under this Act.

#### PART IV

#### GRANT OF WATER RIGHTS

10.—(1) The Minister may grant to any person the right to divert, dam, store, abstract, or use public water from such sources in such quantity, for such period, whether definite or indefinite, and for such purpose as may be specified in the water right, subject to such terms and conditions as he may deem fit. Grant of water rights

(2) Application for the grant of a water right shall be made to the Board which shall give notice of the same in the prescribed manner.

(3) Any interested person may notify the Board within such period as may be prescribed that he objects to the grant of a water right and shall specify the grounds of such objection, and shall, if he so requires, have a right to be heard thereon by the Board.

(4) The Board shall consider every application and any objections made to it in respect thereof and may, after consulting such persons and authorities, if any, as it may decide to consult, submit the application together with its recommendations to the Minister, and the Minister may grant or not grant the right in his discretion.

PART V

REVISION, VARIATION, DETERMINATION AND DIMINUTION OF WATER RIGHTS, POLLUTION OF PUBLIC WATER

Suspension or variation of water rights on account of drought etc.

11.—(1) Where in the opinion of the Minister the supply of public water from any source or in any area is insufficient or is likely to become insufficient, the Minister may at any time and from time to time, by notice in writing to the holders of water rights, suspend or vary all or any rights to abstract or use water from that source, or in that area, for such period as he may deem necessary, and thereupon such rights shall cease for the period of suspension or shall be exercisable only as so varied, as the case may be.

(2) No right to compensation shall arise or accrue by reason of the suspension or variation of a water right under this section.

Determination or diminution of rights where water required for public purpose

12.—(1) Where the Minister is satisfied that public water is required for a public purpose he may, by notice in writing addressed to the holder of any water right, determine or diminish that right to the extent that such water is required for the aforesaid public purpose, and thereupon the right shall cease or shall be exercisable only as so diminished as the case may be.

(2) A declaration in writing under the hand of the Minister that public water is required for a public purpose shall be conclusive evidence of that fact.

(3) The holder of any right shall be entitled to receive such compensation in respect of the loss resulting from the determination or diminution of the right under this section as may be reasonable in all the circumstances, and in the absence of agreement the High Court shall determine the amount of such compensation.

Where quantity unspecified Minister may specify quantity

13. Where any right to the use of an unspecified quantity of public water subsists, the Minister may at any time specify the quantity which may be used, and thereafter the water right shall be deemed to be so varied:

Provided that the Minister shall, before so specifying give the holder of the right the opportunity of making representations thereon, and shall take into consideration any such representations.

Determination for

14. Where the holder

The Minister may declare the right to be determined.

If at any time the Minister has reason to believe that the holder of a water right has not, during the preceding two years, made full beneficial use of that right, he may, after giving the holder of the right opportunity of making representations, by notice in writing addressed to such holder and having regard to the investment in capital works and the long term national interests involved in the undertaking concerned—

Determina-  
tion or  
diminution  
for non-use

(a) declare the right determined; or

(b) declare the right diminished or modified in such respects as may be specified in the declaration.

(1) Any person who, save under the authority of this Act or any other written law, interferes with or alters the flow of or pollutes or fouls any public water, shall be guilty of an offence.

Pollution of  
public water

(2) For the purposes of this section the polluting or fouling of public water means the discharge into, or in the vicinity of public water, or in a place where public water is likely to flow, of any matter or substance likely to cause injury whether directly or indirectly to public health, livestock, animal life, fish, crops, orchards or gardens which are irrigated by such water or any product in the processing of which such water is used or which occasions, or which is likely to occasion, a nuisance.

## PART VI

### MISCELLANEOUS POWERS

(1) Where any person who is the holder of a water right who has applied for the grant of a water right is unable fully to enjoy the benefit of the right without an easement and has failed to secure an easement by agreement with the owner or occupier of the land over which the easement is required he may apply to the Board for the creation of such easement.

Power to  
create  
easement

(2) Upon the receipt of any such application the Board shall give notice of the application on the owner or occupier of the land over which an easement is sought and on any other persons known to be interested in the land.

(3) Any interested person may notify the Board that he objects to the creation of the easement under this section or that he desires to be heard on the subject of compensation.

(4) The Board shall consider any objection and shall give an opportunity of being heard to all persons who so require, and

shall thereafter submit such application together with its recommendations to the Minister who may in his discretion by a certificate in the prescribed form create such easement as he considers appropriate with or without compensation, or may refuse to create an easement, or may make ancillary orders in connection therewith.

(5) If the person enjoying the benefit of an easement fails to pay such compensation as directed or to comply with any ancillary orders made by the Board within such time as is therefore allowed by the Board, the Minister may by notice in writing to that person determine the easement.

(6) Compensation due under this section may be sued for as a civil debt.

Right to  
call for  
information

18. The Board may, for the purpose of this Act, call upon any person to give information on such matters and in such manner as may be prescribed.

Power to  
inspect  
works etc.

19.—(1) The Board may, at all reasonable times, enter upon any land and may inspect any works constructed or under construction thereon and may ascertain or cause to be ascertained the amount of water abstracted or capable of being abstracted by means of such works or otherwise.

(2) If in the opinion of the Board any works are so constructed, maintained or used or are being so constructed as to constitute a danger to life, health or property or damage to the natural resources of the area, it may require any person for the time being enjoying the benefit of those works to carry out such demolitions or to change the use of the works in such manner as it considers necessary and may by notice in writing suspend any water right until it is satisfied that such requirements have been fulfilled and thereupon the right shall cease for the period of the suspension.

(3) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of subsection (1) of this section.

Power to  
require  
demolition  
of unlawful  
works

20.—(1) The Board may by notice in writing require a person—

(a) who has constructed or extended, or caused to be constructed or extended any works contrary to any provision under which such person was required or authorized to construct or extend the same or cause them to be constructed or extended;



(2) If the person fails to comply with a notice served on him under subsection (1), the Board may cause such works to be modified, demolished or destroyed and recover the cost of the modification, demolition or destruction from the person in default by civil suit.

(3) Any person who fails to comply with a notice given under subsection (1) shall be guilty of an offence.

11.—(1) The Board may at all reasonable times enter upon any land for the purpose of making such investigations and surveys as the Board considers necessary in the interest of the conservation and best use of water in Malawi, and may establish and maintain or cause to be established and maintained on any such land, without other authority than this Act, hydrometeorological stations and other works for the purpose of obtaining and recording information and statistics as to the hydrometeorological conditions of Malawi.

Power to establish hydro-meteorological stations and make surveys

(2) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of subsection (1) of this section but the owner or occupier of such land shall be entitled to such compensation for all damage done and for any land occupied for the construction of works as the Minister may determine to be reasonable in all circumstances.

(3) Any person interfering with or damaging any such station or works constructed under the provision of subsection (1) shall be guilty of an offence.

12.—(1) The Minister may, in the public interest declare any part of Malawi to be a controlled area for the purposes of this Act.

Declaration of controlled area

(2) Within a controlled area the Minister may establish a comprehensive scheme for the development of the natural resources of such area.

(3) For the purpose of establishing such a comprehensive scheme the Minister may, after giving the holder of the right an opportunity of making representations, in respect of any subsisting water right within a controlled area—

- (i) declare the right determined; or
- (ii) declare the right diminished or modified in such respects as may be specified in the declaration;

(iii) grant the holder of such right a new water right upon such terms and conditions as the Minister may in his absolute discretion deem fit:

Provided that the holder of any right shall be entitled to receive compensation in respect of any loss resulting from the determination or diminution of the right as provided in section 12 (3).

(4) The Minister may construct and maintain, or cause to be constructed and maintained, such works as may be expedient for the better control of land and water within a controlled area:

(5) The Minister may levy charges upon the beneficiaries of any comprehensive scheme within a controlled area in order to defray expenses of such construction or maintenance or both, and of the services appertaining thereto.

(6) The Minister may create an authority for the purpose of administering the natural resources of the controlled area, and for the construction and maintenance of any necessary works, for making necessary payments and receiving revenue in connection with the administration and betterment of the natural resources of the controlled area.

(7) The authority created under subsection (6) above shall be subject to the Minister's general and special directions.

## PART VII

### MISCELLANEOUS

Service of notices

23. Any notice required to be given under this Act shall be deemed to be sufficiently served if sent by prepaid registered post addressed to the person to whom it is required to be given at his last known address, or if such person is a company, at its registered office or principal office or place of business in Malawi, and in the case of the Minister if addressed to him at the Ministry of Agriculture and Natural Resources, P.O. Box 30134, Lilongwe 3.

Regulations

24. The Minister may make regulations—

(a) prescribing anything which is required to be, or which may be, prescribed under this Act;

(b) providing for forms to be used and the fees to be paid in respect of any matter required or permitted to be done under this Act;

(c) providing for the advertisement of applications for the use of public water and for the giving of notice to interested persons;

association of persons, regulating the division and distribution of water between those persons;

(g) prescribing the matters on which and the manner in which persons may be required to give information as provided in section 18;

(h) generally for the better carrying out of the provisions of this Act.

15.—(1) A person who is guilty of an offence under section 5 shall be liable to a fine of K1,000 and to imprisonment for one year. Penalties

(2) A person who is guilty of any other offence under this Act shall be liable to a fine of K500 and to imprisonment for six months.

16. Notwithstanding anything contained in any other written law, any water right or right to regulate, control or interfere in any way with any public water granted or recognized by or under any other written law shall, subject to notification of the Minister under section 8, be deemed to be a right granted or recognized under this Act, and may be terminated, varied or renewed in accordance with this Act, and any power or duty conferred or imposed on a Minister or any other person or authority under any written law to grant or recognize any such right or to terminate, vary, or renew any such right shall be exercised or performed only with the concurrence of the Minister responsible for water acting on the advice of the Board. Other laws

#### SCHEDULE

(s. 4 (3))

##### CONSTITUTION AND PROCEEDINGS OF BOARD

Membership of the Board shall be comprised as follows—

(a) two representatives of the Ministry responsible for agriculture and natural resources;

(b) a representative of the Office of the President;

(c) a representative of the Water Resources Division;

(d) a representative of the Ministry responsible for trade and industry; and

(e) not more than six other members as the Minister may determine, appointed by the Minister in his discretion.

Constitution  
of Board  
29 of 1970  
9 of 1979

17. The Minister shall appoint one of the members to be Chairman of the Board, and members of the Board shall elect one of their number to be Deputy Chairman, who shall in the absence or temporary incapacity of the Chairman perform the functions of Chairman.

Chairman  
and Deputy  
Chairman

L.R.O. 1/1980

Tenure of office

3.—(1) The Chairman and the members appointed under paragraph 1 (e) shall, subject to the Minister's power, for sufficient reason, either to terminate their appointments, hold office for three years, and shall be eligible for reappointment.

(2) Any member of the Board may at any time resign by giving notice in writing to the Minister, and from the date specified in the notice he shall cease to be a member of the Board.

(3) If any member of the Board is, without the permission of the Chairman, or in the case of the Chairman without the permission of the Minister, absent from more than three consecutive meetings of the Board, or is absent from Malawi for a period exceeding six months he shall cease to be a member of the Board.

Casual vacancies

4. Where any member of the Board ceases to be a member before the normal expiration of his term of office, the Minister may appoint another member in his place to hold office until such first time the member's term of office would have expired had he not ceased to be a member as aforesaid.

Quorum and procedure

5.—(1) The Board shall meet at such times and such places as may be necessary or expedient for the transaction of business.

29 of 1970

(2) At any meeting of the Board one representative each from the Ministry of Agriculture and Natural Resources, Office of the President, the Water Resources Division and one other Member shall constitute quorum.

(3) Decisions of the Board shall be in accordance with the majority of members present and voting thereon, but in the event of an equality of votes the Chairman or the person performing the functions of Chairman shall have a casting vote in addition to his deliberative vote.

(4) The Board may in its discretion invite any person to attend a meeting of the Board, and such person may, with the consent of the Chairman or the person performing the functions of Chairman, attend but shall have no power to vote at that meeting.

(5) Subject to the provisions of this paragraph and to any directions given by the Minister, the Board may regulate its own procedure.

Establishment of committees  
29 of 1970

(6) The Board shall have the power to appoint committees to perform such duties as the Board may delegate to them.

Remuneration  
29 of 1970

6. Members of the Board and Committees may be paid out of funds provided by Parliament such expenses as the Minister may from time to time determine.