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GOVERNMENT NOTICE

DEPARTMENT OF WATER AFFAIRS AND FORESTRY

No. 926

23 September 2005

**NOTICE IN TERMS OF SECTION 148(5)(c) OF THE NATIONAL WATER ACT, 1998
(ACT NO. 36 OF 1998)**

PUBLICATION OF THE WATER TRIBUNAL RULES

By virtue of the powers delegated to me through section 63, read in conjunction with section 148 (5)(c), of the National Water Act, 1998 (Act No. 36 of 1998), I, Matthews Kgomoane Mathipa, in my capacity as Director: Legal Services, hereby publish the Water Tribunal Rules, as made by the Chairperson of the Water Tribunal and approved by the Minister of Water Affairs and Forestry, in the Schedule hereto.



MATTHEWS KGOMOSOANE MATHIPA
DIRECTOR: LEGAL SERVICES

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1. DEFINITIONS

In these rules any word or expression to which a meaning has been assigned in the Act shall have the meaning **so** assigned, unless the context indicates otherwise.

“The Act” means the National Water Act, 1998 (Act No. 36 of 1998);

“Appeal” means any appeal lodged with the Water Tribunal in terms **of section 148(1) of the Act**;

“Application” means a claim lodged with the Water Tribunal under section **22(a) of the Act**;

“Appellant” means a party that initiates appeal;

“Applicant” means a party that initiates application;

“Chairperson” means the Chairperson as contemplated in section **146(3) of the Act**;

“Deputy-Chairperson” means the Deputy-Chairperson as contemplated in section **146(3) of the Act**;

“Member” means a member of the Tribunal as contemplated in section **146(3) of the Act**.

“Notice” means a written notice and ‘notify’ means to give notice in writing.

“Officer” means an official of the Department designated to provide administrative support to the Tribunal in terms of section **147(2) of the Act**;

“Rules” means these rules and includes **any** forms attached hereto or referred to herein.

“Tribunal” means an independent body established under section 146(1) of the Act;

These rules may be cited for all purposes as the Water Tribunal Rules.

2. LANGUAGE OF RECORD AND BUSINESS OF THE TRIBUNAL

- (1) The language of record and the business of the Tribunal shall be English.
- (2) Any person appearing before the Tribunal shall be entitled to speak any language of their choice and where such language **is** not English, such person shall notify the Officer at least ten **(10) days** before the relevant sitting **or** hearing.

3. LODGING OF APPEALS AND APPLICATIONS

- (1) To appeal or apply, in terms of section 148(1) or section 22 of *the* Act, the Appellant or an Applicant must submit **a** notice of appeal or application in writing **and** clearly stating –
 - (a) the full names and current address of such Appellant or Applicant;
 - (b) the grounds for such appeal *or* application; and
 - (c) the signature of such Appellant or Applicant or his duly authorised representative.
- (2) The grounds of appeal may be amplified at any time prior to or during the course of the appeal.
- (3) An appeal or an application for the determination of compensation must be commenced by serving a copy of a written notice of appeal or application on the relevant Responsible Authority, Catchment Management Agency or Water Management Institution and to other affected parties and lodging the original with the Tribunal.

- (4) The Tribunal may decline to consider any appeal or application unless *such* an appeal or application *is* submitted in a prescribed form.

4. TIME LIMIT FOR APPEAL, APPLICATION AND CONDONATION

- (1) An appeal must be commenced within thirty days after –
- (a) publication of the decision in the Gazette;
 - (b) notice of the decision is sent to the Appellant; or
 - (c) reasons for the decision are given, whichever occurs last.
- (2) An application for the determination of compensation must be commenced within six **(6)** months of the relevant decision of the responsible authority.
- (3) Where the responsible authority has notified a person of a decision by means of a written document, the date of that document shall be deemed to be the date on which that decision was given.
- (4) The Tribunal may, for good reason, and on application by any party grant condonation of the late lodging of an appeal or application.

5. NOTIFICATION OF SITTINGS

- (1) The Officer must serve notice of the sitting on –
- (a) an Appellant or Applicant; *or*
 - (b) the representative of record of an Appellant or Applicant; and
 - (c) any other person affected by the subject matter of the appeal or application.

- (2) The Officer must notify all the affected parties at least twenty one (21) days before the scheduled sitting and such notice must reflect –
- (a) the names of the parties;
 - (b) the subject matter of the appeal or application; **and**
 - (c) date, time and venue fixed for such sitting.

6. DEFERMENT OF SITTINGS OR POSTPONEMENT

- (1) The Chairperson of the Tribunal may be requested in writing for a deferment of ~~a~~ a sitting or a postponement *of* hearing and such a request must include the reasons and reach the Chairperson at least ten (10) days before the scheduled date *of the* sitting in issue or hearing.
- (2) The Chairperson of the Tribunal or a member thereof nominated by the Chairperson may grant a deferment of a sitting or postponement of a hearing if satisfied that there is a good cause for a requested deferment or postponement.
- (3) If a deferment or postponement has been granted, the officer must give notice *of* such deferment or postponement to all the affected parties, within three (3) days after the Tribunal's decision to grant ~~a~~ a deferment or postponement.

7. HEARING OF APPEALS AND APPLICATIONS

- (1) Appeals and applications to the Tribunal take the form of a rehearing.
- (2) The Tribunal may receive written and/or oral evidence, and must give the Appellant or Applicant and every party opposing the appeal or application an opportunity to present their case and to question any person who testified at the hearing.

- (3) The Chairperson of the Tribunal must allow the Appellant or Applicant to present his or her case, first, whereafter any affected party must be afforded an opportunity to present their case, and thereafter the Appellant or Applicant must be afforded an opportunity to respond to any information or representations forthcoming from any affected person.

8. RIGHT TO REPRESENTATION

- (1) A party to an appeal or application may be represented by a person *of* that party's choice provided such representation **is** duly authorised by the Appellant or Applicant.
- (2) When an Appellant or Applicant chooses to be represented, **his** or her representative must submit a written proof together with notice of appeal or application to the Tribunal.
- (3) A party does not need to be represented by a legal representative **before** the **Tribunal**.

9. HEARING OF APPEAL IN THE ABSENCE OF EITHER OF THE PARTIES TO THE APPEAL OR APPLICATIONS

- (1) Where a notice *of* sitting was served in terms of rule **4**, the Tribunal may hear an appeal or application in the absence *of* an Appellant or Applicant or any other affected party to the appeal if –
 - (a) such Appellant or Applicant or any other affected party indicated that he or she does not wish to avail him or herself for the sitting; or
 - (b) such Appellant or Applicant or such other party failed to appear for the sitting without providing any reasons; or

- (c) satisfied that the reasons forwarded to it by such Appellant or Applicant or **any** affected party are not of such a nature as to prevent his or her attendance.

10. CONSOLIDATION OF APPEALS AND APPLICATIONS

- (1) If it appears to the Tribunal that in **any** number of appeals or applications –
- (a) some common question of fact or law arises; or
- (b) it *is* practical and appropriate to proceed with the appeals or applications under this regulation,

the Tribunal may, with the agreement of all the parties, **decide** that such appeals or applications be heard together.

11. RECORDS OF PROCEEDINGS

- (1) The Tribunal must keep record of every appeal or application lodged, every document related thereto and a summary of the proceedings or minutes of sittings related thereto.
- (2) Every summary of the proceedings or minutes of a sitting must be made by means **of** shorthand notes or by mechanical means.
- (3) The records referred to in sub-rule (1) must be kept in terms of the relevant law governing the keeping of records and archives.

12. SUBPOENAS AND EVIDENCE

- (1) The Water Tribunal may –
 - (a) subpoena for questioning any person **who** may be able to give information relevant to any of the issues; or
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to any issue, to appear before the Tribunal and to produce that book, document or object.
- (2) A subpoena must be signed by a Tribunal member and must –
 - (a) specifically require the person named in it to appear before the Tribunal;
 - (b) state the date, time and place at **which** the person must appear; and
 - (c) sufficiently identify any book, document or object to be produced **by** that person.
- (3) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies to the questioning of any person and to the production of any **book, document or object in** terms of this sub-rule.
- (4) The party at whose request a subpoena was issued must pay witness fees, travel and subsistence allowances to a person subpoenaed to appear before the Tribunal at the applicable High Court scale.
- (5) The Tribunal may administer an oath or accept an affirmation from any person called or subpoenaed to give evidence.

13. INSPECTION IN-LOCO

- (1) The Tribunal may conduct an inspection in-loco before hearing an appeal: Provided that an appellant and all other parties have been notified in advance of such intended inspection to which each **party** has the right **of** attendance and representation.
- (2) The Chairperson must record any matters which the parties may point out to the Tribunal or which the Chairperson or any member of the Tribunal may observe during inspection.
- (3) **The** matters referred to in sub-rule (2) above must form part of the hearing.

14. WITHDRAWAL OF APPEALS

- (1) The Appellant or Applicant who decides to withdraw an appeal or application must notify the Tribunal in writing about his or her intention to **do so** at least ten **(10)** days before the scheduled date of sitting.

15. DECISIONS OF THE WATER TRIBUNAL

- (1) The decision *of* the Water Tribunal must be in writing. **A** majority decision *of* members hearing **a** matter (if the matter is heard by more than **two** members) constitutes a decision of the Tribunal.
- (2) The Tribunal must, at the request *of any party* and within a reasonable **time**, give written reasons for its decision.

16. CONTEMPT OF THE WATER TRIBUNAL

- (1) A person commits contempt of the Water Tribunal –
- (a) if, after having been subpoenaed to appear before the Tribunal, the person without good cause **does** not attend;
 - (b) if the person, without good cause, fails to produce any book, document or object specified in a subpoena;
 - (c) if, after having appeared in response to a subpoena, the person fails to remain in attendance until excused **by** the Tribunal;
 - (d) by refusing to take the oath or to make an affirmation **as** a witness when the Tribunal so requires;
 - (e) by refusing to answer any question fully and to the best of that person's knowledge and belief, but subject to rule 11(3);
 - (f) if during the proceedings, the person behaves improperly; or
 - (g) if the person prejudices or improperly influences the proceedings **of** the Tribunal.
- (2) The Water Tribunal may refer any contempt to a High Court. A High Court may make an appropriate order.

17. SHORT TITLE

These are the Water Tribunal Rules and take effect on publication thereof in the Government Gazette by the Minister.

18. ANNEXURES**ANNEXURE 'A'****IN THE WATER TRIBUNAL****IN THE APPEAL OF:****[NAME OF APPELLANT]****APPELLANT****AND****[NAME OF THE DEPARTMENT AGAINST
WHOSE DECISION APPEAL IS LODGED]****FIRST RESPONDENT****OR****[NAME OF WATER MANAGEMENT INSTITUTION]****FIRST RESPONDENT****OR****[NAME OF CATCHMENT MANAGEMENT AGENCY]****FIRST RESPONDENT****[NAME OF INTERESTED PARTY (IF APPLICABLE)]****SECOND RESPONDENT**

**NOTICE OF APPEAL IN TERMS OF 148(1) OF THE
NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998)**

- 1.** Take notice that the Appellant intends appealing at a date, time and place determined by the Tribunal Officer against the decision of the *Responsible Authority/Catchment Management Agency/Water Management Institution.

2 The appeal is based on the following grounds
[set out each ground succinctly]

3. And take note that the Appellant appoints _____
as Appellant’s representative in this matter.

4. Take note also that the Appellant will accept services of all documents on the
above matter at the *Appellant’s address/address of the offices of the Appellant’s
representative, which is set below:

*(delete whichever is not applicable)

SIGNED AND DATED AT _____ THIS _____ DAY OF _____

APPELLANT/REPRESENTATIVE

ANNEXURE 'B'

IN THE WATER TRIBUNAL

IN THE APPLICATION OF:

[NAME OF APPLICANT]

APPELLANT

APPLICATION FOR DETERMINATION OF COMPENSATION
 IN TERMS OF SECTION 22 OF THE NATIONAL WATER ACT, 1998
 (ACT NO.: 36 OF 1998)

1. Take notice that the Applicant intends applying at a date, time and place determined by the Officer for the determination of compensation in terms of section 22(6) of the Act.

2. The application is based on the following grounds:
 [set out each ground succinctly]

3. And take note that the Applicant appoints _____
 as Applicant's representative in this matter.

4. Take note also that the Applicant will accept services of all documents on the above matter at the *Applicant's address/address of the offices of the Applicant's representative, which is set below:

*(delete whichever is not applicable)

SIGNED AND DATED AT _____ THIS _____ DAY OF _____

APPLICANT/REPRESENTATIVE

ANNEXURE 'C'

IN THE WATER TRIBUNAL

IN THE APPEAL/APPLICATION OF:

[NAME OF APPELLANT/APPLICANT]

**SUBPOENA IN TERMS OF SECTION 7(1) OF SCHEDULE 6 OF
THE NATIONAL WATER ACT, 1998 (ACT NO.: 36 OF 1998)**

**[STATE NAME, OCCUPATION AND PLACE OF BUSINESS OR RESIDENCE OF PERSON
BEING REQUIRED TO APPEAR]**

- 1.**
- 2.**
- 3.**
- 4.**

You are hereby subpoenaed **to** appear in person before the above-named Tribunal **at** _____ on _____ day of _____ and thereafter **to** remain in attendance until excused by the Tribunal **in** regard to all matters within your knowledge relating to the matter pending before the Tribunal wherein **the** *appellant/applicant **is** seeking

YOU ARE REQUIRED to bring and produce to the Tribunal the following:

[insert accurately the document, book or thing to be produced]

- 1.
- 2.
- 3.

BE INFORMED that should you on any account neglect to comply with any of the provisions of this subpoena the Tribunal will be left with no option but to resort to the provisions of item 8(2) of schedule 6 of the Act.

*(delete whichever is not applicable)

SIGNED AND DATED AT _____ **THIS** _____ **DAY OF** _____

TRIBUNAL

CHAIRPERSON/MEMBER
