

THE WATER ACT

Date of commencement: 1st March, 1968.

Date of Assent: 20th February, 1968.

Arrangement of Sections

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An Act to consolidate and amend the laws in force in Swaziland relating to the control, conservation and use of water for domestic, agricultural, urban and industrial purposes and to make provision for the control of certain activities on or in water in certain areas.

PART 1

PRELIMINARY

Short title.

1. This Act may be cited as the Water Act, 1967.

Interpretation.

2. In this Act, unless the context otherwise requires —
 - "area" includes any number of areas whether or not contiguous;
 - "board" means the water apportionment board established under section 23;
 - "concession" means any grant of land or the use thereof made by or on behalf of the Ngwenyama and confirmed by the late Chief Court or by the High Commissioner under the Concessions Act No. 3 of 1904, and includes any right originally included in any such grant which has become vested in or has been expropriated on behalf of the Crown, whether or not such grant has been cancelled;
 - "deeds office" means the deeds office created by section 1 of the Deeds Act No. 10 1902;
 - "department" means the department of Public Works;
 - "chief engineer" means the officer for the time being holding the appointment of chief engineer in the Government or any person appointed to act in that capacity;
 - "existing right" means —
 - (a) any right to water acquired by any person by deed of servitude, agreement, order of a competent court or other lawful means; and
 - (b) any right protected by section 4;
 - "Government waterwork" means a waterwork constructed or maintained or proposed to be constructed or maintained by, or under the control of the Government, and includes water impounded and stored in such work, but does not include a waterwork constructed by the Government for or on behalf of any person;
 - "irrigation board" means a board established under section 87;
 - "irrigation district" means an area declared under section 82(3)(a) or section 83(1)(a) to be an irrigation district and includes any such area as reconstituted under section 83(4) by excluding any portion thereof or including any additional area therein, and any portion of an existing irrigation district constituted as a separate irrigation district under section 83(4) either alone or together with any other area, including any such area forming part of an existing irrigation district;

"land right" means and includes —

(a) a right to land derived from a concession making a grant of land;

(b) a right to land derived from a concession conveying a lease or grant of land for a limited period if freehold title may in terms of any law be issued in respect of such land;

(c) the right to land held under a freehold grant made in terms of any law or under a deed of transfer of such a grant or under a certificate of title;

(d) the right of the Government to any land vested in the Government, whether or not an original grant has been made in respect of such land;

(e) the right of the Swazi Nation in respect of any Swazi area;

(f) the right of the Swazi Nation in respect of any Swazi area, but shall not include any right to graze animals or to cut timber on any land;

"local authority" means a town council or town board, district council, or other local institution of a similar nature which is constituted in accordance with any law and which under any law has powers for safe-guarding the health of the inhabitants of the area under its jurisdiction, if the power of controlling the supply of water to the inhabitants in such area is vested in such board, council or institution;

"magistrates' court" means a Subordinate Court of the first class established under the Subordinate Courts Proclamation (Cap. 20);

"Minister" means the Minister for Works, Power, and Communications;

"normal flow", in relation to a public stream, means the quantity of public water actually and visibly flowing in that public stream which, under a system of direct irrigation from that stream, whether by furrows or other wise, but without the aid of storage can be beneficially used for the irrigation of land riparian to such stream;

"proprietor" means —

(a) any person who is registered in the deeds office as the owner or holder of a concession conveying rights to water or a land right;

(b) any person who is registered in the deeds office as the holder of any lease or other document by virtue of which a person referred to in paragraph (a) has disposed of any concession mentioned in the paragraph, either in whole or in part;

(c) any person who is the owner or holder of a land right;

(d) the liquidator of a company which is a proprietor, the legal representative of any person referred to in paragraph (a) or (b) or to whom has died or is a minor or of unsound mind or has become insolvent or is otherwise under disability, and the agent in Swaziland of a proprietor who is absent from Swaziland or whose whereabouts are unknown;

Provided that for the purpose of this definition the Ngwenyama shall be deemed to be the proprietor of any Swazi area;

"private water" means all water, not being public water, which rises naturally or is obtained by artificial means on any land or which falls or naturally drains on to any land, so long as it remains visible on the surface of such land;

"public stream" means a natural stream of water which flows in a known and defined channel, whether or not such a channel is dry during any period of the year and whether or not its conformation has been changed by artificial means;

"public water" means any water flowing or found in or derived from the bed of a public stream, whether visible or not;

"regulation" means a regulation made and in force under this Act and includes any regulation made under Part III of the Concessions Act No. 3 of 1904 or under the Water Proclamation, 1959 (No. 73 of 1959) and in force at the commencement of this Act, so long as it remains in force, and where appropriate, includes rules made by the Chief Justice under section 62;

"riparian land" in relation to a public stream, means any land which is the subject of a concession or included in a land right wherein or along any portion of any boundary whereof a public stream exists and, subject to section 7, includes any subdivision of such land;

"riparian proprietor" means a proprietor of a riparian land;

"surplus water" means public water flowing or found in a public stream other than the normal flow, if any;

"Swazi area" means land held by the Ngwenyama in trust for the Swazi nation;

"use for agricultural purposes", in relation to water, means use for the irrigation of land and the use of water for the propagation or breeding of fish or other aquatic life, and includes use by a riparian proprietor or any other person who has, before the commencement of this Act, acquired a right to the use of water for the said purposes or for primary purposes;

"use for industrial purposes", in relation to water, means use for manufacturing, mechanical or mining purposes or for the generation of power, or for railway purposes or public roads, and includes use for primary purposes or for the watering or cleaning of streets in so far as such use may be incidental to use for industrial purposes;

"use for primary purposes", "primary purposes" or "primary use", in relation to water, means —

(a) the daily use of water for the support of animal life; and

(b) the use of water for domestic purposes in or about a dwelling, including use for water-borne sanitation and for the watering of gardens but, except in the case of use of water for urban or industrial purposes, not exceeding such quantity per day for each person resident in or about the dwelling as may from time to time be determined by the Minister by notice published in the Gazette;

"use for urban purposes", in relation to water, means use in any area under the jurisdiction of a local authority for purposes for which water is ordinarily used by a local authority or by the inhabitants of such an area, including use for primary purposes, watering or cleaning of streets or for industrial purposes;

"waterwork" means —

(a) a canal, channel, well, reservoir, protecting wall, embankment, weir, dam, borchole, pumping installation, pipeline, sluice gate, ditch, sedimentation tank, road, telephone line or other work

constructed, erected or used for or in connexion with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, including the generation, transmission and supply of electricity, or the filtration or purification of water, or the protection of public streams against erosion or siltation, or flood control, or the protection of any waterwork or irrigated land, or the use of water for any purpose, or the conservation of rain water;

- (b) land occupied for or in connexion with the impounding, storage, passage, drainage, control, abstraction, filtration, purification, development of power (including generation of electricity), or any use of water, and includes any area occupied or required or held for the purpose of being irrigated or for flood control purposes;
- (c) gauge posts, measuring weirs, and any other appliances erected or used by the Government or the board or an irrigation board.

(Amended A1/1969)

PART II

CENTRAL CONTROL

General powers of the Minister.

3. The Minister shall have power to —

- (a) acquire, construct, extend, alter, maintain, repair control, and dispose of waterworks as he may consider necessary in the exercise of his powers or the performance of his functions under this Act;
- (b) assist and advise the board in connexion with the carrying out of the functions, powers and duties assigned to or imposed upon it under this Act;
- (c) sink boreholes and wells, obtain supplies of water from underground sources, conserve water so obtained and supply or deliver it to any person for use for any purpose without payment or upon payment of charges, and make regulations from time to time as to the matters referred to, including regulations fixing scales of charges;
- (d) establish or maintain hydrologic and hydrographic stations and works and to record the observations obtained thereby, and generally to obtain and record information and statistics as to hydrologic and hydrographic conditions in Swaziland;
- (e) obtain and record information as to the extent of land under irrigation, the quantity of water used or required for the irrigation of such land, and the extent, nature or value of the crops raised thereby;
- (f) obtain and record information as to the extent of land which could be brought under irrigation;
- (g) develop hydro-electric power, to obtain and record information as to the location, number and extent of hydro-electric or water-power schemes, and generally to obtain and record information and statistics as to hydro-electric possibilities;

- (h) advise proprietors, irrigation boards, local authorities and other persons as to the construction, alteration, maintenance, control or repair of water-works, and to assist in and advise on matters affecting the use of water in accordance with regulations and scales of charges to be made by him from time to time;
- (i) inspect any waterwork and in writing to require any local authority, irrigation board or other person responsible for the work to do such acts or execute such repairs or alterations as he may consider necessary for the protection of life or the public safety or the protection of property, which in his opinion is or may be endangered by the existence of such work, and in default of compliance with such requirements within a reasonable time specified in the order, himself to do such acts or execute such repairs or alterations and to recover the cost thereof from the local authority, irrigation board or person concerned by action in any competent court;
- (j) examine and inquire into plans, specifications, estimates of cost and reports which may be submitted to him in connexion with any proposed utilization of water for any purpose, and to furnish advice in connexion with any such plans, specifications, estimates, or reports which are in conformity with regulations made by him;
- (k) examine and inquire into plans, specifications, estimates of cost and reports in connexion with any proposed waterwork in respect of which application has been made for a loan in which the Government has any interest, for the purpose of ascertaining whether or not it is expedient that such a loan be granted; and
- (l) take such other steps as he may consider necessary for the development, control and utilization of water and for giving effect to the provisions of this Act.

PART III

CONTROL AND USE OF PRIVATE AND PUBLIC WATER

Saving of certain rights.

4. The provisions of this Act, except section 69, shall not be construed as —
- (a) affecting or derogating from —
 - (i) any right to water which at the commencement of this Act has been lawfully acquired in terms of any award, order, decision, permission, authority or apportionment given or made by a board of adjustment, water court or by the then Resident Commissioner under any law in force prior to the commencement of this Act, or otherwise, and which is possessed and is being beneficially exercised; or
 - (ii) any right to water lawfully acquired by any person before the commencement of this Act for the purpose of supplying water to the public and existing at such commencement; or
 - (b) (i) compelling any person, who, prior to the date of commencement of Part III of the Concessions Act No. 3 of 1904, constructed, or

had in the course of construction, works for the use of water of any stream, to allow to flow down past his works water which he could beneficially use by means of or for the purpose of his works and which he was at that date entitled so to use; or

- (ii) preventing any person, who, prior to the said date of commencement, used and was entitled to use the water of any stream for agricultural purposes on non-riparian land, from continuing to use such water.

Ownership of public and private water.

5. (1) Subject to any existing right preserved by this Act, there shall be no right of property in public water and the control and use thereof shall be regulated as provided in this Act.

(2) Save as provided in subsections (3) and (4), sections 7, 72 and 73(1), a riparian proprietor or any other person who is entitled to use public water for any of the purposes authorized by this Act shall not sell, lease or otherwise dispose of --

(a) any portion of such water; or

(b) the water right by virtue of which he is so entitled to use thereof,

to any other person otherwise than in the ordinary course of a sale, lease or disposal of the land to which the said water right lawfully attaches or on or in connexion with which the said water is lawfully used.

(3) Any person who was at or prior to the thirty-first day of December, 1966, selling, leasing or otherwise disposing of such water or who had entered into any lease or other agreement in force at such date by virtue of which he had, for a period determined therein, disposed of any water right aforesaid may apply to the board for a permit to enable him to continue to sell, lease or otherwise dispose of such water or to provide for the continuation of the said lease or agreement for a period specified in such application, and the board may grant the application subject to such modifications and conditions as it may deem fit, or may refuse to grant the application.

(4) Subsections (2) and (3) shall not apply in respect of a local authority.

(5) A riparian proprietor having a supply of private water available for use on his land shall not be entitled to claim a share of any water to which he would otherwise have been entitled in accord with section 9 so long as the water court or the board, as the case may be, is of the opinion that the supply of water so available is of such volume and can be so utilized by such proprietor that the use by him of water from a public stream to which his land is riparian would be a wasteful use.

(6) The distribution between and use by members of the Swazi nation of water to which Swazis areas are entitled under the provisions of this Act shall be regulated by the Ngwenyama in Libandhla in terms of section 9(1)(j) of the Swazi Administration Act No. 79, 1950.

Use of private water.

6. (1) Subject to rights lawfully acquired and existing at the commencement of this Act, the sole, exclusive and unlimited use and enjoyment of private water belongs to the proprietor of the land on which such water is found.

(2) For the purposes of this section, the rights to water protected by section 4 shall be deemed to include rights to private water.

(3) The beneficial utilization of private water shall be deemed to be an improvement for the purpose of Part VIII of the Mining Act No. 5, 1958.

Rights to public water in respect of subdivision of riparian land.

7. (1) Subject to section 13(1), the proprietor of any subdivision of land referred to in the definition of "riparian land" in section 2 is entitled to such share of the water of a public stream, to which the owner of the original piece of land of which such subdivision formed a part was entitled immediately prior to the subdivision of such land, as may be determined by agreement between the proprietors concerned or apportioned by a water court or the board at the date of or prior to the registration of such subdivision in the deeds office, even if that public stream does not flow on or along the boundary of such subdivision provided that such agreement or apportionment is registered in the deeds office on the title deeds of the land concerned simultaneously with transfer of the said subdivision, and if the said agreement or apportionment is not so registered the said subdivision shall cease to be riparian to the said public stream.

(2) Nothing contained in subsection (1) shall be construed as rendering riparian to a public stream any subdivision of land held under separate title, at the commencement of this Act, but not riparian to that stream at such commencement.

Irrigation or flooding of veld and soil erosion control.

8. (1) For the purposes of this section, "veld" means uncultivated pasture land.

(2) No water of any public stream shall be used for the irrigation of veld until all the irrigable land which is riparian to such stream and which is being cultivated and is capable of being supplied with such water by means of existing works has received sufficient water to meet reasonable requirements.

(3) Subject to subsection (4), nothing in subsection (2) shall be construed as —

- (a) preventing any person from doing on his own land any act necessary to prevent the erosion thereof, so long as he does not thereby waste public water through the unbeneficial storage or detention thereof or the unbeneficial flooding of veld; or
- (b) precluding the irrigation of pasture land in any area in which any work is undertaken in terms of an order given under section 19 of the Natural Resources Act No. 71, of 1951 in so far as may be reasonably necessary for the purpose of providing grazing required for stock or dairy purposes, and the storage or detention of public water or the use thereof in connexion with any such order shall not be deemed to constitute unbeneficial storage, detention or use of such water;

Provided that the Minister may in respect of any public stream by notice, in the Gazette prescribe such specifications and conditions, subject to which any soil conservation works may be constructed, as he may consider necessary to ensure that public water will not be wastefully stored or detained or used for the flooding of veld to the prejudice of lower riparian proprietors.

(4) Any unbeneficial irrigation of veld by frequent and excessive flooding thereof or the leading of public water onto or into places such as brak pans, hollows, swamps or any other places from which no advantage will be derived, shall be deemed to be unreasonable use of water.

(5) A person who fails to comply with any specifications or conditions prescribed in the proviso to subsection (3) shall be guilty of an offence.

Use of normal flow of a public stream.

9. Subject to this Act, and to any existing right, every riparian proprietor is entitled to the reasonable use of such share as may have been lawfully acquired by him from any other person prior to the commencement of this Act and of his share of the normal flow of a public stream to which his land is riparian for use for agricultural purposes on such land and the permission of a water court in terms of section 16(2)(a) shall not be required in respect of such use:

Provided that —

- (a) a riparian proprietor shall not use such water wastefully or detain any proportion thereof unreasonably or allow it to run off in unreasonable quantities to the detriment of lower proprietors;
- (b) a riparian proprietor who uses any portion of such normal flow for agricultural purposes shall, on his own land if practicable, or otherwise at the nearest convenient point elsewhere, return such water to the public stream from which it was abstracted with no other loss than that which has been occasioned by such reasonable use, unless he is legally obliged to pass the water on to other land;
- (c) subject to this Act and to any existing right, the proprietors of land riparian to a tributary to a public stream shall be entitled to so much of the normal flow of such tributary as they may require for the aforesaid use in preference to any right of any other proprietor to the normal flow of such tributary for such use on land which is riparian thereto only by virtue of its being riparian to the main stream to which the said tributary flows;
- (d) a riparian proprietor shall not use any portion of such normal flow for the irrigation of land if thereby he deprives any lower riparian proprietor having a right to the use of such normal flow, other than an inhabitant within the area of jurisdiction of a local authority who is being supplied with water by that local authority, of water for primary purposes;
- (e) a lower riparian proprietor referred to in paragraph (d) shall satisfy his needs as to primary use out of so much of the normal flow as he is entitled to use for agricultural purposes before he shall be entitled to demand, for the purposes of his primary use, that any other riparian proprietor shall abate any of the share of the normal flow that such last-mentioned proprietor is entitled to use for agricultural purposes.

Use of public water by authorized persons and by the Swaziland Railway for certain purposes.

10. (1) Notwithstanding anything contained in this Act —

- (a) any person, while he is lawfully at any place where he has access to a public stream, may take and use water from such stream for the immediate purpose

of watering stock or drinking, washing or cooking, or use in a vehicle at that place; or

- (b) any officer or servant of any lawfully constituted body (including the Government) which is responsible for the construction, maintenance, repair or control of any roadway, while he is lawfully at any place where he has access to a public stream, may take and use so much of the water from such stream as may be necessary for the purpose of constructing, maintaining, repairing or controlling such road, provided no riparian proprietor along the course of such stream is thereby deprived of water from such stream for his own use for the irrigation of land which is then under irrigation or for primary purposes.

(2) If the construction or maintenance of railway services by the railway, as defined in section 2 of the Swaziland Railway Act, No 15 of 1962, is at any time rendered difficult owing to a temporary or partial failure of any existing supply of water which the railway is lawfully using for any of the purposes mentioned in section 37(1) of the said Act, the railway may make application to the board for a temporary permit authorizing it to use a stated quantity of public water for the said purposes and the board may, notwithstanding anything in this Act or in section 37(3) of the said Act, issue a permit authorizing the use of such water for such period and subject to such terms and conditions as it may determine:

Provided that on the urgent application of the railway and on good cause shown the secretary of the board or any member thereof may in writing authorize the use of the said water pending the decision of the matter by the board.

(3) If the board or the secretary of the board or any member thereof issues a permit in terms of subsection (2) and any person who is entitled to the use of the water from the public stream in respect of which that permit has been issued is adversely affected by being temporarily deprived of the use of such water and has suffered loss as a result thereof, the railway shall pay to such person such compensation as may have been agreed upon or as may, at any time subsequent to the issuing of the permit, and after due notice to the parties concerned, be determined by a water court.

Local authority or Electricity Board entitled to take water for certain purposes.

11. (1) If a local authority requires water whether public water or ground water for use for urban purposes, or if the Electricity Board constituted in terms of section 3 of the Electricity Act No. 10 of 1963 requires water for use for industrial purposes, the local authority or the Electricity Board, as the case may be, may with the consent in writing of the board, subject to any conditions imposed by the board, and subject to an obligation to pay compensation, take such water or any portion thereof as it may require from any person who is lawfully entitled to the use thereof.

(2) Not less than three months before exercising the power conferred upon it by subsection (1), the local authority or the Electricity Board gives to the person concerned and to every person, who is shown upon the title deed of the land on which the water is found, to have any interest in such land and whose whereabouts the local authority or the Electricity Board can readily ascertain, a notice by registered post setting forth clearly and fully details of the water in question and the compensation offered therefor.

(3) The proviso to section 68(2)(a) and paragraphs (b) and (c) of that subsection and of subsections (3) to (11), inclusive, of the said section shall, *mutatis mutandis* apply in connexion with any such action by the local authority concerned or the Electricity Board.

(4)(a) Nothing in this section shall apply to any land or to water found on such land belonging to the Government or the board, or the Electricity Board aforesaid, or the Swaziland railway established in terms of section 3 of the Swaziland Railway Act, No. 15 of 1962, or an irrigation board, or to any works or undertakings conducted by or on behalf of the Government, the Ngwenyama, or the board, or the Electricity Board or the Swaziland railway or an irrigation board.

(b) The Minister may, by notice published in the *Gazette*, declare a Swazi area defined in such notice, to be an area in respect of which this section shall not apply and, as from the date of publication of such notice, the said provisions shall not apply to the area so defined or to water found thereon or to any works or undertakings conducted thereon by or on behalf of the Ngwenyama.

Use of public water for mining purposes.

12. (1) A person entitled to prospect for minerals may apply to the board for a permit entitling such person to use a stated quantity of public water or for the renewal of a permit issued by the commissioner of mines under section 14 of the Water Proclamation, No. 73 of 1959, or any other law, for or in connexion with the said purpose.

(2) The board may, after consultation with the commissioner of mines, issue or, as the case may be, renew a permit entitling the applicant to use a defined quantity of public water at any place, whether on land riparian to the public stream from which such water is derived or otherwise, and for such period and subject to such terms and conditions as are set out in the permit, or may refuse to issue or renew a permit:

Provided that a permit, or any renewal thereof, for the use of water for the purposes of a prospecting licence issued under section 32 of the Mining Act No. 5 of 1958, shall not be issued for a period exceeding, in the aggregate, three years.

(3) If a permit is renewed in terms of subsection (2), the board may impose terms and conditions in respect thereof different from the terms and conditions set forth in the permit which is the subject of renewal.

(4) If a permit is issued or renewed in terms of subsection (2) and proprietors of land riparian to the public stream from which the supply of water is abstracted in pursuance of the permit, or any other persons who are entitled to the use of the water of such stream, are adversely affected by being temporarily deprived of the use of such water and have suffered loss as a result thereof, the holder of the permit shall pay to those proprietors or persons such compensation as may have been agreed upon or as may, at any time subsequent to the issuing of the permit, and after due notice to the parties concerned, be determined by a water court.

(5) Any right to the use of water granted under section 25 of the Crown Mineral Areas Proclamation (Chapter 88 of the Laws of Swaziland, 1951), and in force at the commencement of this Act, shall terminate not later than a date upon which the mining right in reference to which the said right to the use of water was granted would have terminated if the Mining Act No. 5 of 1958, had not been promulgated.

(6) Subject to section 69, a person who is the holder of a mineral concession or a mining right, or who is otherwise entitled to carry on mining operations other than the prospecting for minerals, and who desires to use public water for the said purposes, or who requires the renewal of a permit issued by the commissioner of mines under section 14 of the Water Proclamation No. 73 of 1959 or any other law, may apply to a water court for a permit entitling such person to use a stated quantity of public water for mining purposes.

(7) For the purposes of an application under subsection (6), the provisions of this Act relating to the use of water for industrial purposes shall apply.

(8) For the purposes of an application under subsection (1), section 18(7) to (13) inclusive and section 18(14) to (17) inclusive shall *mutatis mutandis* apply.

Rights of riparian proprietors in event of artificial diversion or natural change of course of public stream.

13. (1) If a riparian proprietor desires to divert the course of a public stream, he may apply to a water court for permission to do so and the water court may refuse the application or may grant it subject to such terms and conditions as it may deem fit to impose, and may direct the applicant to pay any person, who may, in the opinion of the water court, be adversely affected by the diversion, such compensation as it may deem just.

(2) Where, owing to natural causes, a public stream which constitutes the boundary between two or more pieces of riparian land, ceases to flow between or separate such pieces of land and is diverted to a new course, the boundaries of the several pieces of land shall remain as if no such change of course had taken place, and no such change of course shall deprive a proprietor of riparian land which may be cut off from such public stream by reason of such change of his riparian rights in relation to such stream, which rights shall remain and be regarded as if the said stream had not been diverted.

(3) A proprietor referred to in subsection (2) may, at any time within a period of ten years after the change of course of the public stream to which his land is riparian, apply to a water court for an order prescribing such points or point on the new course of the said stream as to the water court may appear necessary for the practical exercise by such proprietor of his riparian rights, and the water court shall upon such application grant to that proprietor a right of access to the public stream in question at such point or points along a convenient line to be determined by it as will enable the said proprietor to take and convey water from such stream for the purposes for which he is entitled to use water therefrom under this Act.

(4) When any change in the course of a public stream referred to in subsection (2) is to the detriment of any proprietor of land which is riparian thereto, he may, within five years after the change has taken place, apply to a water court for permission to construct such works as, in the opinion of the water court, may be necessary for the restoration of such stream to its former channel.

Rights of Government to surplus water.

14. Subject to this Act, all rights to the use of surplus water shall vest in the Minister on behalf of the Government and shall be exercised by the board in accordance with the provisions of this Act and no person shall be entitled to use surplus water except in accordance with a permit issued by the board.

Remedy against excessive storage, impounding, or diversion of surplus water.

15. A proprietor of land riparian to a public stream, who feels aggrieved by the storage, impounding or diversion by an upper riparian owner along such stream of a greater quantity of the surplus water thereof than he could reasonably be entitled to use, may apply to a water

court for an order determining the quantity of water which in the opinion of the said court, such upper owner shall be entitled to store, impound or divert, and thereafter the said upper owner shall not be entitled to store, impound or divert a greater quantity of water than the quantity so determined:

Provided that no order of the water court under this section shall interfere with the use, enjoyment or exercise of any lawful right previously held, or any permission previously granted in terms of an order made by the water court or a board of adjustment under this or any prior law to store, impound or divert public water.

Use of public water by certain persons subject to permission of a water court.

16. (1)(a) Save as provided in section 63(2), no person shall use public water for industrial purposes except with the permission of a water court:

Provided that the permission of the water court shall not be required in the case of a local authority or in the case of any person to whom such water is supplied by such a local authority:

Provided further that, subject to section 9, a person who is entitled or has acquired a right to use public water for agricultural purposes may, under permit from the board and subject to such conditions as it may deem fit to impose, use water for the development of power not exceeding fifteen horse power or for industrial purposes not exceeding ten thousand gallons per day without the permission of a water court.

(b) The permission of a water court shall not be required in respect of the use by any person in connexion with any undertaking of a quantity of public water not exceeding during any month the average quantity per month of such water lawfully used by him in connexion with that undertaking during the last period of six months within the period of twelve months immediately preceding the commencement of this Act during which water was so used by him, nor shall the permission of a water court be required for the use by any person in connexion with any undertaking of a quantity of public water in respect of which he has acquired a lawful right prior to the commencement of this Act under the Water Proclamation No. 73 of 1959, as in force at the date of such commencement.

(2) A water court may, on the application of any person (including the Government)--

(a) who is entitled in terms of this Act to use public water for agricultural purposes or who has acquired a right to the use of such water for such purposes, permit the applicant to use the share of such water to which he is so entitled or to the use of which he has acquired such a right, or any part of such share, at any place, for agricultural, industrial or urban purposes or such other purposes as the water court may determine;

(b) who is not entitled to use public water --

(i) if the water court is of the opinion that the grant of such permission would be in the public interest, permit the applicant to abstract from a public stream or to impound and store within or outside the channel of a public stream and to abstract, for use at any place for agricultural, urban or industrial purposes or such other purposes as the water court may determine, either on land riparian to such stream or elsewhere, a stated quantity of public water, whether normal flow or surplus water of such stream;

(ii) if the water court is satisfied that during any period all the water of a public stream, whether normal flow or surplus water, is not

or will not be used on land riparian to every stream in or into which such water naturally flows, permit the applicant to abstract from such stream or to impound and store within or outside the channel of such stream and to abstract during the said period, for use at any place, so much of the water as in the opinion of the water court is not or will not be so used, for agricultural, industrial or urban purposes, or such purposes as the water court may determine, either on riparian land within the catchment area of such stream or elsewhere.

(3) A water court shall not consider an application for permission to use any quantity of surplus water unless the application is accompanied by a permit issued by the board under section 14.

(4) Before granting any permission under subsection (2)(b)(i), the water court shall determine in what manner and to what extent the rights of the persons or of any one or more of the persons entitled to the use of water from the stream in question shall be abated for the purpose of making available the water in respect of which such permission is to be granted:

Provided that

- (a) such abatement shall as far as practicable be made in the first instance in respect of the rights of persons who have not exercised such rights;
- (b) any existing right to the water of the public stream in question vested in any person at the date of this Act coming into effect shall not be subject to any abatement if such right is being beneficially exercised;
- (c) the rights of a proprietor to the use of the normal flow of such stream for primary purposes shall not be so abated or in any manner prejudicially affected without his written consent.

(5) Any permission —

- (a) under subsection (2)(b)(ii); or
- (b) in respect of the use of surplus water under subsection (2)(a),

may be granted permanently or for such period as the water court may determine.

(6) The water court may —

- (a) in respect of a permission granted under subsection (2)(a) or (b)(ii), impose such conditions as in its opinion will prevent lower riparian proprietors from being prejudicially affected; and
- (b) in respect of a permission granted under subsection (2)(b)(i) order the payment of compensation (the amount and manner of payment whereof shall be determined by the water court) to any person whose rights have been abated;

and may impose such other conditions in respect of any permission granted under the said subsection as it may deem desirable.

Permit for industrial use of water to be obtained in certain cases.

17. (1) Any person who desires to establish an industrial undertaking in respect of which any quantity of water is required to be used for industrial purposes or who desires to expand an industrial undertaking in respect of which any quantity of water is used or is required to

be used for such purposes shall, before initiating or establishing or expanding such undertaking :-

- (a) advise the Minister of the nature and the method of purification of the waste water, effluent or waste, if any, which will be occasioned by the operation of such undertaking; and
- (b) if he desires to use for industrial purposes a quantity of public water exceeding sixty thousand gallons on any one day or fifty thousand gallons on an average per day during any month (whether or not any portion of such water is, in the case of water abstracted from a public stream, subsequently returned to that stream), apply to the Board for a permit authorizing such use.

(2) Any person who has, during the period of six months referred to in section 16(1)(b), used in connexion with any undertaking a quantity of public water exceeding on an average fifty thousand gallons per day, shall, within six months after the commencement of this Act, lodge with the Minister a statement showing the quantity of such water so used during that period and particulars of the undertaking in connexion with which that water was so used.

(3) An application under subsection (1) shall be in such form and shall contain such particulars as may be prescribed by regulation.

(4) Upon receipt of such application the board shall, after such investigation as it may deem fit and after consultation with the Minister, consider the application with due regard to :-

- (a) the quantity of water which is, in its opinion, ordinarily available for use at the proposed source of supply;
- (b) whether or not the granting of a permit under this section would be likely to result in such a diminution of the supply as to endanger the reasonable supply of water from the same source to persons in the area of jurisdiction of the local authority or other body concerned with the supply of such water, or, as the case may be, to persons entitled to use water from that source; and
- (c) whether it would not be desirable in the public interest or with a view to the decentralization of industrial undertakings or the nature of the waste water, effluent or waste which will be occasioned by the operation of the undertaking in question or the method to be applied in the purification of such waste water, effluent or waste, that such undertaking be established at a place other than the place stated in the application.

(5) The board may thereupon grant a permit in terms of the application or with such modifications or subject to such conditions as it may deem fit, or may refuse to grant a permit.

(6) Nothing in this section contained shall be construed as exempting any person from applying to a water court for permission to use public water for industrial purposes.

Purification and disposal of industrial water and effluents.

18. (1) For the purpose of this section, "tailings" means any substance, including gravel, sand or slimes, which forms the residue of mining operations.

(2) The purification of any waste water or any effluent or waste or tailings produced by or resulting from the use of water for industrial purposes shall form an integral part of the process of such use and, subject to subsection (6), any person using water for industrial purposes shall purify such water, effluent or waste or tailings so as to conform to such

requirements as the board may from time to time prescribe by notice published in the Gazette, either generally or in relation to water used for or in connection with any one or more specified industrial purposes.

(3) Public water which has been used for industrial purposes and any effluent produced by or resulting from such use, other than water or effluent referred to in subsection (4), shall, subject to section 16, after purification in accordance with subsection (2), be returned by the user at the nearest convenient point to the bed of the public stream from which the said water was abstracted:

Provided that where water has been so used at any place outside the natural watershed of the catchment area of a public stream from which it was abstracted and in the opinion of the water court it is for any reason impracticable or inadvisable to return such water or any such effluent to the said stream, such water or effluent may be returned by the user to the bed of some other public stream at a point determined by the water court.

(4) Subsections (2) and (3) shall not apply in respect of a person supplied with water by the Minister or by any local authority or other person or lawfully constituted body having a right to control and supply public or private water, including ground water, within its area of jurisdiction, if the Minister or, as the case may be, such local authority, person or body or any other local authority has undertaken the duty of disposing of such water or any effluent or waste produced by or resulting from the use thereof after water has been used by the said person and has been discharged into any channel, drain or sewer under the control of the Minister or the local authority, person or body concerned.

(5) Water used for industrial purposes and returned in accordance with subsection (3) shall not be diminished in quantity save in so far as such diminution is caused by such use.

(6) Any person or user referred to in subsection (2) or (3) may apply to the board for a permit exempting him from compliance with either of those subsections, and, subject to this subsection, the board may, after such investigation as it may consider necessary, if it is satisfied that compliance with provisions of such subsections is impracticable in the particular circumstances, grant a permit subject to such conditions as it may deem fit to impose and subject to the payment by the applicant of such compensation as the board may determine to any person who, in the opinion of the board, is likely to suffer damage as a result of the exercise of rights granted under such permit, exempting such person or user from compliance therewith to such an extent as the board may determine, or authorizing such person or user to discharge any waste water, effluent, waste or tailings, in an unpurified state or in such state of semi-purification as the board may determine, into any public stream at a point to be fixed by the board:

Provided that, in the case of an application for a permit authorizing such person to discharge any such waste water, effluent, waste or tailings into any public stream, the board shall not issue such a permit unless it is satisfied that the dilution of such waste water, effluent, waste or tailings by other water contained in the said stream will be such that aquatic flora or fauna in the public stream will not be detrimentally affected or that it is not injurious for use for primary, agricultural, industrial or urban purposes.

(7) Before granting a permit under subsection (6) the board shall cause to be published in the Gazette, and in a newspaper circulating in Swaziland, a notice containing a summary of the application, and, where practicable, the board shall post a copy of such notice to every person whom it has reason to believe is an interested person (including a person mentioned in subsection (6)).

(8) Any interested person (including a person mentioned in subsection (6)) may, within thirty days of the publication of a notice in terms of subsection (7), notify the board in writing of his intention to present such evidence as is relevant to the said application and such person shall thereupon be entitled to appear before the board and present such evidence in person or through witnesses called by him.

(9) Any notification referred to in subsection (8) shall include a statement indicating the nature of the evidence which is to be presented and, if such notification has been given by a person other than the applicant, the board shall, within seven days of receipt thereof, transmit a copy thereof to the applicant.

(9) Before granting a permit in terms of subsection (6), the board shall cause to be published in the Gazette and in a newspaper circulating in Swaziland, a summary of the proposed permit and of any conditions to be imposed by it in respect thereof.

(10) Any interested person may, after written notification to the Board and within thirty days of the publication of a notice in terms of subsection (9) appeal to a water court for the amendment or modification of any such proposed permit, including the compensation determined as aforesaid, and the said court may annul the proposed permit or may order the board to grant a permit as proposed or in such modified form as the court may direct.

(11) If no appeal has been noted in terms of subsection (10) or, having been noted, has not been prosecuted or has been dismissed, the board shall thereupon grant the said permit and issue it to the applicant.

(12) The board may at any time by notice in writing to the holder of any permit issued in terms of this subsection withdraw that permit or amend it in such manner as it may deem fit if the holder of the said permit by any act or omission fails to conform to any condition imposed in the permit.

(13) Any person to whom a permit has been granted under this subsection shall not be deemed to be excused from liability in respect of any damage caused to any other person by reason of the exercise of such permit.

(14) The board, in prescribing any requirements under subsection (2) or imposing any conditions under subsection (6) to (13) inclusive may also specify the steps to be taken by any person carrying on any mining or other industrial operations in order to prevent the pollution of public water or ground water, by seepage or drainage from any area on which those operations are carried on both while such operations are in progress and after the abandonment thereof.

(15) Any such person who fails to take steps so specified within a period determined by the board and made known by notice published in the Gazette or by notice in writing addressed to such person, or within such further period as it may allow and similarly make known, shall be guilty of an offence.

(16) For the purpose of this section, a local authority which uses water for the purification or disposal of sewage or any effluent or waste referred to in subsection (4), shall be deemed to use such water for industrial purposes.

(17) A person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

Disposal of effluents by local authorities.

19. (1) Notwithstanding any other law; but subject to subsection (2), a local authority having jurisdiction over the disposal of sewage may, after purifying the effluent derived from the treatment of such sewage in accordance with requirements prescribed under section 18(2),

and with the permission of the board, use such effluent for any purpose approved by the board or dispose of such effluent for use by any person or discharge such effluent into a public stream.

(2) The board may, in writing, and on such conditions as it may deem fit, exempt from compliance with section 18, any local authority which does not dispose of water used for any industrial purpose other than the purification or disposal of sewage.

(3) A local authority which contravenes or fails to comply with any condition subject to which any exemption has been granted to it under subsection (2) shall be guilty of an offence.

Prevention of pollution of water.

20. (1) A person who wilfully or negligently, and, where any provision of section 18 or 19 applies, contrary to that provision, does any act whereby any public or private water, including ground water, is polluted in such a way as to render it injurious for use for primary, agricultural, industrial or urban purposes, or for recreational or other legitimate purposes, shall be guilty of an offence.

(2) The Minister may, out of the revenues and funds of Swaziland provided for the purpose, take any steps which he may consider necessary to prevent the pollution, as a result of seepage or drainage from any area on which mining or other industrial operations have been carried on, of public or private water, including ground water, after such operations have been abandoned, and may in his discretion recover the cost or any part of the cost incurred in taking such steps from any person who carried on or is entitled to carry on such operations.

(3) The Minister or a person acting under his authority may at any time enter upon any land for the purpose of taking any steps referred to in subsection (1), and may take with him on to such land any men, animals, vehicles, equipment, appliances, instruments, stores or materials, and may erect such camps and construct such works as may be necessary for that purpose.

(4) No compensation shall be payable to any person for any loss which may be sustained by him in consequence of any action taken under this subsection, except by order of a competent court.

Commencement of section 18 in relation to certain persons.

21. (1) The board may from time to time on the application of any person grant exemption from the operation of any provision of section 18 to any such person;

Provided that no such exemption shall be granted in respect of any period ending on a date more than five years after the commencement of this Act, or such later date, not more than seven years after the said commencement, as may be determined by the Minister by notice published in the Gazette.

(2) For the purposes of the granting of any exemption under subsection (1), section 18(7) and (13) inclusive shall, *mutatis mutandis*, apply.

Regulations as to permits and control of pollution of water

22. The Minister may make regulations relating to —
- (a) the form of any application under section 5(3), section 10(2) or section 12(1), and the particulars to be furnished in connexion with any such application;
 - (b) the form of application for permits under section 14 or 17 and the particulars to be furnished in connexion with any such application or under section 17(1)(a);
 - (c) the prevention of wastage of public water or pollution of public or private water, including ground water, and the powers and duties of persons appointed to exercise control in respect thereof; and,
 - (d) generally, any other matter which he considers it necessary or expedient to prescribe in order that the objects of sections 18 to 21, inclusive, may be achieved.

PART IV

WATER APPORTIONMENT BOARD

Establishment of Water Apportionment Board.

23. There is hereby established a board, to be known as the Water Apportionment Board, which shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its objects, the exercise of its powers and the performance of its functions.

Object of the board.

24. The object for which the board is established is to foster, plan and promote the better and more effectively co-ordinated exploitation, development and use of the water resources of Swaziland and the conservation and utilization of public water in the best interests of agricultural, urban and industrial development.

Functions, powers and duties of the board

25. It shall be the function and duty of the board to endeavour to achieve the object for which it is established with all the means at its disposal, and for the purpose of achieving that object the board shall, subject to the provisions of this Act, have power, in addition to any other powers vested in it by this Act —

- (a) to advise the Minister as to —
 - (i) the establishment of any Government water control area or catchment control area under section 66 or of any water sport control area under section 79;
 - (ii) the fixing of rates or charges under section 63(2) or of charges under section 75(1);
 - (iii) the control of the sources, catchment areas, beds and banks of public streams;

- (iv) matters connected with the preservation, conservation, utilization, control, supply or distribution of water resources and water; and
 - (v) any other matter relating to the object of the board which the Minister may refer to the board for investigation;
- (b) to encourage research and the collection of information and such statistics as it may deem necessary for the attainment of its object and to co-ordinate and disseminate such information;
- (c) subject to section 65, to control, operate, administer or maintain any Government waterwork and to control, supply or distribute water therefrom in accordance with the provisions of this Act and, with the approval of the Minister to control, operate and administer any area declared under section 66 to be a Government water control area or a catchment control area;
- (d) on the application of any person in terms of section 36(8)(a), to hear and determine any claim for a servitude and to fix the compensation payable in respect thereof; and,
- (e) generally, with the approval of the Minister to do such things as will, in the opinion of the board, contribute towards the attainment of its object.

Constitution of the board.

26. (1) The board shall consist of seven members to be appointed by the Minister, of whom two shall be persons actually engaged in the cultivation of land under irrigation or possessing such special knowledge or experience of the use of water generally or any branch or aspect of agriculture as, in the opinion of the Minister, makes them suitable persons for appointment as members of the board.

(2) One of the said two members shall be appointed in consultation with and on the advice of the Ngwenyama.

(3) One of the said two members shall be selected by the Minister from a list of names submitted by such organization as the Minister may recognize as being representative of organized agriculture.

(4) One of the members shall be a person actually engaged in industry or possessing such special knowledge or experience of the use of water in or by industrial undertaking or any branch thereof as, in the opinion of the Minister, makes him a suitable person for appointment as a member of the board, and shall be selected by the Minister from a list of names submitted by such organisation as the Minister may from time to time recognize as being representative of users of water for industrial purposes.

(5) Whenever any member referred to in subsection (3) or (4) is to be appointed, the Minister shall, by notice in writing invite the organization referred to in the said paragraphs to nominate a specified number of persons whose names are to be included in the applicable list.

(6) If the nominations required under subsection (5) are not lodged with the Minister within the period stated in the notice inviting such nominations, the Minister shall compile a list of names of persons whom he considers suitable for appointment, and such list shall, for all purposes, be deemed to be a list of names submitted by the organization in question.

(7) One of the members shall be a person nominated by the Electricity Board constituted under section 3 of the Electricity Act No. 10 of 1963.

(8) The remaining three members shall be persons who are in the full-time employment of the Government, one of whom shall be a senior officer of the department, one of whom shall be a senior officer of the department of Agriculture, and one of whom shall be a senior officer of such Government department as the Minister may from time to time determine.

(9) The Minister may appoint a person possessing the qualifications for appointment as a member of the board to be an alternate to any member of the board other than the chairman:

Provided that the provisions of this section relating to consultation, advice and nomination prior to the appointment of a member shall apply, *mutatis mutandis*, to the appointment of an alternate.

(10) An alternate member shall be entitled to attend the sitting of the board but shall not be entitled to vote unless the member in respect of whom he is an alternate is absent. (Added by A.40/1970.)

Period of office and remuneration of members of the board.

27. (1) A member of the board shall be appointed for such period, not exceeding three years, as the Minister may determine at the time of appointment and any person whose period of office as a member of the board has expired shall be eligible for reappointment.

(2) The members of the board selected or appointed under section 26(2), (3) and (4), shall hold office upon such conditions (including payment of remuneration and allowances) as the Minister may, in consultation with the Minister of Finance, determine.

(3) Any remuneration or allowances which may become payable under subsection (2) shall be paid out of the Consolidated Fund.

Chairman and acting chairman.

28. (1) One of the members of the board shall be designated by the Minister as chairman of the board and, if the chairman ceases to hold office as a member of the board or as chairman of the board, the Minister shall designate a new chairman.

(2) The Minister may designate another member of the board to act as chairman whenever the chairman of the board is absent or unable to perform his functions as chairman, and such member shall, when acting as chairman, have all the powers and perform all the duties of the chairman.

Disqualifications, termination of membership and filling of vacancies.

29. (1) No person shall be appointed to hold office as a member of the board —

(a) if he is an unhabilitated insolvent; or

(b) if he has been convicted of an offence and sentenced to imprisonment without the option of a fine.

(2) The Minister may remove from office any member of the board who has been selected or appointed under section 26(2) (3) or (4) —

(a) who has failed to comply with a condition of his appointment;

(b) who, in the opinion of the Minister has been guilty of improper conduct or has habitually neglected his duties as a member of the board; or

(c) who has, without written permission of the chairman of the board, been absent from three consecutive meetings of the board of which he had notice.

(3) The period of office of a member of the board who is in the full-time employment of the Government may be terminated at any time if, in the opinion of the Minister, there are good reasons for doing so.

(4) If any member of the board ceases to hold office, the Minister shall, with due regard to section 26, appoint a person to fill the vacancy on the board.

Meetings of the board.

30. (1) The first meeting of the board shall be held at a time and place to be determined by the Minister, and all subsequent meetings shall, subject to subsection (2), be held at such times and places as may be determined by the board or, if at the close of any meeting the board has not determined the time and place for its next meeting, by the chairman of the board.

(2) The chairman of the board shall, when directed thereto by the Minister, call a special meeting of the board to be held at a time and place determined by the Minister.

Quorum, majority decision and chairman's casting vote.

31. (1) Four members of the board shall form a quorum for any meeting of the board.

(2) At all meetings of the board the chairman or the acting chairman of the board shall preside;

Provided that, if neither the chairman nor the acting chairman is present at any meeting, some other member of the board chosen by the members present shall preside at that meeting.

(3) The decision of a majority of the members of the board present at any meeting thereof shall constitute a decision of the board, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(4) No decision taken by or act done under the authority of the board shall be invalid by reason only of an interim vacancy on the board or of the fact that a person who is disqualified from being a member of the board, or with respect to whose appointment the provisions of this Act had not been observed, sat or acted as a member at the time when the decision was taken or the act was performed or authorized, if the decision was taken or the act performed or authorized by the requisite majority of the members of the board present at the time who were entitled to sit and act as members.

Committees of the board.

32. (1) The board may appoint advisory committees to assist it in the performance its functions and the carrying out of its duties and the persons to be appointed by the board as members of any such committee may include persons other than members of the board.

(2) There shall be payable to a member of a committee of the board, other than a member of the board or a person who is in the full-time employment of the Government, such remuneration or allowances, while he is engaged in the carrying out of his duties as a member of the committee, as the Minister may, in consultation with the Minister of Finance, determine.

(3) Any remuneration or allowance which may become payable under subsection (2) shall be paid out of the Consolidated Fund.

Administrative and other work of the board.

33. The administrative, clerical and other work of the board shall be performed by such members of the public service of Swaziland as may be deputed thereto by the Minister.

Establishment and keeping of registers.

34. The board shall establish and keep, in the prescribed form, registers of all permits and licences issued, varied, withdrawn or cancelled by it under this Act.

Review of decisions of the board and appeal to a water court.

35. (1) If any person is aggrieved by an order or decision or a proposed order or decision of the board, he may, within a period of three months of the making of the order or decision by the board and on payment of such fee as may be prescribed, request the board to reconsider its previous order or decision.

(2) In any such reconsideration section 18(6)(8) and (9) shall, *mutatis mutandis*, apply.

(3) Any person who is aggrieved by any decision of the board upon such reconsideration may appeal to a water court against such decision, and the decision of the water court on such appeal shall, for all purposes, be deemed to be a decision of the board.

Inquiries by the board and hearing of applications for servitudes.

36. (1) The board may, in accordance with this section, conduct an inquiry into any matter falling within the scope of its functions, powers and duties and for that purpose may, by registered letter signed by its chairman or acting chairman, summon any person to give evidence at the inquiry or to produce any book, document or thing which may, in the opinion of the board, be relevant to the subject matter of the inquiry.

(2) The board may call and examine any person present at the inquiry, whether or not he has been summoned to attend under subsection (1), and may inspect and retain for a reasonable period any book, document or thing the production of which was required under subsection (1):

Provided that, in connexion with the examination of any such person or the production of any such book, document or thing, the law relating to privilege, as applicable to a person subpoenaed to give evidence or to produce any book, document or thing before a court of law, shall apply.

(3) Whenever the board deems it necessary to do so, it may direct any person to give his evidence at any such inquiry on oath or affirmation and the member of the Board presiding at such inquiry may administer the oath to, or accept an affirmation from, such person.

if he had been summoned to attend at a criminal trial in the High Court.

(5) A person shall be guilty of an offence if—

- (a) having been summoned to give evidence at an inquiry under subsection (1), without sufficient cause, the onus of proof whereof shall rest upon him, he fails to attend at the time and place specified in the summons, or fails to remain in attendance until the conclusion of the inquiry or until excused from further attendance by the member of the board presiding at the inquiry, or fails to produce any book, document or thing in his possession or custody or under his control, which he has been summoned to produce; or,
- (b) having been summoned under subsection (1) or called under subsection (2), without sufficient cause, the onus of proof whereof shall rest upon him, he refuses to be sworn or to make affirmation as a witness after he has been directed by the board to do so; or refuses to give evidence or refuses or fails to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him.

(to) Section 34(1) shall, *mutatis mutandis*, apply in respect of any inquiry under this section.

(7) If requested to do so by any witness and on good cause shown to the satisfaction of the board, the board shall hear his evidence *in camera*.

(8) If any person who is entitled to claim any servitude in terms of section 114(1) is unable to reach an agreement with the person, from whom the servitude is claimed, as to the terms of the servitude or the compensation to be paid in respect thereof, the parties to the dispute may in writing agree to submit the matter in dispute to the board for decision and the board shall, after making such investigation and inquiry as to it may appear necessary, make such order in regard to the matter in question as it may deem just, and any order so made shall be binding upon the said parties and shall not be subject to appeal.

(9) This section, other than subsections (4) and (7), shall, *mutatis mutandis*, apply in respect of any investigation and inquiry referred to in subsection (8).

(16) In determining any matter mentioned in subsection (5), the board may, upon the application of any of the parties to the said dispute, make such order as to costs as it may deem just in accordance with a scale of costs prescribed by regulations made under section 38.

(11) Any order made by the board under subsection (8) shall, if the board so directs, upon production of the said order, be registered by the registrar of deeds against the title deed of any land to which the order refers and recorded in the appropriate registers in the deeds office, and the proprietor of any such land shall produce his title deeds for the purpose.

(12) For the purpose of such registration of section 59(2) and (3) shall, *mutatis mutandis*, apply.

(13) A person who, during any sitting of the board wilfully insults a member thereof or any member of the public service who has been deputed thereto under section 33 and who is attending at such sitting, or wilfully obstructs or interferes with any such member in the execution of the duties he is required to perform in terms of the said section, or wilfully

interrupts the proceedings of the board or otherwise misbehaves himself in the place where the board is sitting, shall be guilty of an offence and liable on conviction to the penalties mentioned in section 30(1).

Annual reports.

37. (1) The board shall, within six months after the end of each financial year, furnish to the Minister a report upon the activities of the board during that financial year and upon any other matter with which the Minister may require the board to deal.

(2) Every report furnished to the Minister under subsection (1) shall be laid before Parliament as soon as possible after receipt thereof.

Regulations.

38. (1) The Minister may make regulations relating to --

- (a) the conduct of and procedure at meetings of the board and of any committee appointed under section 32 (including the quorum in the case of committees) and the manner in which meetings of any such committee shall be called;
- (b) the form in which the registers referred to in section 34 are to be kept;
- (c) the form and manner in which an application referred to in section 36(10) shall be made and the fees which may be charged in respect of any such application; and
- (d) generally, any other matter which he considers necessary or expedient to prescribe in order that the objects of the board may be achieved.

PART V

WATER COURTS

Interpretation.

39. In this Part, "presiding officer" means a judge appointed under section 41(1).

Establishment of water courts.

40. The Minister may, from time to time, establish water courts for the hearing and determination of any matter which may be referred to a water court under this or any other law.

Constitution of water court.

41. (1) A water court shall be a superior court of record and shall be presided over by the Chief Justice, or by a person appointed by him who possesses the qualifications which would entitle him to be appointed a judge of the High Court.

(2) A water court shall consist of the Chief Justice or a judge appointed by him in terms of subsection (1) sitting alone or, if the judge presiding over the court so directs, with one engineer assessor and not more than two lay assessors, appointed or selected as hereinafter provided. (Amended A.1/1969.)

Appointment of assessors.

42. (1) The assessors, if any, required for the hearing and determination of any matter arising for decision by a water court shall —

- (a) in the case of an engineer assessor, be appointed by the Minister; and,
- (b) in the case of a lay assessor, be selected in manner prescribed by regulation from a panel prepared under section 43.

(2) The name of any assessor appointed or selected in accordance with subsection (1) shall be notified to each of the parties to the matter to be investigated or determined and any such party may, in accordance with regulation, lodge an objection to such assessor with the presiding officer who shall decide on the objection.

(3) If the presiding officer upholds an objection lodged under subsection (2), another assessor shall forthwith be appointed or selected, as the case may be, in accordance with subsection (1).

(4) At a hearing before a water court in which the Government is a party to any matter arising for decision, no lay assessor or no engineer assessor shall be qualified to serve on that court if he is in the employment of the Government.

(5) No assessor shall be qualified to serve at a hearing before a water court if he has any direct or indirect personal interest in the matter to be heard and determined, or is related within the third degree of consanguinity or affinity to any party to the suit, and every assessor shall before taking his seat declare upon oath administered by the presiding officer that he has no such interest and is not so related and that he will to the best of his ability give judgment upon the matter to be heard in accordance with the evidence submitted.

(6) There shall be charged on the Consolidated Fund and paid out to assessors such fees and allowances as may from time to time be fixed by regulations made under section 62.

Preparation of panels of assessors.

43. (1) The Minister shall nominate not less than three and not more than seven persons as water court lay assessors and shall prepare a panel containing the full christian names and surnames, the place of abode and the title, calling or business of every person so nominated.

(2) No person shall be qualified to serve as a water court lay assessor nor shall his name be inserted in any such panel of lay assessors unless he is not less than thirty years of age and is permanently resident in Swaziland.

(3) The Minister may at any time in his discretion remove the name of any person from a panel prepared by him under subsection (1) or include the name of any person in such panel, and if any person whose name is on the said panel ceases to be qualified in terms of subsection (2) or becomes insolvent or of unsound mind, his name shall forthwith be removed from the said panel.

Functions of assessors.

41. At any hearing before a water court the assessor shall advise the judge presiding over the court on all matters of fact which the court is called upon to decide but the decision of the judge shall be the decision of the court. (Amended A 1/1902).

Death of assessor or inability to sit.

45. (1) If after a water court has been constituted, an assessor nominated or selected thereto ...

- (a) dies or becomes insolvent or of unsound mind during the hearing of an application by such court or so soon before such a hearing that the vacancy cannot be filled in time for the hearing; or
- (b) is unable to take his seat and another assessor cannot be nominated or selected in time for the hearing; or,
- (c) having taken his seat, is unable to continue to sit, the parties to the application may agree to its being heard and decided by the remaining member or members of the court;

Provided that in the case of a difference of opinion where the court consists of the presiding officer and one assessor, the judgment of the presiding officer shall be the judgment of the court.

(2) Any order or award made or judgment given in the circumstances described in subsection (1) shall be deemed for all purposes to be an order, award or judgment of a water court.

(3) Whenever, in the circumstances described in subsection (1), the parties to an application do not agree to the hearing and decision of that application by the remaining members of the water court, the hearing shall be adjourned by the presiding officer for the nomination or selection, as the case may be, of an assessor in the place of the assessor who has died, become insolvent or of unsound mind or become unable to take his seat or continue to sit, and if the application has been partly heard, upon reconstitution of the court, the matter shall be heard *de novo*.

Applications to a water court.

46. Any application for the hearing of any matter by a water court shall, in the first instance, be lodged by the applicant with the Minister who shall, as soon as may be practicable thereafter, establish a water court for the hearing and transmit the said application to the registrar of that court.

Powers, jurisdiction and authority of a water court.

47. A water court shall have power ...

- (a) to make orders and awards, including orders for the payment of money, where necessary, upon ...
- (i) applications in connexion with disputes regarding the use, diversion or appropriation of public water;

- (ii) applications in connexion with claims for servitudes by means of which rights to use or dispose of public water are or may be exercised;
- (iii) applications as to any matter which in terms of this or any other law may be brought before a water court;
- (b) on the application of any interested person, including the Government, to investigate, define and record the rights to the use of public water of any particular stream and, subject to section 49 and to the due recognition of all rights to the public water in question which have been defined and any apportionment which has been made by order of a competent court or by arbitration or agreement or in any other lawful manner, to apportion such public water for any of the purposes recognized by this Act;
- (c) to inquire into and, in its discretion, determine —
 - (i) any existing, future or contingent right or obligation in respect of the use of public water; or
 - (ii) any right of servitude;by means of which public water is being or may be used or disposed of, notwithstanding that no person can claim any relief consequential upon such determination;
- (d) to investigate, determine and record whether any particular stream is a source or tributary of another public stream or is the main stream;
- (e) to investigate, define and record the normal flow of a public stream at any point along the course of such stream;
- (f) to determine and fix the place or places, either upon land riparian to a public stream or upon any land higher up the course of such public stream, at which a proprietor of such land shall be entitled to divert water from such stream;
- (g) to determine, if required, the nature and extent of the right of use at the place or places referred to in paragraph (f), due regard being had to the rights of any other persons;
- (h) to investigate any application for the removal or alteration of any dam, weir or other obstruction in the course of a public stream and to make orders and awards thereon;
- (i) to grant permission for the use of public water, including the use of water for mining purposes mentioned in section 12(6);
- (j) to give such direction for the erection, maintenance, control and supervision of devices for the proper measurement and division of the normal flow of any public stream and as to the payment of the costs thereof as may be necessary to give effect to its orders or awards; and,
- (k) generally, to do any act or thing which may under this Act be done by a water court;

Provided that a water court shall not have power in respect of any matter referred to in paragraph (a) (i), (b), (c)(i), (d), (e), (f), (h), (i) or (j) if such matters relate to any application in respect of the abstraction, impounding, storage or use of water in a Government water control area declared under section 66(1), save and except the hearing and determination of such appeals to the said court as are permitted under this Act.

Original jurisdiction of a water court as to water disputes.

48. Except as provided in this Act or with the written consent of all the parties concerned, no court other than a water court shall have jurisdiction in the first instance to hear and determine any dispute or claim arising out of or in connexion with any matter referred to in section 47, and no process shall issue out of any other court.

Apportionment suits and orders.

49. (1) Such part of any order made by a water court under section 47(b) which determines the manner of distribution of the water apportioned in terms of the said order shall be provisional and shall become final after the expiration of a period fixed by the said court in such order:

Provided that if a variation of the said part of such order has before the expiration of the said period been sought and granted by the court, the court may make such order final.

(2) In respect of any application to a water court for the hearing of an apportionment suit and the distribution of water in terms thereof, it shall not be essential for the applicant to —

(a) have searches made in the deed, office of proprietors of land in respect of which an apportionment of public water of any particular stream is sought; or

(b) take gaugings of the flow of such stream;

if the water court is satisfied by other evidence that sufficient proof has been submitted to it to enable it to adjudicate upon such application.

Minister may present evidence in water court suits.

50. (1) If the Minister is of opinion that it is desirable in the public interest that any evidence available to him should be presented in any suit before a water court, he or any person authorized thereto by him may, without becoming a party to such suit and notwithstanding anything to the contrary in any law contained, through witnesses called by him present to the court any such evidence as is relevant to the proceedings before it.

(2) As soon as possible after it has been decided to present evidence in terms of subsection (1) but not later than the date fixed in terms of the water court regulations for the filing of exceptions, pleas and counter claims, the Minister shall cause to be sent to the registrar of the court and to each of the parties to the suit whose address can be ascertained from the documents filed of record or to his legal representative in the suit notice in writing informing him of the intention so to present evidence and indicating the nature of the evidence which is to be presented.

Powers of judge as to water court matters.

51. (1) A judge referred to in section 41(1) shall have power —

(a) at any time after the lodging of an application for the hearing of a matter by a water court to —

(i) order substituted service of any process, including any application, on any particular person or class of persons,

(ii) give any other directions as to the service of the application;

- (iii) decide any objection to an assessor;
 - (iv) adjourn the hearing or the further hearing of the application;
 - (v) grant leave to take evidence on commission or on affidavit;
 - (vi) grant leave to an applicant to withdraw or amend his application upon such terms as to notice to any other party to the application as to such Judge may seem necessary;
 - (vii) grant leave to an applicant to join further persons as respondents in a suit;
 - (viii) grant leave to any person to intervene as a party to a suit;
 - (ix) grant any order permitting an applicant, a respondent or any party directly interested in the application to make surveys or take gaugings upon the land of a respondent or an applicant; and
 - (x) make such orders as to costs as he may deem just in connexion with any order or direction made or given by him under the preceding paragraphs or to make any special supplementary order as to any costs, fees or expenses referred to in section 55(3);
- (b) at any time, whether prior to or after the lodging of an application for the hearing of a matter by a water court to —
- (i) decide whether a pending dispute is one cognizable by a water court or by some other court;
 - (ii) grant an interdict pending the decision of a matter by a water court;
 - (iii) grant any interlocutory order he may deem fit, the generality of this provision not being limited by anything contained in the preceding sub-paragraphs; and
 - (iv) make such orders as to costs as he may deem just in connexion with any order or direction made or given by him under the preceding sub-paragraphs.

(2) If any judge referred to in subsection (1) has not been appointed or, having been appointed is unable for any reason to act, the powers referred to in subsection (1)(b)(ii) and (iv) shall be exercisable by any magistrates' court having jurisdiction in the district in which the matter referred to it has arisen and shall apply, *mutatis mutandis*, in respect of any matter contemplated in the sub-paragraphs which may be referred to such magistrates' court at any time prior to the lodging of an application for the hearing of a matter by a water court.

(3) Any judge referred to in subsection (1) shall have power upon application to declare any agreement made between all the parties to a dispute affecting water rights, whether or not it be the subject of proceedings before the water court, to be an order of court:

Provided that —

- (a) such application shall state the full names of the parties affected by the making of such order, the particulars of the rights which are the subject of the dispute and the grounds of the dispute; and
- (b) the judge shall be satisfied that every party affected by the application has been duly served with notice thereof and that the agreement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with this Act.

(4) Any proceedings in terms of this section shall be deemed to be proceedings before a water court, and any order made by a judge in respect of such proceedings shall be deemed to be an order of a water court, and no such order shall be subject to appeal to any court.

Appearance of water apportionment board, irrigation board or local authority before a water court in certain circumstances.

52. (1) If a party to any matter brought before a water court is the proprietor of land which has been included in the schedule of an irrigation board prepared or revised in accordance with section 96, the irrigation board concerned shall, whether or not the irrigation board is a party to the dispute, be entitled to appear before the water court and to produce such evidence as the irrigation board may consider necessary.

(2) A local authority, which controls or distributes water within its area of jurisdiction to persons who are liable for the payment of rates or charges to such local authority and who have a right to the use of or use such water, shall be entitled to appear as applicant and be liable to be cited as respondent on behalf of such persons in connexion with any proceedings in a water court:

Provided that nothing in this subsection shall be construed as preventing any such person from appearing in such proceedings.

(3) In a suit before a water court, the board may, without becoming a party to such suit and notwithstanding anything to the contrary in any law, through witnesses called by it present to the court any evidence which the board may deem relevant to the proceedings before the court, and for such purpose of section 50(2) shall, *mutatis mutandis*, apply.

Representation in appearance before a water court.

53. In any proceedings before a water court

- (a) a party to such proceedings may appear personally;
- (b) the board or a local authority or a company or an irrigation board, the Railway Board, the Electricity Board, or, with the permission of the water court, any other statutory body, if a party to such proceedings, or, in the case of the board or a local authority or an irrigation board entitled to appear in accordance with section 52, may appear by the person nominated by the board or by such local authority, company or irrigation board or statutory body; and
- (c) a person or body, being a party to such proceedings or otherwise entitled under this Act to appear, may appear by an advocate or attorney.

Summoning of witnesses and penalty for non-attendance.

54. (1) A party to an application before a water court, or the board or a local authority or an irrigation board entitled to appear in accordance with section 52, may procure the attendance of any witness in the manner prescribed by regulation made under section 62.

(2) If a person who has been duly subpoenaed to attend the proceedings in a water court for the purpose of giving evidence or producing any book, record, document or thing in his possession or under his control, refuses to be sworn or to make affirmation as a witness after he has been directed by the presiding officer to do so, or fails without reasonable cause to attend or to give evidence, or refuses or fails to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him, or to produce that book, record, document or thing as required by the subpoena or, unless excused by the presiding officer, to remain in attendance throughout the proceedings, the presiding officer may, upon

being satisfied upon oath or by return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding two hundred rand or imprisonment for a period not exceeding six months or both.

(3) If a person so subpoenaed fails to appear, or, unless duly excused, to remain in attendance throughout the proceedings, the presiding officer may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in subsection (2).

(4) A person referred to in subsection (2) who, after having been sworn or having made affirmation, gives false evidence before the court, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

(5) The presiding officer may on cause shown remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(6) The presiding officer may order the costs of any adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(7) A penalty imposed under subsection (2) or (3) shall be enforced, *mutatis mutandis*, as if it were a penalty imposed by the High Court in circumstances such as are described in the relevant subsection, and the provisions of any law which are applicable in respect of such a penalty imposed by the High Court shall, *mutatis mutandis*, apply in respect of a penalty imposed under either of the said subsections.

Order in mand of a water court and fixing of costs.

55. (1) A water court shall make such order or award in any proceedings brought before it as it may deem just, including any order as to costs of any such proceedings as it deems fit in accordance with a scale of fees prescribed by regulations made under section 62:

Provided that a water court shall not in any order for the payment of costs include any sum as fees for appearance before it (other than witness fees) unless the person so appearing is an advocate or an attorney referred to in section 53(e).

(2) Any order as to costs may include the costs of —

(a) any necessary search made in the deeds office;

(b) making of surveys and plans;

(c) taking gaugings of the flow of water;

(d) transcripts of the evidence in the proceedings; or

(e) necessary travelling expenses of parties or their representatives,

and any costs awarded by a water court shall be subject to taxation by the registrar of such court.

(3) Advocate's fees, the qualifying expenses of any professional witness and costs awarded in respect of any matter referred to in subsection (2), shall not be included in the party and party costs of any proceedings of a water court unless a special order to that effect has been made by such court or by a judge in terms of section 51(1)(a)(x).

Contempt of a water court.

56. (1) If, during the sitting of a water court, a person wilfully insults a member of such court or any officer thereof attending at such sitting, or wilfully obstructs or interferes with an officer of a water court in the execution of his duties, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the presiding officer may order such person to pay a fine not exceeding one hundred rand or to suffer imprisonment for a period not exceeding one month, or both.

(2) Any order made under subsection (1) shall be executed, *mutatis mutandis*, as if it were an order made by the High Court under circumstances such as are described in that subsection, and the provisions of any law applicable in respect of such an order made by the High Court shall, *mutatis mutandis*, apply in respect of an order made under the said subsection.

(3) A person who wilfully disobeys an order of a water court or fails to carry out any order which a water court has required him to carry out, shall be guilty of an offence and liable, upon conviction, to a fine of four hundred rand or imprisonment for twelve months, or both.

Appeals from orders or awards of a water court.

57. (1) Save as is provided in section 54(4) and in section 58, any party to proceedings before a water court in which such court has given a final judgment may appeal against such judgment to the Court of Appeal.

(2) Any such appeal shall be prosecuted as if it were an appeal from a decision of the High Court and all the provisions applicable in relation to an appeal from any such decision shall, *mutatis mutandis*, apply in respect of an appeal under this section:

Provided that the period within which any such appeal may be noted shall be three months after the date of the order or award in respect of which such appeal is to be noted, or such further period as the Court of Appeal may, upon application, allow.

(3) Pending the determination of such an appeal, the judge who presided over the water court which granted the order or award in respect of which such appeal is pending or, if such judge is not available, a judge of the High Court, shall have power to grant a stay of execution in whole or in part of such order or award upon such terms and conditions as to him appear just.

Agreement to accept decision of a water court as final, and settlements during proceedings.

58. The parties to any dispute concerning the use, diversion or appropriation of water, may in writing agree to submit the matter in dispute for final decision to a water court, and thereupon any order or award made by the water court in regard to the matter in question shall be binding upon the said parties and shall not be subject to appeal to any court.

Registration of orders and awards against title deeds of land concerned.

59. (1) Any order or award of a water court affecting rights to water which is final and which is not subject to appeal, or as to which no appeal has been noted within the prescribed time, or as to which an appeal has been noted but has not been prosecuted or has been dismissed, or any order or award made upon appeal to the Court of Appeal under this Act shall

if the water court or the Court of Appeal, as the case may be, so directs, upon production of the said order or award, be registered by the registrar of deeds against the title deed of any land to which the order or award refers and recorded in the appropriate registers in the deeds office and the proprietor of any such land shall produce his title deeds to the registrar of deeds for that purpose.

(2) The cost of such registration shall be borne by one or other of the parties to the proceedings in pursuance of which such order or award was made, as the water court or the Court of Appeal, as the case may be, may direct.

(3) If the title deed of any such land cannot be readily produced for purposes of registration, the registrar of deeds shall note the said order or award on the duplicate title deed filed in the deeds office and in the appropriate registers in that office and no further transaction relating to the said land shall be registered until registration of the said order or award has been completed by endorsement thereof on title deed, and the registrar of deeds is hereby authorized to impound the said title deed and to make the necessary endorsement thereon whenever it may, for any reason, be lodged in the deeds office.

Considerations to be applied in determining a riparian proprietor's share of public water.

60. (1) In determining a riparian proprietor's share of the normal flow of a public stream for the purposes of section 9 a water court shall take into consideration —

- (a) the nature of the soil which is to be irrigated;
- (b) the comparative extents of irrigable land on the respective pieces of riparian land the proprietors of which are entitled to the use of the water of the public stream to which such land is riparian;
- (c) any natural sources of water supply on the said respective pieces of land other than that derived from the public stream in question;
- (d) that the quantity of water which may reasonably be used for agricultural purposes should be regulated as between riparian proprietors concerned according to the quantity of water flowing in the stream;
- (e) the depth of water required per unit of irrigable land for the beneficial irrigation of such land; and
- (f) any other features which it considers necessary in order to arrive at a fair apportionment of the water in question:

Provided that, in applying the consideration described in paragraph (b), a water court shall not, for the purpose of apportioning the normal flow of a public stream, take into account a greater area of irrigable land on any piece of land referred to in the said paragraph than an area which it deems to be commensurate with the total area of land which might be irrigated if the total quantity of the water ordinarily available for apportionment were allotted to such piece of land.

(2) No riparian proprietor shall be entitled to divert on to his riparian land or to impound and store for use for agricultural purposes more water than he can reasonably be expected to use for such purposes, and the quantity of water so diverted or impounded and stored shall not be greater than is required to apply such water efficiently and economically to such purposes.

(3) In adjudicating upon any application made in terms of section 15, a water court shall take into consideration —

- (a) the annual rainfall in the area in which the applicant's land is situated;
- (b) the number of times during an average year that the public stream in question is likely to flow;
- (c) the evaporation in the area in question;
- (d) the depth of water required per unit of irrigable land for the beneficial irrigation of such land;
- (e) the quantity of water which, under the circumstances, should reasonably be stored for the purpose of obtaining crops or for such other purposes as the water is being lawfully used;
- (f) any natural sources of water supply, including ground water, on the land affected other than that derived from the public stream in question; and
- (g) any other features which it considers necessary in order to arrive at a just decision in the matter.

Procedure to be observed by a water court.

61. The procedure of a water court shall be in accordance with the provisions of this Act and regulations made under section 62:

Provided that if there be no such provisions or regulations applicable in any particular circumstances, a water court shall act in such a manner and on such principles as it shall deem best fitted to do substantial justice and to carry out the objects and provisions of this Act.

Water court rules and regulations.

62. (1) The Chief Justice may make rules relating to the procedure in water courts and any matters which he considers necessary or expedient to prescribe in so far as the functioning of water courts is concerned and, without derogating from the generality of the foregoing, relating to —

- (a) the pleading, practice and procedure of such courts, including all matters connected with the forms, notices and other documents to be used and the fees to be payable, their amount and the method and time of payment thereof and the service of any such document;
- (b) the expenses of parties and witnesses, their amount and the method and time of payment thereof;
- (c) the fees and costs of advocates and attorneys and the amount, taxation and recovery thereof;

Provided that every rule made by him shall be published in the Gazette and take effect and have the force of law from a date to be prescribed by him therein.

(2) The Minister may make regulations relating to —

- (a) the procedure to be adopted in connexion with the registration of orders or awards in terms of section 59 and of servitudes in terms of section 123;
- (b) the allowances which shall be paid to members of a water court who are not in the full-time service of the Government; and
- (c) the appointment of a registrar and other officers of a water court.
(Amended A.1/1969)

PART VI

GOVERNMENT WATERWORKS
AND GOVERNMENT CONTROL OF WATER

Construction and control of Government waterworks.

61. (1) The Minister may, out of funds and revenues provided for the purpose, and subject to the provisions of this Act, construct any Government waterwork which he may deem necessary or desirable for the purpose of conserving or utilizing any water or the drainage of land, or for abstracting, storing or preventing the waste of or controlling ground water or for the generation of electricity.

(2) Notwithstanding anything to the contrary contained in this or any other law, the Minister may —

(a) supply or distribute water from any Government waterwork to any person (including the Government) for use at any place and for any purpose approved by the Minister; and

(b) supply or distribute electricity generated in connexion with any Government waterwork to any person,

at such rates or charges as he may from time to time assess.

(3) The rights and privileges of ownership in any Government waterwork shall be vested in the Government and shall be exercised by the Minister and shall not be transferred or alienated to any person except under section 65(1)(b).

(4) The control of any Government waterwork and the power to regulate or prohibit the abstraction of any water from any area submerged as a result of the construction of such work or the use of or entry into such work or any such submerged area is vested in the Minister.

(5) Whenever the Government has constructed any road for or in connexion with a Government waterwork, or in connexion with any holdings or plots which have been established by the Government for the purposes of land settlement in terms of any law, and the control of such road has not been assumed by any local authority or other like institution which is lawfully entitled to exercise control over that road, the Minister may exercise control over such road and over the use thereof and the regulation of traffic thereon, and shall have power to make any regulations which he deems necessary for that purpose and to prescribe penalties for any contravention of or failure to comply with any such regulation or any direction or order issued thereunder and made known in such manner as may be prescribed in such regulations.

Construction by Government of waterworks for any person.

64. (1) The Minister may, subject to any existing right, construct any waterwork for or on behalf of any person and may enter into agreements with such person relating to the construction of such work and any matter incidental thereto.

(2) The Minister may, at any time before or after the commencement of the construction of any such work, by notice published in the Gazette apply the provisions of section 68 to any area defined in the notice which in his opinion is or is likely to be affected by that work, and thereupon the said provisions shall, *mutatis mutandis*, apply as if the said area were a Government water control area and as if the said work were a Government waterwork.

(3) The Minister may from time to time by notice published in the Gazette alter the boundaries of any area defined under subsection (2) as he may consider necessary.

Delegation of control or alienation of Government waterworks.

65. (1) The Minister may —

- (a) at any time and for such period and on such terms and conditions as he may deem fit, delegate all or any of the powers of control, operation, administration or maintenance of any Government waterwork or of control, supply and distribution of water from such Government waterwork or of electricity generated in connexion with such work, assigned to him under this or any other law, to any local authority, irrigation board or other statutory body;
- (b) at any time, if authorized thereto by resolution of Parliament and on such conditions as may be prescribed in such resolution, sell or otherwise dispose of any Government waterwork to any local authority or irrigation board or to any such statutory body.

(2) The provisions of this Act relating to Government waterworks shall, save as otherwise provided in any conditions prescribed in any resolution referred to in subsection (1)(b), continue to apply, in relation to a Government waterwork which has been sold or disposed of under that paragraph, as if such sale or disposal had not taken place, and for that purpose any reference in any such provision to the Minister shall be construed as a reference to the local authority, irrigation board or other statutory body to which such waterwork has been sold or disposed of.

Declaration of control areas.

66. (1) The Minister may, by notice published in the Gazette, declare the area defined in such notice, being —

- (a) an area comprising every piece of land which, or a portion thereof, is affected or likely to be affected by any Government waterwork constructed or deemed to have been constructed or in course of construction or intended to be constructed under this Act; or
- (b) an area (which may include non-riparian land) within which the abstraction, utilization, supply or distribution of the water of any public stream should, in his opinion, be controlled in the public interest;

to be a Government water control area, and may from time to time in like manner amend or repeal any such notice.

(2) Whenever, in the opinion of the Minister —

- (a) the flow of a public stream in any particular area should in the public interest be regulated or controlled by damming, cleaning, deepening, widening, straightening or altering the course of the channel or by taking such other steps as may be necessary to improve the water resources or for the prevention or control of silt or for the purpose of lessening the possibility of damage to land which is riparian to such stream in the event of flood; or
- (b) any land is required for the protection of any portion of the catchment area of a public stream; or

(c) any part of a public stream or any area should, in the public interest, be set aside as a reserved area for the future construction of a storage dam;

the Minister may, by notice published in the Gazette, declare the channel of any such stream or any portion thereof, together with such portion of the land on either side or on both sides of the said channel, or any other area situated within the catchment of such stream, as he may consider necessary for such purpose, and as may be defined in the notice, to be a catchment control area, and he may from time to time in like manner amend or repeal any such notice.

(3) The area defined in the schedule to Government Notice No. 61 of 1964 dated the nineteenth day of May, 1964, and declared in that notice to be a special river control area in terms of section 18 of the Electricity Proclamation, No. 10 of 1963, shall be deemed to have been declared a Government water control area under subsection (1) of this section.

Suspension of owner's rights in or over land in a catchment control area for certain purposes.

67. (1) Whenever any area has, under section 66(2), been declared to be a catchment control area for any of the purposes mentioned in paragraph (a) or (b) thereof, the Minister may

- (a) out of funds and revenues provided for the purpose, cause such work as he may deem necessary in connexion with any of the purposes set out in the said subsection to be carried out on any land in that area;
- (b) by notice in writing, suspend for a period to be specified in such notice, which period may from time to time in like manner be extended, all or any of a proprietor's rights in or over any land in the said area, and at the expiration of a period of three months from the date of such notice, enter upon and take possession of the land in order to carry out such work.

(2) The Minister may, in respect of any land in a catchment control area, in his discretion withdraw any suspension of rights of subsection (1)(b) in the case of a proprietor who has, within three months of the date written undertaking to construct or carry out at his own expense such works or measures, to be specified in the undertaking, as the Minister may require, and may, if in his opinion a proprietor has failed to comply with the terms of any such undertaking, give that proprietor one month's notice in writing of the termination of such withdrawal.

(3) The Minister may, at any time by notice in writing cancel any suspension of rights under subsection (1), and thereupon the suspended rights referred to in such notice shall be restored to the proprietor or his successor in title subject to subsection (5) and to such conditions as to occupation and use of the land as the Minister may deem fit to impose, which conditions shall attach to the land and, at the request in writing of the Minister, be noted free of charge by the registrar of deeds on the title deed of the said land and in the appropriate registers in the Deeds Office.

(4) For the purpose of subsection (3), the proprietor or other person in possession of the title deed to land shall upon demand deliver such title to the Minister and the registrar of deeds shall, if requested thereto by the Minister and pending the noting of the said conditions on the said title deed, make a note of such conditions in the appropriate registers.

(5) The Minister may from time to time assess rates on any land which has been declared to be a catchment control area for any of the purposes mentioned in section 66(2)(a)

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or *it*) and in which any work has been carried out by him under this section, whether or not such work has been carried out on that land, and may recover any rates or taxes paid from the proprietor of that land.

(6) The cancellation of any suspension of rights in terms of subsection (3) shall not be deemed to prevent the Minister at any time thereafter from again suspending any such rights in respect of the land in question in terms of subsection (1)(a).

(7) Whenever any area has under section 66(2) been declared to be a catchment control area for the purposes of paragraph (c) thereof, the Minister may by notice in writing suspend for a period to be specified in such notice, which period may from time to time in like manner be curtailed or extended, all or any of a proprietor's rights in or over any land in the said area and shall give a similar notice to every person, who is shown upon the title deed of such land or in the records of the registrar of deeds or of any other Government office in which rights granted under any law relating to prospecting or mining are recorded, to have any interest in such land and whose whereabouts he can readily ascertain.

(8) The Minister shall in such notice of suspension or in any notice of extension of the period of such suspension, state the amount of compensation if any, offered thereby and the manner in which such compensation has been assessed.

(9) If the period of suspension of any of a proprietor's rights is curtailed, the compensation payable to such proprietor shall be reduced by such amount as may be agreed upon or, failing agreement, as may be determined by a water court on the application of the Minister or the proprietor concerned.

(10) Section 68(3) to (9) inclusive shall, *mutatis mutandis*, apply in respect of any compensation offered under subsection (8).

(11) Whenever the Minister has given any notice to a proprietor under subsection (3), the Minister shall in writing direct the registrar of deeds to record, free of charge, the terms of such notice on the title deed of the land described in the notice and in the appropriate registers in the deeds office, and, for the purposes of such direction, subsection (4) shall, *mutatis mutandis*, apply.

(12) The suspension of any rights in terms of subsection (7) shall not be deemed to vest in the Minister any right to the use of the land in question.

(13) Section 68(2) shall, *mutatis mutandis*, apply in respect of the service of any notice under subsection (1)(a) or subsection (2) or (7) of this section.

Expropriation of land, water, etc., in certain areas.

68. (1) The Minister may, subject to an obligation to pay compensation as hereinafter provided, expropriate any land or any right in respect of land or any existing right or appropriate any substance or material on any land or temporarily use any land or any waterwork on any land within a Government water control area or a catchment control area, as he may consider necessary for or in connection with any Government water work within such Government water control area or to enable him to construct access roads to such Government waterwork for use by the public or by any person or for the effective carrying out of any work which he may consider necessary in connection with any of the purposes mentioned in section 66(2)(a) or (b) within such catchment control area.

(2) Not less than three months before the Minister expropriates any such land or right in respect of land or existing right or appropriates any material or substance on any

such land of conveniences to use any such land or waterwork, he shall give the proprietor of the land, right, waterwork, substance, material or existing right and every person who is shown upon the title deed of such land or in the records of the registrar of deeds or of any other Government office in which rights granted under any law relating to prospecting or mining are recorded, to have any interest in such land and whose whereabouts he can readily ascertain, notice by registered post, setting forth clearly and fully the land, right, waterwork, substance, material or existing right in question and the compensation offered therefor and the manner in which such compensation has been assessed:

Provided that if the whereabouts of any such proprietor or person having any interest as aforesaid is not readily ascertainable, the Minister shall cause such notice to be given by publication in three consecutive ordinary issues of the Gazette and once a week during three consecutive weeks in a newspaper circulating in the district in which the said land or waterwork is situated, or in which the said existing right is exercisable, as the case may be, and the said notice shall in such event be deemed to have been given on the day on which the last publication thereof takes place.

(3) The Minister may, subject to subsections (5), (6) and (7), from time to time, and at any time before any offer of compensation has been accepted, or application has been made under subsections (8) or (9) for the determination of the amount of such compensation by a water court, modify the offer in question by notice given in the same manner as is prescribed for the giving of any notice under subsection (2), by increasing the amount of the compensation offered.

(4) A modification of any offer of compensation shall not affect the operation of the relevant notice of expropriation in any other respect, but the period of one year referred to in subsection (9) shall in such event be deemed to commence on the date of the notice of that modification.

(5) The amount of compensation to be offered in the case of an expropriation of land shall not exceed

- (i) the fair market value of the land, without improvements;
- (ii) the fair value of any necessary or useful improvements thereon;
- (iii) the fair value of any luxurious improvements thereon, not exceeding the actual cost of such improvements; plus
- (iv) a sum to make good any actual inconvenience or loss likely to be caused by the expropriation.

(6) The amount of compensation to be offered in the case of an expropriation of any right in respect of land for any existing right, or in the case of an appropriation of any substance or material on any land, or in the case where any land or waterwork is temporarily used, shall not exceed a sum to make good any inconvenience or loss caused by such expropriation, appropriation or temporary use.

(7) Any enhancement or diminution in the value of land referred to in subsections (5) or (6) which may be caused by the construction, operation or extension of a Government waterwork, or by any work or act which the Minister may carry out or perform in connection with any of the matters referred to in section 66(1)(b) (2)(a) or (b) shall not be taken into account in determining the amount of compensation referred to therein.

(8) If a proprietor of land or a person who holds a right in respect of land or an existing right refuses to accept the compensation offered by the Minister either party shall, subject to subsection (9), have the right to have the amount thereof determined by a water court, and in that event the provisions of subsections (5) (6) and (7) shall, *mutatis mutandis*, apply.

(9) If an application for the determination of the amount of any such compensation is not lodged with the water court within a period of one year from the date of the relevant order, the proprietor concerned shall be deemed to have accepted the amount offered.

(10) Interest at a rate determined from time to time by the Minister shall, as from the date on which any relevant act may be performed by the department in terms of subsection (1) and subject to subsection (11), be paid on any outstanding amount (payable by way of compensation in terms of this section).

(11) If the proprietor of land which has been expropriated is permitted and agrees to occupy that land or any portion thereof no interest shall be payable on so much of the outstanding amount as is, in the opinion of the Minister, outstanding in respect of the land occupied by that proprietor.

(12) Upon the expiry of a period of three months from the date on which the notice referred to in subsection (2) was given or at any time prior to such expiry if agreed to by all interested parties, the department may forthwith enter upon and take possession of or use the land, waterwork, substance or material or exercise the right, to which such notice refers, as it may deem fit, irrespective of whether or not the amount to be paid in compensation has been agreed upon or settled as hereinbefore provided.

(13) If any such notice has been given in respect of the expropriation of any land, all rights in respect of such land not registered against the title deed thereof, or in any office referred to in subsection (2), shall terminate on the date on which any relevant act may be performed by the department in terms of subsection (12) and the Government shall not be obliged to pay any compensation for such rights.

(14) Any person authorized thereto in writing by the Minister may at any time enter upon or cross any land for the purpose of exercising any of the powers of the department under subsection (12) or making any inspection or investigation in connexion with any such land, waterwork, substance, material or right as is referred to in the said subsection, which the Minister deems necessary.

(15) Whenever the Minister has made an expropriation under the provisions of this section —

- (a) the proprietor or other person in possession of the title deed to any land concerned shall upon demand deliver such title deed to the Minister; and
- (b) the registrar of deeds shall, if requested thereto by the Minister and pending the transfer or registration of the said land or right expropriated, as the case may be, make a note in the appropriate registers in the deeds office that such land or right has been acquired by the Minister.

(16) If any land or right in connexion with any water which the Government is entitled to use, supply or control or in connexion with any waterwork which the Government has constructed or is constructing or intends to construct, whether on its own behalf or on behalf of any person, has under this or any prior law been acquired by the Government by expropriation or otherwise, the Minister may at any time transfer such land or right to any person on behalf of whom the Government has constructed or is constructing or intends to construct such work or to whom the said work or the control thereof or the use, supply, distribution or control of the said water has been transferred in accordance with this Act or the said prior law.

(17) Sections 115, 119(2), and 123(3)(a) shall, *mutatis mutandis*, apply in relation to any servitude acquired under this section.

(18) A notice issued under subsection (2) in respect of the expropriation of any servitude shall be accompanied by a plan showing the position, locality and nature of any proposed works in respect of which the servitude is required and, in the case of a servitude of aqueduct or a servitude of drainage, the line of passage of the aqueduct or drain to be constructed.

(19) In respect of any expropriation made under this Act, no other law relating to expropriation shall apply.

Control and use of public water in a Government water control area.

69. (1) Notwithstanding anything to the contrary contained in this Act but subject to subsection (4), the rights to the use and the control of water in any public stream in a Government water control area shall vest in the Minister on behalf of the Government and shall be exercised by the board, and no person shall, except as provided in subsection (2), or under the authority of a permit from the board and on such conditions as may be specified in that permit —

- (a) abstract, impound, store or use such water; or
- (b) construct, alter or enlarge any waterwork for the abstraction, impounding, or storage of such water,

unless the Board has by notice published in the Gazette authorized the abstraction, impounding, storage or use of such water or the construction of such works, or otherwise than in accordance with the conditions specified in such notice.

(2) Any person who, within a prescribed period prior to the date upon which any area is declared to be a Government water control area under section 66(1) was abstracting, impounding or storing any water from any public stream within that area by means of waterworks in existence on the said date, shall, within three months after being called upon in writing by the Minister to do so, communicate to the latter particulars showing —

- (a) his name, permanent address and a description of the land upon which the waterworks are situated and the land upon which the water abstracted, impounded or stored by means of such works is being used;
- (b) the nature and size of the said waterworks;
- (c) the value of such works;
- (d) in the case of a pumping installation, the quantity of water which such installation is capable of abstracting and delivering per hour;
- (e) the extent of land which has been or is to be irrigated annually by means of such works;
- (f) any other purpose for which the water abstracted, impounded or stored has been or is to be used;
- (g) whether the said water is being or is to be abstracted, impounded or stored in accordance with any order, award, decision, permission, authority or apportionment given or made by a board of adjustment, water court or any other competent body or person under any law in force prior to the commencement of this Act, or otherwise, and which is in force and possessed by such person;
- (h) details of any order, award, decision, permission, authority or apportionment referred to in paragraph (g); and

(i) any other particulars which the Minister may require; and the chief engineer shall cause a register of such particulars to be kept. (Amended A 40/1970)

(3) Any person referred to in subsection (2) who is beneficially using the water abstracted, impounded or stored, shall be entitled to a permit to be issued by the board on such conditions as it may deem fit to impose, to enable him to continue to abstract, impound or store, and use, for such purposes as may be prescribed in such permit, a quantity of water at the rate at which he was lawfully, beneficially and efficiently abstracting or impounding and storing water during the aforementioned period. (Amended A 40/1970.)

(4) In issuing any permit, the board shall have due regard to loss of water which may, in its opinion, reasonably be expected to occur in the conveyance of the water from the point at which it is abstracted and delivering it to the place at which it is used or is to be used.

(5) No person shall abstract, impound or store water from a public stream referred to in subsection (2) without having furnished the particulars mentioned therein as required by the Minister, or, if a permit referred to in subsection (3) has been issued, otherwise than in accordance with the conditions specified in that permit.

(6) A permit or notice issued under this section may provide for the abstraction, during any period, of a specified quantity of water within the area in question and for the impounding, storage and use thereof by any person for any purpose in any place within such area and the conditions specified in such permit or notice may relate to the nature of any works which may be constructed or the size or capacity of any such works and may include any other provisions which the board may consider necessary to promote the more efficient and beneficial utilization of the water resources of the said area, and different conditions may be specified in respect of different periods in any year or in respect of different persons or classes of person.

(7) The board may in any such permit or notice provide for the temporary increase or reduction of the quantity of water which may during any period be abstracted by any person if, in the opinion of the board, special circumstances warrant or require it, and may at any time amend the conditions specified in any such permit or notice.

(8) Any person, who has in any Government water control area constructed a water-work in respect of the construction of which a permit is not required, for the purpose of abstracting water from any public stream, shall, within one month after the completion of such work, in writing communicate to the Minister the particulars referred to in subsection (2) in relation to such work, and the Minister shall cause a register of such particulars to be kept.

(9) A person referred to in subsection (8) who fails to comply with the requirements thereof shall be guilty of an offence.

(10) After the board has determined the total quantity of water in respect of which, under subsection (2), (3), (4), (5) or (8), permits are to be issued and, after the board has determined what quantity of water, if any, is to be reserved by it for such other purposes as it may deem fit, the board shall -

- (a) determine the total quantity of water to be made available under subsection (1) for abstraction, impounding, storage or use during any period by all persons who are the proprietors of riparian land in relation to any public stream within the Government water control area in question which can be beneficially irrigated by means of water from that public stream and who, but for the provisions of subsection (1), would have been entitled to the use of water from such public stream for irrigation purposes on riparian land within such area;

(b) determining the formula according to which such quantity of water is to be apportioned between the persons referred to in paragraph (a), either generally or in respect of any portion of the Government water control area in question; and,

(c) in respect of every piece of riparian land within the Government water control area in question in relation to which any person referred to in paragraph (a) would, but for subsection (1), have been entitled to the use of water from the public stream in question for irrigation purposes, determine the extent of the land comprised therein which can, in the opinion of the board, be beneficially irrigated by means of water from such public stream. (Amended A-40/1970.)

(11) In making any determination under subsection (10)(c) and in determining the formula under subsection (10)(b), the board shall take into consideration —

(a) the distance the water is to be conveyed from the point at which it is to be abstracted to the place where it is to be used and, in the case of abstraction by means of a pumping installation, the maximum effective height to which the water will be lifted from the said point place where it is to be used and, in the case of abstraction to the point of discharge;

(b) the considerations set forth in section 60(1) and (3);

(c) the minimum quantity of water which should, in its opinion, be apportioned to each proprietor of riparian land in the Government water control area in question to enable such proprietor to make a reasonable living;

and the formula so determined shall provide that the apportionment in so far as it relates to persons to whom permits have been or are to be issued under subsection (3), shall, subject to subsection (12), be made with due regard to the respective quantities of water in respect of which permits have been or are to be issued to such persons under subsection (3).

(12) In determining the formula to be applied in respect of any person entitled to a permit in terms of subsection (3), the board shall have regard to the nature of the undertaking in connection with which water is being used, and if, in the opinion of the board it is in the public interest to do so, the determination made in respect of such person shall provide for an apportionment to that person of a quantity of water which, together with the quantity of water which may be allocated to him under that subsection shall, in the opinion of the board, be sufficient to enable such person to efficiently and economically irrigate the extent of land, as determined by the board, which has been or is to be irrigated annually by means of the works referred to in subsection (2)(b) or otherwise to efficiently and economically carry on the said undertaking. (Amended A-40/1970.)

(13) Any determination made under subsection (10) and the details of any permits proposed to be issued under subsection (3) and the conditions proposed to be included in any such permits, shall be made known by notice published in the Gazette which shall also set out the quantity of water, if any, to be reserved for such other purposes as shall be stipulated in the notice and quantity of water which the board proposes to apportion to each of the persons referred to in subsection (10)(a), in accordance with such determination and the board shall cause to be published in a newspaper circulating in the Government water control area in question a concise notice directing attention to the publication of the notice in the Gazette.

(14) Any person referred to in subsection (10)(a) who is dissatisfied with —

(a) the quantity of water proposed to be allocated to him under a permit to be issued to him in terms of subsection (3); or

(b) the determination made under subsection (10)(ii) in respect of any piece of land; or

(c) any other determination made under subsection (10);

may, within three months after the date of publication of the details of the said permit or of any of the said determinations, as the case may be, by notice in writing to the Board, request the Board to reconsider its decision in respect of such matter as is set forth in the said notice. (Amended A.40/1970.)

(15) For the purposes of any proceedings under subsection (14), section 35(2) and (3) shall, *mutatis mutandis*, apply.

(16) If, upon such reconsideration, any person appeals to a water court under section 35(3), the court may either confirm the said permit or determination, as the case may be, or make an order varying the terms of the permit or make such other determination as in its opinion the board ought to have made.

(17) If the water court has made an order varying the terms of any such permit or has made a determination in respect of any piece of land which does not correspond with the determination made by the board in respect thereof, any apportionment of water previously made under such permit or determination shall lapse and any permit or notice which is issued by the board under this section shall give effect to the said order or determination of the water court.

(18) If the quantity of water referred to in subsection (10) or the quantity of water to be made available for the purposes of any permits to be issued under subsection (3) is not sufficient to give effect to any order or determination made by the water court in terms of subsection (17), the shortage shall be made good from any quantity of water which the board has reserved for other purposes.

(19) Any proprietor of riparian land situated in a Government water control area may apply to the board for permission to abstract, impound or store and utilize a stated quantity of public water, being portion of the water held in reserve in respect of the Government water control area in question or being water which is not being utilized by the persons entitled thereto.

(20) If the board is satisfied that the quantity of water for which application has been made is available for use, it shall issue a temporary permit to the applicant for such period and subject to such conditions as it may prescribe in the permit to enable the applicant to abstract, impound or store and utilize a stated quantity of public water for such purposes as may be stipulated in the permit.

(21) Upon the expiry of the period referred to in subsection (11) and if the board is satisfied that the quantity of water in question is still available for use, the said proprietor shall be entitled to a renewal of the said permit from time to time and for such further period and subject to such conditions as the board may determine to enable such proprietor to continue to utilize the said quantity of water for the said purpose.

(22) If at any time the board is of the opinion that public water abstracted or impounded and stored in terms of this section is not being beneficially and efficiently used, the board may cancel any permit issued by it under this section or, in the case of a person referred to in subsection (8), in writing direct such person to make such alterations to the waterworks in question as will, in the opinion of the board, result in such water being made available for beneficial use, and such person shall within a period stipulated by the board and at his own expense, comply with the board's directions.

(23) The board may, after notice in writing to the owner of any privately owned waterwork situated within a Government water control area, construct such additional works or make such adjustments or repairs to the said waterwork, or in writing direct any such owner to construct, at his own expense and within a period stipulated by the board, such additional waterworks or make such adjustments or repairs as may, in the opinion of the board, be necessary for the proper measurement and regulation of any public water abstracted or conveyed by or flowing over such waterworks.

(24) The board, or any owner referred to in subsection (23) with the prior authority of the board, may recover, from any person who in the board's opinion derives or is likely to derive any benefit from any additional works constructed or any adjustments or repairs executed under subsection (23), such portion of the costs of such works, adjustments or repairs as it may consider equitable.

(25) If any person fails to comply with any direction under subsection (22), (23) or (24) within the time stipulated in that direction or within such further period as the board may allow, the board may cause the adjustments or repairs specified in that direction to be made or, as the case may be, the additional waterworks so specified to be constructed by the department and recover the cost thereof from the person concerned.

(26) Any permit issued under this section shall attach to the land in respect of which it is issued and shall, while it remains of force, be available to any successor in title of the person to whom it was issued.

(27) A person who abstracts, impounds or stores public water in contravention of the provisions of this section or fails to comply with any direction given to him under section 70(3), shall be guilty of an offence and liable on conviction to the penalties prescribed by section 128(1). (Amended A.1/1969.)

Special provisions relating to Little Usutu and Great Usutu rivers special river control area.

70. (1) For the purposes of this section —

"the Electricity Board" means the board established under section 3 of the Electricity Proclamation, No. 10 of 1963;

"special area" means the area referred to in section 66(3).

(2) Subject to the provisions of subsections (3), (4) and (5) a permit issued under section 19 of the Electricity Proclamation, No. 10 of 1963, shall be deemed to have been issued under section 69.

(3) If, upon the application in writing of the Electricity Board, the board, in terms of a condition imposed by it under section 69(7) in any permit issued in relation to any public stream in the special area, reduces for any period the quantity of water which may be abstracted, impounded or stored by any person under such permit, the board shall send a notice to the person concerned by registered post setting forth the period during which such reduction shall be made and the nature of the reduction and shall, in such notice, direct such person to take such steps as may be specified to give effect to such reduction.

(4) The Electricity Board shall pay to any person, referred to in subsection (3) to whom a permit has been issued under section 69(3), such compensation arising out of the said reduction as may be agreed upon, or failing agreement, as may be determined by a water court on the application of either of the parties.

(3) The Electricity Board shall not be obliged to pay compensation arising out of any reduction imposed under subsection (3) in respect of a permit relating to any public stream in the special area and issued to any person who is not entitled to a permit under section 69(3);

Provided that after a period of twenty years has elapsed, calculated from the nineteenth day of May, 1964, subsection (4) shall apply in respect of such person.

Permits for use of water on non-riparian land for certain purposes.

71. (1) Any proprietor of land which is not riparian to a public stream may apply to the board for a permit to enable him to abstract at a specified place on a public stream and to convey to and use on such land, for primary purposes, a defined quantity of public water.

(2) Section 18(7) to (13) inclusive shall apply, *mutatis mutandis*, in respect of any application made under subsection (1) and section 69(6), (7), (22) and (26) shall apply in respect of any permit issued under subsection (1).

(3) Section 69(8), (9) and (27) shall be observed by a person to whom a permit has been issued in respect of an application made under subsection (1) and section 69(23), (24) and (25) shall apply to a person to whom the permit has been so issued in the same way as they would if his property were situated within a Government water control area.

Transfer of water right from one piece of land to another.

72. The board may, upon the application of a person to whom a permit has been issued under this Act for the use of public water on any piece of land for agricultural or primary purposes, and on such terms and conditions as it may stipulate, permit the use of the water available in respect of that piece of land upon any other piece of land in the area affected.

Substitution of permits on subdivision of land and cancellation of permits.

73. (1) Whenever any piece of land, in respect of which a permit has been issued under section 69 or 71 and is in force for the use of water for agricultural or primary purposes respectively, is subdivided, the board may, on the written application of any interested person and after such inquiry and investigation as it may deem fit, apportion to each piece of land resulting from such subdivision or to any one or more such pieces of land, such quantity of water, being portion of the water specified in the said permit, as it may deem fit, and the board shall thereupon cancel the said permit and issue new permits to the persons entitled thereto in respect of the water so apportioned upon such conditions as it may deem fit to impose.

(2) Section 69(6) to (9) and (22) to (27) inclusive, shall apply in respect of any permit issued under subsection (1).

(3) If any person is convicted of an offence under section 69(27), the board may cancel any permit which has been issued to such person.

Recording of permits on title deeds of land.

74. (1) Whenever a permit has been issued under this Act for the abstraction, impounding or storage and use of public water for primary or agricultural purposes on land described in such permit, the board shall, by notice in writing, direct the registrar of deeds to note such permit free of charge on the title deed of that land.

(2) If a permit noted in terms of subsection (1) is subsequently cancelled, withdrawn or substituted by any other permit issued by the board in terms of the provisions of this Act, the board shall, by notice in writing, notify the registrar of deeds of such cancellation, withdrawal or substitution and the said registrar shall thereupon, free of charge, make the necessary notes on the relevant title deed in accordance with the directions contained in such notice and in the manner in which the original note was made.

(3) The document conveying the direction or notice referred to in subsections (1) and (2), respectively, shall set forth —

- (a) a description of the land in question and the number and date of its title deed;
- (b) the name of the proprietor of that land;
- (c) the number and date of the permit to be noted, cancelled, withdrawn or substituted, as the case may be,

and, where applicable, shall be accompanied by a copy of the relevant permit duly certified by a person authorized thereto by the board, and the registrar of deeds shall cause the said copy to be filed of record in the deeds office.

Fee for the issue of a permit by the board.

75. (1) Whenever a permit has been issued under the provisions of this Act for the use of public water on any land or in connexion with any undertaking carried on or to be carried on on any land, the board may, with the permission of the Minister, require the payment of a fee for the issue of such permit.

(2) Any fee to be paid to the board in terms of subsection (1) shall be in accordance with a schedule of standard charges to be prescribed by regulations made by the Minister under section 78(c) and different charges may be prescribed in respect of each of the purposes for which public water may be used in terms of this Act or in respect of different persons or classes of person.

Collection of rates and charges.

76. (1) Whenever the Minister has assessed any rates or charges under section 63(2) or section 67(5), the board shall recover the amounts payable in terms of such assessment from the proprietors of the land in respect of which the rates or charges have been assessed or, as the case may be, from the persons entitled to use the water or electricity.

(2) Rates or charges so assessed in respect of water used for agricultural purposes shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the proprietor of any such land shall be liable for any such rates or charges which remain unpaid at the time when he becomes the proprietor.

(3) The board may, in addition to any action it may take in terms of subsection (1) for the recovery of any rates or charges referred to therein and which have not been paid on due date, stop the supply of water from the Government waterwork in question to the land in respect of which such water is supplied, or to the person who is being supplied with water, or suspend the supply of electricity to the person who is being supplied therewith, or suspend the permit in terms of which the water is being used, as the case may be, until the said rates or charges have been paid, and the board shall not be obliged, after the amount due has

been paid, to supply any water or electricity so stopped or to pay any compensation for any loss sustained by any person consequent upon the stopping of the said supply of water or electricity or the suspension of the said permit.

(4) Whenever rates or charges have been assessed under section 63(2) or section 67(5) in respect of any land, the board shall in writing advise the registrar of deeds accordingly, and thereupon no transfer of such land or any interest in such land shall be passed by the said registrar until a certificate signed by a person authorized thereto by the board has been produced to him stating that all rates or charges assessed on such land have been paid.

(5) No suspension under subsection (3) of a permit or of the supply of water or electricity to the land or person referred to therein shall relieve any person from any liability, in respect of the period of such suspension, for any rates or charges assessed by the Minister or the board under this Act.

Powers of inspectors.

77. (1) Every inspector appointed to the department for the purposes of the proper enforcement of the provisions of this Act relating to the abstraction, impounding, storage or use of public water by any person shall be furnished with a certificate signed by the Minister or any officer of the department deputed thereto by the Minister stating that he has been designated as an inspector for the purposes of this Act.

(2) An inspector shall, on demand by any person affected by the exercise or the performance by him of any power or function under this Act, exhibit the certificate referred to in subsection (1).

(3) An inspector may, for the purposes of this Act —

- (a) without previous notice, at any time enter upon any land and at all reasonable times enter any premises on which any waterwork has been or is being constructed and, after having informed the person who is for the time being in charge or control of such land or premises of the purpose of his visit if any such person can readily be found thereon, make such examination or inspection of any are, which is being or has been or is intended to be irrigated on that land or of any waterwork situated on that land or in those premises, or take gaugings or readings of any water contained in or flowing in such waterwork or which is being used to irrigate any area, as he may deem necessary;
- (b) at any reasonable time, while he is upon the land or upon or in the said premises or otherwise, question any person —
 - (i) who uses or intends to use water for primary, agricultural, urban or industrial purposes on the said land; or
 - (ii) who has constructed or supplied or is constructing or supplying any waterwork or component thereof in connexion with such use; or any employee of such person, in the presence of or apart from others, and require from such person or employee the production then and there, or at a time and place fixed by the inspector, of any book, list, record, notice or other document which is or has been upon or in the premises or in the possession or custody or under the control of such person or employee if in his opinion examination or inspection of that book, list, record, notice or document is necessary for the purpose of any investigation which he is carrying out; and

- (c) examine and make extracts from and copies of any such book, list, record, notice or document, and require from such person or employee an explanation of any entries in any such book, list, record, notice or document, and seize any such book, list, record, notice or document as in his opinion may be necessary for the purpose of any investigation which he is carrying out.
- (4) Any person or employee referred to in subsection (3) shall at all times furnish such reasonable facilities as are required by an inspector for the purpose of exercising his powers under the said subsection.
- (5) A person who --
 - (a) hinders or obstructs an inspector in the exercise of his powers or the performance of his duties; or,
 - (b) without valid excuse, refuses or fails to answer to the best of his ability any questions which an inspector in the exercise of his powers or the performance of his duties has put to him; or
 - (c) refuses or fails to comply to the best of his ability with any reasonable requirement of an inspector in the exercise of his powers or the performance of his duties; or
 - (d) wilfully furnishes to an inspector any information which is false or misleading;shall be guilty of an offence and liable, on conviction, to the penalties prescribed by section 128(1).

Regulations in connexion with Government waterworks, etc.

78. The Minister may, in respect of any Government waterwork, Government water control area or catchment control area make regulations relating to --
- (a) the manner of regulating the flow of water into, the abstraction or distribution of water from, and the use of water in or from any portion of such work or area;
 - (b) the protection or preservation of the work or area or any part thereof;
 - (c) the control of and access to the work or any area submerged or to be submerged as a result of the construction of the work, including the use of boats of whatever description in or upon any such submerged area;
 - (d) the issue of permits under the provision of this Part and the recording and registration thereof and of the particulars notified to the Minister in terms of section 69(2) or (8);
 - (e) the fees which may be charged by the board under section 75;
 - (f) the method of assessing and recording rates or charges under sections 63(2) and 67(5);
 - (g) the form of application and manner in which any request may be made to the board under section 69(14) and the procedure to be observed at the hearing of any such request and for the advertising of the time and place of such hearing;
 - (h) the form of application for a permit under section 69(19), (20) and (21) or section 71;

- (f) the recovery of the cost of construction of any Government waterworks constructed under section 63 or any part of such cost, from the persons who, in the opinion of the Minister, derive or are likely to derive benefit as a result of the construction of such work, and the security to be furnished by such persons for the due repayment of such cost or portion thereof; and,
- (g) generally, any other matter which he considers it necessary or expedient to prescribe in order that the objects of this Part may be achieved.

PART VII

WATER SPORT CONTROL AREAS

Establishment of water sport control areas.

79. (1) The Minister may, by notice published in the Gazette, declare any area defined in such notice to be a water sport control area if, in his opinion, such area or any portion thereof is or is from time to time or is likely to become submerged, whether naturally or artificially, by water, and such water is or would be navigable or suitable for the practice of any water sport by the general public and the general public is lawfully entitled to access to such water.

(2) Notwithstanding the provisions of this or any other law, or any existing right or other right in respect of water or land in any such water sport control area, the rights to and the control of the use of such water or land for the purposes of navigation or any sport which is practised in or upon water, or any activities arising therefrom or incidental thereto, shall vest in the Minister.

(3) The provisions of section 65(1)(a) shall, *mutatis mutandis*, apply in respect of the powers conferred upon the Minister by subsection (2).

Regulations in respect of water sport control areas.

80. Notwithstanding anything in any other law contained, the Minister may in respect of any area which, in terms of section 79 has been declared a water sport control area, make regulations relating to —

- (a) the control over, and the use of such area for navigation or any sport which is practised upon or in water;
- (b) the control over and use of craft and appliances of whatever nature, upon or in water in such area;
- (c) the control in such area of any activity arising from or incidental to the use of such area for navigation or any sport contemplated in paragraph (a);
- (d) the use of the land in such area between the surface of the water therein and the boundary thereof, for any activity contemplated in paragraph (c);
- (e) the fees payable in respect of the use of such area for any activity referred to in paragraph (a) or (c), or in respect of the use thereof of craft or appliances as contemplated in paragraph (b); and,
- (f) generally, any other matter which he considers it necessary or expedient to prescribe in order that the objects of section 79 may be achieved.

PART VIII

IRRIGATION BOARDS

Petition for constitution of irrigation district.

81. (1) Any three or more proprietors of land riparian to a public stream or any tributary thereof, who together own not less than one-tenth of the land irrigated or proposed to be irrigated by means of water from that stream or tributary, if they consider it desirable that —

- (a) a combined system of waterworks should be constructed for the abstraction or the impounding and storage of any water of that stream or tributary for the purpose of irrigating the said land; or
- (b) any existing waterworks used for the irrigation of such land and the distribution of water should be specially controlled, or that such works should be extended or enlarged or otherwise improved; or
- (c) the use of the water of the said public stream or tributary should be specially controlled; or
- (d) there should be a combined system of drainage for such land;

may transmit to the Minister a petition requesting that the area comprising such land, or such larger area as may be specified in the petition, be declared an irrigation district.

(2) Such petition shall state —

- (a) the boundaries and approximate extent of the area proposed to be included in the irrigation district;
- (b) the approximate extent of the land within such area which is irrigated and which it is proposed to irrigate;
- (c) the purposes in connexion with which it is proposed to constitute the district; and
- (d) the nature and class of any waterworks which it is proposed to construct.

Inquiry into subject matter of petition.

82. (1) If the Minister is satisfied that the persons who have signed a petition transmitted to him under section 81 are proprietors of not less than one-tenth of the land irrigated or proposed to be irrigated within the area to which such petition relates, and the petition is supported by such evidence as the Minister may require, he shall cause a summary of the petition to be published in the Gazette and in a newspaper circulating in that area and cause such inquiry to be made into the subject matter of the petition as he deems fit.

(2) For the purpose of any such inquiry, the Minister may, if he deems fit, cause arrangements to be made for the holding of a public meeting of persons interested in the subject matter of such petition, for the purpose of ascertaining the views of such persons.

(3) Any such meeting shall be presided over by an officer of the department delegated thereto by the Minister, and notice of the time, date and place thereof shall be published in the Gazette and a newspaper circulating in the area in question not less than three weeks before the date on which the meeting is held.

(4) After completion of any such inquiry, the Minister may in his discretion, by notice published in the Gazette, declare the area specified in the petition in question or such other area as he may determine to be an irrigation district, if he is satisfied

- (a) that not less than two-thirds of the proprietors of land situated within the area so specified or within such other area, as the case may be, who together own not less than two-thirds of the land irrigated and proposed to be irrigated within such area; and,
- (b) where an area served by a tributary stream is to be included in any such area, that not less than two-thirds of the proprietors who together own not less than two-thirds of the land irrigated and proposed to be irrigated from such stream, in the area in question,

are in favour of the declaration of such irrigation district, and shall in such notice specify the name by which the irrigation district in question shall be known.

(5) The Minister may, in his discretion at the same time or subsequently and in like manner, declare that the said irrigation district be divided into such sub-districts as may be defined in the notice, and may at any time by like notice withdraw any such subdivision or amend it as he may deem fit.

Constitution of irrigation districts otherwise than on petition of proprietors and reconstitution of irrigation districts.

83. (1) The Minister may, at any time of his own motion, by notice published in the Gazette, declare any area to be an irrigation district and shall in such notice specify the name by which the said irrigation district shall be known.

(2) An irrigation district declared under subsection (1) or under section 82(4) may include —

- (i) land which is not riparian to any public stream; or
- (ii) any area or any part of such area, which has been declared to be a catchment control area or a Government water control area under section 66; or
- (iii) any area, or any part of such area which has been declared to be a water sport control area under section 79.

(3) The provisions of section 82(5) shall apply in respect of any irrigation district declared under subsection (1).

(4) Any land which is not riparian to a public stream and which has in terms of subsection (1) been included in an irrigation district, shall, notwithstanding anything to the contrary contained in this Act, be deemed to be riparian to the said stream as long as it continues to be irrigated by water from that stream by means of works constructed for the purpose.

(5) The Minister may, by notice published in the Gazette —

- (a) combine any irrigation district or any portion thereof with another irrigation district to which it is contiguous or any portion of such other irrigation district; or
- (b) constitute any portion of an irrigation district as an irrigation district and sever such portion from the irrigation district of which it forms a part; or
- (c) exclude any area from an existing irrigation district or include any additional area therein.

(6) Any notice issued under subsection (5) shall indicate the name by which any irrigation district constituted thereby, including any such district constituted by excluding from an existing district any area forming part thereof or by including in an existing district any additional area, shall be known.

(7) A change in the area comprised within an existing irrigation district shall not be deemed to constitute the establishment of a new irrigation district, whether or not the name of such district or of its irrigation board is altered, and subject to subsections (8) and (9) -

- (a) all assets, rights, liabilities and obligations vested in or devolving upon the board of such existing district on the date upon which the change takes effect, shall continue to vest in or devolve upon that irrigation board as if no change had taken place; and
- (b) any by-laws made or decision given or rates or charges imposed by such board shall remain of full force and effect and shall, in so far as they can be so applied, apply also in relation to any additional area included in such existing district;

Provided that the members of such board holding office at the date on which the change takes effect shall vacate their seats on that date or on such later date as the Minister may direct, and thereupon new members shall be elected as if a new irrigation district had been established.

(8) Whenever any portion of the area included within an irrigation district is combined with another such district or any portion of the area included in such other district, or any portion of the area included in any such district has, either alone or together with any other area, been constituted as an irrigation district, the board shall, after such inquiry as it may deem fit, apportion the assets, rights, liabilities and obligations of all the irrigation boards affected amongst those irrigation boards in such manner as the board may consider equitable, and any apportionment made by the board shall be final and binding upon all such irrigation boards.

(9) Subsection (8) shall apply also where a new irrigation district comprising the areas included in two or more existing districts is established if such new district is established in addition to and not in substitution for such existing districts.

(10) Where the areas or portions of the areas comprising two or more existing irrigation districts are, either alone or together with any additional area or areas, combined to form an irrigation district in substitution for such existing districts

- (a) all assets, rights, liabilities and obligations vested in or devolving upon the irrigation board of any such existing district, on the date upon which the substitution takes effect, shall vest in and devolve upon the board of the substituted district; and
- (b) any by-law made or decision given or rate or charge imposed by the irrigation board of any such existing district shall remain of full force and effect as if made, given or imposed by the irrigation board of the substituted district, and shall, in so far as it can be applied, and to the extent determined by the Minister and made known by notice published in the Gazette, apply also in relation to any additional area included in such substituted district.

Powers of the Minister in catchment control area may be assigned to irrigation boards.

84. (1) An area which has been declared to be a Government water control area, or a catchment control area under section 66 or a water sport control area under section 79 or an

area which forms part of any such area, shall not cease to be or to form part of such area by reason of the fact that it has been declared to be an irrigation district under section 82(4) or under section 83(1), or has been included in any such district.

(2) The Minister may assign to the irrigation board established in respect of an irrigation district which comprises or includes an area declared to be a catchment control area or a water sport control area as aforesaid, or any portion of any such area, any or all of the powers vested in him in relation to such catchment control area or water sport control area or such portion thereof by virtue of the provisions of sections 67 and 79 respectively;

Provided that any expenditure incurred by the said irrigation board in carrying out any work which it may deem necessary to carry out in connexion with any of the purposes set out in section 66(2)(a) and (b) or section 79(2) and any compensation payable under section 67(7) to (10) inclusive shall be met by that irrigation board.

(3) For the purpose of the exercise by an irrigation board of any powers assigned to it under subsection (2), any reference in the relevant provisions of section 67 or 69 to the Minister shall be construed as a reference to the said board.

Major and minor irrigation districts.

85. (1) Whenever an irrigation district comprises another irrigation district, the area so comprised shall, in relation to the irrigation district within which it is comprised, be known as the minor irrigation district, and the irrigation district comprising it shall, in relation to such minor irrigation district, be known as the major irrigation district.

(2) The schedule of rateable areas prepared in terms of section 96 in respect of any minor irrigation district, shall be the schedule of those rateable areas for the major irrigation district within which the said minor irrigation district is comprised, and the total of the rates levied by the board of the said major irrigation district in respect of land within the minor irrigation district shall be a charge against the board of such minor irrigation district and shall, for the purposes of section 98(1) be deemed to be expenditure incurred by the board of the minor district.

Disestablishment of irrigation districts.

86. (1) Whenever --

- (a) an irrigation board has not during any consecutive twelve months held any meeting; or
- (b) at a special meeting, convened for the purpose in terms of section 109(2), persons representing a majority of votes, according to the latest voters' list of an irrigation district who would be qualified to vote at an election of members of the board of such district if an election were then held, vote in favour of the disestablishment of such irrigation district and submit to the Minister a petition requesting that the said irrigation district be disestablished; or
- (c) he deems it desirable in the interests of the majority of the persons liable for the payment of rates to such board that the said board be disestablished,

he may, after such inquiry as he deems fit, by notice published in the Gazette, disestablish the said irrigation district.

(2) The Minister may --

- (a) apply to the High Court for directions as to the disposal of the property or the liquidation of the affairs of the board of an irrigation district dis-established in terms of subsection (1), and the High Court may make such order in the matter as it deems fit; or
- (b) refer the matter to the board to advise him as to the liquidation of the affairs of the irrigation board in question, and may after consideration of the report of the board make such order in the matter as he deems fit and such order shall be final and binding on all persons affected.

Establishment of irrigation boards.

87. (1) For every irrigation district there shall be an irrigation board which shall be known by the name to be given to it in the notice whereby such irrigation district is established.

(2) An irrigation board shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its duties, the exercise of its powers or the performance of its functions:

Provided that an irrigation board shall not buy, hold or sell land without the approval of the Minister, and that no land belonging to it shall be sold except by public auction.

(3) Any land owned by an irrigation board which is situated outside the boundaries of its irrigation district shall be deemed to form part of the said district and shall be included in such district by the Minister by notice published in the Gazette.

Number of members of an irrigation board.

88. (1) An irrigation board shall consist of such number of members to be elected in terms of section 92 as the Minister shall, in each case, from time to time determine.

(2) In addition to the number of members to be elected as determined under subsection (1), the Minister may in respect of any irrigation board at any time appoint not more than two persons who are in the employ of the Government to serve on any such board for such period as he may determine and such persons shall be entitled to vote on any matter which is put to the vote by such irrigation board and shall, for all purposes, be deemed to be members of such board.

(3) If an irrigation district which is divided into sub-districts ceases to be so divided, or any such district not divided into sub-districts is so divided, or the number of members of the irrigation board of an irrigation district is increased or reduced, the persons then holding office as members of the irrigation board of such district shall vacate their offices on a date to be determined by the Minister and an election of members of such board shall be held in the manner prescribed in this Act in respect of a first election of members of such board, and all the provisions of this Act relating to such a first election and to the persons elected thereat shall apply in respect of such election and in respect of the members thereupon elected.

(4) The members of an irrigation board shall, subject to subsection (2) and section 92(6), be elected in the manner hereinafter specified:

Provided that two-thirds of the members of the irrigation board of an irrigation district declared under section 83(1) may be appointed by the Minister.

Qualifications of candidates for irrigation boards.

89. Every person whose name is on the voters' list of an irrigation district prepared under section 91 shall be eligible for election as a member of the irrigation board of the said district, unless he is disqualified from voting in terms of section 90(1)(a) or is, without the permission of the Minister, a party to any subsisting contract with the said irrigation board exceeding one hundred rand in value or is without such permission interested in any such contract:

Provided that, if an irrigation district is divided into sub-districts, a person shall be eligible for election as a member of the said irrigation board only in respect of the sub-district under which his name appears on the said list.

Voting for members of irrigation boards.

90. (1) Subject to subsection (3) and the proviso to section 91(1) —

- (a) every person whose name is on the voters' list of an irrigation district prepared under section 91 shall be entitled to nominate candidates for election as members of the irrigation board of the district and to vote at an election of members of such board, unless —
 - (i) any rates levied by the said irrigation board on the land in respect of which such person's name has been placed upon the said list are in arrear for three months or more at the date of such nomination or election, as the case may be; or
 - (ii) such person has ceased to be the proprietor of the land in respect of which his name appears on the said list; or
 - (iii) such person is the accredited representative of a proprietor who has ceased to be the proprietor of the land in respect of which that person's name appears on the said list or that person has ceased to superintend the operations carried out on such land;
- (b) every person entitled to vote in terms of paragraph (a) shall have in respect of every vacancy to be filled at an election —
 - (i) in the case of a person in whose name any land has been scheduled under section 96(2)(a) or, in the case of a first election, under section 96(1)(a), one vote for every ten acres of the land so scheduled; or,
 - (ii) in the case of any other person, so many votes as may, in respect of each irrigation district affected, be determined in the manner prescribed by regulation;

Provided that no person shall exercise more than ten votes in respect of any single candidate.

Provided further that if the Minister is of the opinion that the interests of any voter or body of voters are inadequately represented on the board, he may appoint one or more persons to the board to represent such interests, and the persons so appointed shall for all purposes be deemed to be members of the board.

(2) The Government or a local authority or other corporate body included in the said voters' list may vote by a person duly nominated thereto by the Government, local authority or other corporate body concerned.

(3) A person whose name appears on a voters' list prepared in respect of a sub-district of an irrigation district shall be entitled to nominate candidates and to vote only in connexion with elections of members of that sub-district.

Voters' list.

91. (1) The chief engineer shall, for the purposes of the first election of members of the irrigation board of an irrigation district, prepare a preliminary voters' list showing —

- (a) the names of the proprietors of land in relation to which section 96(1)(a) applies; and
- (b) the names of the proprietors of other land, if any, within the district which, in the opinion of the chief engineer, is or is likely to be affected by any works constructed or intended to be constructed by the irrigation board concerned; and the number of votes which each such proprietor is, in accordance with section 90(1)(b) entitled to exercise in respect of such first election;

Provided that —

- (i) if the said irrigation district is divided into sub-districts, the voters' list of such district shall be divided into sub-districts and the names of the said proprietors shall be shown under the respective sub-districts in which the said land is situated;
- (ii) if there are two or more proprietors of land referred to in paragraph (a) each of whom is not the proprietor of a separate and defined portion thereof, each such person shall be entitled to have his name included in the said voters' list in respect of an area determined by dividing the total extent of land so scheduled by the number of such persons, unless the area so determined is less than ten acres;
- (iii) if the area determined under paragraph (d) is less than ten acres the said persons shall be entitled to have their names jointly included, in such voters' list and to exercise jointly the number of votes determined in accordance with section 90(1)(b)(i) in respect of the land referred to by designating one of their number to vote on their behalf, which said designation shall be in writing and shall be lodged with the Minister;
- (iv) whenever the proprietor of land so scheduled is not permanently resident on such land, his accredited representative shall, so long as he superintends the operation conducted on such land, for all purposes be entitled to have his name placed on the said voters' list in the stead of such proprietor.

(2) Any preliminary voters' list prepared under subsection (1) shall as soon as may be practicable after an irrigation board has prepared a schedule under section 96 be revised by the said board in the manner prescribed by regulation.

(3) The voters' list as so revised shall show the names of all proprietors of land scheduled under section 96 and the number of votes which each proprietor is, in accordance with section 90(1)(b), entitled to exercise in respect of any election of members of the said irrigation board, and the proviso to subsection (1) shall apply, *mutatis mutandis*, in respect of such revised list.

(4) The said voters' list shall thereafter be revised by such irrigation board annually and also whenever the boundaries of the irrigation district in question have been altered or such irrigation district has been combined with another irrigation district, or any portion of such irrigation district has been constituted as an irrigation district.

(3) A copy of the list prepared or revised in accordance with subsection (1), (2), (3) or (4) shall be kept by the secretary of the irrigation board concerned and may be inspected free of charge at any reasonable time by any interested person.

(4) If for any reason a voters' list prepared by the chief engineer under subsection (1) has not been revised by the irrigation board concerned, the list so prepared shall be deemed to be the voters' list of the irrigation district to which it relates until it has been so revised.

(5) Whenever a voters' list has been prepared or revised by an irrigation board under this section, a copy thereof shall be transmitted by the said board to the department.

Election of members of irrigation boards and duration of office of members.

92. (1) The nomination of candidates for election as members of an irrigation board, the election of members and the procedure and voting thereat shall take place in the prescribed manner.

(2) The date of the first election shall be determined by the Minister, who shall, in respect of such election and the nomination of candidates in connexion therewith, appoint a returning officer.

(3) In respect of a nomination of any candidate or any election of members other than the first nomination or election, the chairman of the irrigation board in respect of which such nomination or election is held or a member of the said board nominated by him shall act as returning officer, unless the Minister has designated an officer of the department to act as such:

Provided that —

- (i) the chairman shall not perform any function conferred on him by this paragraph; and
- (ii) a member shall not act as a returning officer; if he is a candidate for nomination or election.

(4) Subject to the provisions of subsection (5), members of an irrigation board shall hold office for a period of three years from the date of their election and a member vacating office shall, if qualified thereto, be eligible for re-election.

(5) Of the members elected at the first election of members of an irrigation board —

(a) of an irrigation district which is divided into sub-districts —

- (i) the member elected for any sub-district who stands first on the poll shall hold office for a period of three years;
- (ii) the member so elected who stands second on the poll shall hold office for a period of two years; and
- (iii) the remaining member so elected shall hold office for a period of one year;

(b) of an irrigation district which is not divided into sub-districts —

- (i) one-third of the members elected, who stand highest on the poll, shall hold office for a period of three years;

- (ii) one third of the members elected, who stand next highest on the poll, shall hold office for a period of two years; and
- (iii) the remaining one-third of the members elected shall hold office for a period of one year;

Provided that if in any case no poll is required to be held, or if two or more candidates have received an equal number of votes, the respective periods of office of the members affected shall be determined by lot under the supervision of the returning officer.

(6) If for any reason any vacancy existing on an irrigation board be not filled by the election of a member thereto, the Minister shall appoint any person whom he considers suitable to be a member of the board to fill the vacancy for such period as the Minister may deem fit.

Casual vacancies on irrigation boards.

93. (1) If a member of an irrigation board ceases to possess the qualifications which would render him eligible to have his name included in the voters' list of the irrigation district in respect of which such board has been established if such list were then revised, or if any such member dies or resigns or becomes insolvent or of unsound mind or is convicted of an offence and sentenced to imprisonment without the option of a fine or otherwise becomes disqualified to be a member of the board, or absents himself from three consecutive meetings of the board without having previously obtained its leave to do so, his office shall become vacant.

(2) As often as any such vacancy occurs, another person shall be nominated and elected to fill such vacancy and the provisions of this Act and the regulations relating to the nomination of candidates for election as members of an irrigation board, the election of members, and the procedure and method of voting thereat, shall apply, *mutatis mutandis*, in respect of the filling of such vacancy:

Provided that —

- (i) the date for the nomination and election to fill such vacancy shall be fixed by the returning officer referred to in section 92(3) within two months of the occurrence of the vacancy; and
- (ii) the member elected to fill the vacancy shall hold office for the remainder of the period for which the person who has died or otherwise vacated his office and whose place has been filled would otherwise have continued in office.

Chairman and vice-chairman of an irrigation board.

94. (1) The members of an irrigation board shall, as soon after the first election of members as is practicable, elect a chairman and a vice-chairman of the irrigation board.

(2) The chairman and the vice-chairman shall respectively hold office as such for a period of twelve months from the date of their election thereto and shall be eligible for re-election, and the chairman or vice-chairman whose period of office has expired shall, so long as he remains a member of the board in question, remain in office as chairman or vice-chairman, as the case may be, until the next succeeding meeting of the said irrigation board.

(3) An irrigation board shall annually elect a new chairman and a new vice-chairman of such board, and if the chairman or vice-chairman dies or otherwise vacates his office, the irrigation board shall proceed forthwith to elect another chairman or vice-chairman for the remainder of the period in respect of which the office in question has become vacant.

(4) If the chairman of an irrigation board be absent from any meeting of such board, the vice-chairman shall preside thereat, and if the vice-chairman be also absent from such meeting, the members of the irrigation board who are present thereat shall elect one of their number to preside at the said meeting.

(5) Any person who is entitled to preside at a meeting of an irrigation board in terms of this section shall, in the case of an equality of votes upon any matter which the irrigation board is determining, have a casting vote in addition to his deliberative vote as a member.

Invalidities in election, etc., not to affect validity of acts by an irrigation board.

95. (1) An irrigation board shall not be deemed to be defectively constituted by reason of any failure to elect the prescribed number of members of such board, or by reason of any vacancy existing, so long as there is a sufficient number of members on the irrigation board to form a quorum.

(2) All acts done in good faith by an irrigation board or its chairman or vice-chairman or a person acting as chairman or vice-chairman or a member of an irrigation board or a committee of such board, or an officer of the department to whom the functions, powers and duties of an irrigation board have been delegated in accordance with section 103(4), in the carrying out of any powers, functions or duties assigned to or imposed upon such irrigation board by this Act or the regulations made under section 110 shall, although it may afterwards be discovered that there was some defect in the constitution, election or appointment of the irrigation board, chairman, vice-chairman, committee, person or officer, or that such board, chairman, vice-chairman, committee, person or officer was otherwise disqualified from so acting, be as valid as if such board, chairman, vice-chairman, committee, person or officer had been duly constituted, elected, appointed or qualified.

Schedule of rateable areas of irrigation districts.

96. (1) The Minister shall, in respect of every area declared to be an irrigation district, prepare a preliminary schedule setting forth —

(a) the approximate extent of each piece of land within the said district which is irrigated and which is proposed to be irrigated by the proprietor thereof and in respect of which rates may be levied by the irrigation board of the said district in terms of section 98(1);

(b) particulars of the title deed according to which that piece of land is held, a description of that piece of land, and the extent thereof; and

(c) the name of the proprietor of that piece of land; and the extent so determined in respect of any such piece of land shall, until a schedule has been prepared by the said irrigation board, be deemed to be the rateable area of that piece of land.

(2) Every irrigation board shall, as soon as possible after the first election of its members, prepare in manner prescribed by regulation a schedule of rateable land in its irrigation district, setting forth —

- (a) the extent of each piece of land in respect of which water may be supplied by the said irrigation board from any waterworks owned or controlled by such board which will be rateable and in the case of an irrigation board to which the powers referred to in section 97(1)(f) or (g) have been assigned, the extent of the land, forming part of every piece of land riparian to the public streams in relation to which the said powers have been assigned to such board, which is irrigated by means of water from waterworks belonging to the proprietor of such piece of land and which will be rateable:

Provided that, in fixing such last-mentioned extent, the irrigation board shall have regard to the share or volume of water of the aforesaid public streams which the proprietor of the land has a right to use thereon, and to the number of acres which could ordinarily and with due precaution against waste be efficiently and beneficially irrigated in the course of a year by that share or volume, irrespective of the number of acres actually irrigated, or, if such extent cannot be so fixed, the average number of acres annually irrigated on the said piece of land from the said public streams as ascertained by measurement or inquiry:

Provided further that an irrigation board shall not include in its schedule of rateable land in respect of any one proprietor an extent of land which shall be rateable in excess of the actual extent of rateable land applied for in writing by such proprietor at the time of the constitution of the irrigation district; and

- (b) the particulars described in subsection (1)(b) and (c).

(3) A schedule prepared by an irrigation board in accordance with subsection (2) shall take the place of any preliminary schedule previously prepared by the Minister in terms of subsection (1).

(4) An irrigation board shall, in the prescribed manner from time to time, revise the schedule prepared by it in terms of subsection (2):

Provided that, whenever the boundaries of an irrigation district have been altered, or an irrigation district has been combined with another irrigation district, or any portion of an irrigation district has been constituted as a new irrigation district, new schedules, in respect of the new irrigation district and of the remainder of the irrigation district of which such new irrigation district formed a part, shall forthwith be prepared in accordance with the provisions of the said subsection.

(5) Whenever an irrigation board has prepared or revised a schedule under this section, it shall transmit a copy thereof to the Minister and to the registrar of deeds.

(6) An irrigation board may, on the application of an owner of any piece of land scheduled under this section, and on such terms and conditions as it may stipulate, permit the use of water available in respect of that land upon any other piece of land in its irrigation district.

(7) A schedule prepared or revised under this section shall be kept by the secretary of the irrigation board concerned and may be inspected free of charge at any reasonable time by any person interested.

Functions of irrigation boards.

97. (1) The Minister may, by notice published in the Gazette and notice in writing to the board of an irrigation district, assign to that board such functions, as he may deem fit enabling or requiring it to --

- (a) protect the sources of the water of any public stream in the said irrigation district;
- (b) prevent the waste of the water of any public stream in the said district;
- (c) prevent the leakage or flow of any public water from the surface into subterranean channels;
- (d) prevent any unlawful abstraction or storage of public water or to cause to be removed any abstraction unlawfully placed in a public stream, and to prevent any unlawful act which is calculated to diminish the quantity of water in any part of the public stream;
- (e) exercise general supervision over all public streams within the said irrigation district and to cause any such stream to be cleansed, deepened, widened, straightened, restored to its former channel (in the case of a stream which has changed its course) or otherwise improved whenever it appears necessary or expedient to do so;
- (f) investigate and record the quantity or share of water which, in different stages of flow in all or any of the public streams in the irrigation district, every person having any rights in respect of such water is entitled to use and the times at which such quantity or share may be taken;
- (g) subject to any existing right, supervise and regulate the distribution and use of the water of all or any of the public streams in the irrigation district and for that purpose to erect and maintain such devices for measuring and dividing the flow of the said water or controlling diversion thereof as may have been ordered by a water court, or, in the absence of any such order, as the said board may consider necessary, and generally to supervise within the said irrigation district the storage, diversion and use of water in public streams;
- (h) construct, purchase or otherwise acquire and to maintain such waterworks as may be considered necessary for the drainage of land in the irrigation district or for the proper irrigation of any of the areas scheduled under section 96(2)(a), and any other works which such board may deem necessary for the protection and preservation of such waterworks;
- (i) control, operate, administer or maintain any Government waterwork and to control, supply or distribute water therefrom in accordance with section 65, the generality of this provision and of the terms and conditions which the Minister may impose in terms of the said section not being limited by anything contained in the preceding paragraphs; and,
- (j) subject to the provisions of this Act, supply any water under the control of such irrigation board to any local authority or other person for primary, urban or industrial purposes.

(2) An irrigation board shall from time to time on the directions of the Minister enter into such contracts of insurance, against any losses, damage, risks or liabilities which the board may incur, as the Minister may require.

(3) Whenever an irrigation board has constructed or acquired waterworks in terms of subsection (1)(h) it shall, subject to subsection (4), take such steps as it may deem necessary to ensure that there is delivered for use on every piece of land which has been included in the schedule prepared by the said board in terms of section 96(2) and in respect of which an area has been scheduled under paragraph (a) thereof, which is entitled to receive water from the said waterworks, a quantity of water, being a portion of the water available for agricul-

total use from such works, which, as nearly as may be practicable, bears to the whole quantity of water available for such use, the same ratio which the said area bears to the whole area so included:

Provided that, if any such land is subdivided and any subdivided portion is sold or otherwise disposed of to any person, the person selling or disposing of such subdivided portion shall make such provision as may in the opinion of the irrigation board be necessary to ensure the delivery on to such subdivided portion of the quantity of water to which it may be entitled.

(4) If any privately owned waterwork within an irrigation district is used by one proprietor or a group of proprietors or contiguous holdings to convey water distributed by the land of that district in terms of this section to the land held by such proprietor or proprietor, such land may deliver the water to which the land in question is entitled into the said waterwork for the use of that proprietor, or, as the case may be, for distribution by those proprietors amongst themselves in shares proportionate to the extent of each proprietor's land entitled to such water, or in accordance with existing rights, as the case may be, or may itself undertake the distribution of that water amongst such group of proprietors and in that event exercise in relation to such waterwork any of the powers which may, under subsection (3)(b) or (c), be exercised by it in relation to any waterwork referred to therein.

(5) If an irrigation board referred to in subsection (3) uses the channel of any public stream within its irrigation district for the conveyance of any water from the waterworks referred to in the said subsection for the purpose of supplying or distributing such water to the persons entitled thereto —

(a) the said board shall during such conveyance, and notwithstanding any existing right, have the exclusive control of all water which is so conveyed in the channel of such public stream, together with all other water which may during such conveyance be flowing in that stream;

(b) the said board may exercise control over such portions of privately-owned waterworks constituted within the irrigation district, for the purpose of abstracting or conveying water from such public stream, as it may from time to time deem necessary for the purpose of effecting a proper distribution of the water referred to in subsection (3), and may, with the written consent of the Minister and after notice in writing to the proprietor concerned like over for such period as the Minister may determine when granting such consent, the maintenance and control of any such privately-owned waterwork, if in its opinion the water so abstracted or conveyed by means of such works is not being distributed among the persons entitled thereto in the manner provided in subsection (4);

(c) the said board may —
(i) after giving notice in writing to the proprietor of any such privately-owned waterworks, construct such additional works, or make such adjustments or repairs to the existing waterworks; or
(ii) give written notification to such proprietor to construct such additional works or to make such adjustments or repairs to existing works;

as may, in the opinion of the said board, be necessary for the proper maintenance and regulation of the water abstracted or conveyed by such waterworks, and, if in the case of a notification to a proprietor under sub-paragraph (ii), such proprietor fails to construct, adjust or repair such works

to the satisfaction of the said board within six months of the date of such notification, the said board may undertake such construction, adjustment or repair at the expense of the said proprietor and may, by action in competent court, recover the costs incurred from such proprietor;

(d) no person shall construct any new or materially alter or enlarge any existing waterwork on any such public stream for the purpose of abstracting or conveying water from such stream (other than water to which he is entitled in terms of any order, award, decision, permission, authority, or apportionment given or made by a competent court under this Act or by any other competent body or person under any prior law) without the consent in writing of the said irrigation board;

(e) no decision of a water court on an application under section 10(1) for relief from any decision made by an irrigation board under paragraph (d) shall be construed as entitling any person to abstract from any such public stream any water other than water to which he is entitled in terms of an order, award, decision, permission, authority or apportionment given or made by a competent court under this Act or by any other competent body or person under any prior law.

(6) A person who contravenes subsection (5)(d) shall be guilty of an offence.

(7) Whenever the powers referred to in subsection (1)(g) have been assigned to an irrigation board --

(a) Subsection (4) and subsection (5)(b) to (e) inclusive shall apply, *mutatis mutandis*, in relation to any public stream within the irrigation district of the said board; and

(b) such board may, with the previous sanction of the Minister, order any person to carry out such work and execute such repairs in relation to waterwork belonging to him or under his control as may be necessary for the protection of life or the public safety, and, in default of compliance with such order, cause the work to be carried out or the repairs to be executed and recover the cost from such person by action in a competent court.

(8) An irrigation board may levy a rate upon the land served by any waterwork taken over by it in terms of subsection (5)(b), sufficient to defray the cost of maintenance and control of such work, and such rate shall be additional to and not in substitution of any rate levied by the said board in terms of section 98(1).

(9) An irrigation board shall not be liable for the payment of any compensation to any proprietor referred to in subsection (5)(c) in respect of the construction by such board on such proprietor's land of any works referred to therein.

(10) This section shall not be deemed to authorize an irrigation board to arrange for the distribution and use of water within the area of jurisdiction of a local authority unless such local authority consents thereto, and, if any such area is included in an irrigation district, such local authority shall have all the powers as to the distribution and use of water which are conferred in respect thereof by the law regulating the powers of that local authority.

Irrigation board may assess rates and charges.

98. (1) For the purpose of defraying any expenditure lawfully incurred or to be incurred by it in the carrying out of the duties, the performance of the functions or the exercise of the powers assigned to or imposed upon it under this Act, an irrigation board may --

- (a) assess rates on land scheduled in terms of section 96(2)(a) or, in the case of a preliminary schedule prepared under section 96(1), on land scheduled in terms of paragraph (a) thereof, or assess charges for water supplied or distributed in respect of such land or to any person from waterworks belonging to the said board, or assess both such rates and such charges;
- (b) assess rates on any land referred to in section 91(1)(b) within its irrigation district;

and may recover the rates and charges so assessed from the proprietors of the said land or from any person to whom water is so supplied, as the case may be.

(2) If an irrigation board assesses rates, such rates shall be assessed annually by such board at a uniform sum per acre of the land affected;

Provided that the said board may, under special circumstances and with the consent of the Minister, levy rates upon and in respect of any land at rates different from the rates in respect of any land or levy a special rate in addition to the rate assessed annually.

(3) Whenever an irrigation board is empowered to supply water in terms of section 97(1)(j), it may from time to time assess such charges as the Minister may determine for water so supplied and may recover such charges from the persons to whom such water is so supplied.

(4) This section shall not be construed as preventing an irrigation board from entering into an agreement with one or more proprietors of land for raising a loan on the security of the rates which it may assess in terms of subsection (1) for the purpose of constructing a waterwork for the sole benefit of such proprietor or proprietors, and from levying on the land affected an additional rate sufficient to cover the interest and other annual charges payable in respect of such loan.

Irrigation board to prepare assessment rolls.

99. (1) Whenever an irrigation board has assessed any rate in terms of section 98(1) or (2) or any additional rate in terms of section 98(4) such board shall cause to be prepared an assessment roll setting forth —

- (a) the name of each person liable to pay rates;
- (b) a description of the piece of land in respect of which the rate is assessed;
- (c) the extent of such piece of land which is scheduled in terms of section 96(1)(a) or 96(2)(a);
- (d) the amount of the rate assessed; and
- (e) the date or dates upon which payment is due and the amount due on each such date.

(2) One copy of such assessment roll shall lie in the office of the secretary of the irrigation board concerned and shall be open to inspection at all reasonable times by any interested person.

Payment and recovery of rates and charges assessed by an irrigation board.

100. (1) Any rate assessed by an irrigation board under section 98 shall be due and payable at the office of such board on the date or dates shown on the assessment roll under section 99(1)(e) and any charge assessed by such board in terms of section 98(3) shall be due and payable on a date to be fixed by such board when the said charge is so assessed.

(2) If, within one month after the date fixed for payment, the amount due and payable by any person liable to pay such amount has not been paid, the irrigation board concerned may --

- (a) without further demand, recover such amount from such person by action in a competent court, and the whole of the amount of the rate of which such amount due and payable forms a part shall forthwith become due and payable and may be recovered by such board in like manner; and,
- (b) by such means as it deems fit, stop any water flowing from any waterwork under its control onto land in respect of which such amount is due and unpaid until the amount is paid, or, in the case of an amount due and unpaid in respect of a charge assessed in terms of section 98(3), suspend the supply of water to the person concerned until the amount has been paid, and the said board shall not be obliged, after the amount due has been paid, to supply any water so stopped or to pay compensation for any loss sustained by any person consequent upon the stopping of the said water.

(3) No cessation under subsection (2)(b) of the supply of water to the land or person referred to therein shall relieve any person from any liability for any rates or charges assessed by the irrigation board in question in terms of section 98 in respect of the period of such cessation.

(4) Rates assessed by an irrigation board shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the proprietor of any such land shall be liable for any such rates which remain unpaid at the time when he becomes the proprietor.

(5) No transfer of any land in respect of which rates may be assessed by such an irrigation board shall be passed by the registrar of deeds, until a certificate signed by the secretary of such board has been produced to such registrar stating that all rates assessed on such land or charges due to that board by the proprietor of such land have been paid:

Provided that this subsection shall not apply unless the said board has supplied the said registrar with a copy of the schedule of rateable areas of its irrigation district, in accordance with section 96(5), or, where a copy has been so supplied, unless the particulars shown therein relating to the land in question are sufficiently set forth to enable the said registrar readily to identify such land in his registers.

(6) If the proprietor of any land upon or in respect of which rates have been levied by an irrigation board becomes insolvent or, in the case of a proprietor being a company, such company is placed in liquidation, the amount of the rates or charges unpaid at the date upon which such proprietor becomes insolvent or such company is placed in liquidation, as the case may be, not exceeding the amount of such rates or charges for a period of two years immediately prior to the date of such insolvency or liquidation, shall rank preferent to any registered mortgage other than a mortgage registered prior to the date on which the irrigation board in question was established under section 87(1).

Irrigation board may raise loans.

101. (1) An irrigation board may, in the prescribed manner and with the approval of the Minister, raise by way of loan any money required by it for the purpose of carrying out any of the duties, the performance of any of the functions, or the exercising of any of the powers assigned to or imposed upon it under this Act.

(2) Whenever an irrigation board proposes to raise a loan notice in writing of its intention to do so, setting forth the details of the proposal, shall be given to every member of such board not less than twenty-one days before the date of the meeting of the board at which such proposal is to be considered, and no loan shall be raised except upon a resolution of the board passed at a meeting at which not less than two-thirds of the members thereof are present.

(3) The security in respect of a loan to an irrigation board shall be the rates and charges leviable by such board under this Act or such other security as may be agreed upon.

Irrigation board may expropriate land, servitude, etc.

102. (1) An irrigation board may, with the consent of the Minister, and for the purpose of exercising any function or power or carrying out any duty assigned to or imposed upon it by this Act, expropriate any land or servitude over land or any existing right or appropriate any substance or material on any land or temporarily use any land or any waterwork within its irrigation district as it may consider necessary:

Provided that this subsection shall not apply to land or to water found on such land belonging to the Government or the Ngwenyama in trust for the Swazi nation or the Electricity Board constituted in terms of section 3 of the Electricity Proclamation No. 10 of 1963, or the Swaziland Railway established under section 3 of the Swaziland Railway Proclamation No. 15 of 1962, or to any works or undertakings conducted by or on behalf of the Government or Swazi Nation or the said Electricity Board or Swaziland Railway.

(2) Section 68(2) to (19) inclusive, shall, *mutatis mutandis*, apply in connexion with any such expropriation.

Powers of the Minister to supervise the affairs of an irrigation board.

103. (1) Any officer of the department nominated thereto by the Minister shall be entitled to attend, but not to vote at, any meeting of an irrigation board and to assist any such board or a committee thereof with his advice upon any matter relating to any question under discussion or consideration by such board or committee.

(2) The Minister may from time to time appoint any officer of the department to inspect the lands or waterworks belonging to or under the control of an irrigation board, including any land in respect of which water is supplied from works controlled by such board, or to investigate the affairs of such board, and if after consideration of a report made by such officer the Minister is satisfied that the said works have not been or are not being executed or maintained in a satisfactory manner, or that such board has failed to carry out any of the functions, powers and duties assigned to or imposed upon it under this Act or the regulations made thereunder or any other law, or has been dilatory or negligent in carrying out such functions, powers and duties, or has not satisfactorily carried out or complied with any order of a water court or the board whereby any duty has been imposed upon the said irrigation board, the Minister may --

- (a) by notice in writing direct the said irrigation board to take within a period specified in the notice such action as is therein set out, or
- (b) cause such action as he may deem necessary to be taken at the expense of the irrigation board, or levy and recover rates and collect any dues payable to such board sufficient to pay any moneys due in respect of any advance or

loan, and sufficient to cover the cost of any action so taken, together with all expenses incidental to the levying, recovery or collection of any rate he may so levy; or,

(c) by notice published in the Gazette and notice in writing to the irrigation board, declare the period of office of the members of such board to be terminated, and assume the functions of such board for such period as he may deem fit, or upon such termination or at any time thereafter take all such steps as he may consider necessary for the election of new members to such board.

(3) If the irrigation board fails to comply with a direction under subsection (2g) within the period specified by the Minister or within such further period as he may determine, the Minister may forthwith apply the provisions of subsection (2)(b) or (c).

(4) The Minister shall, in respect of any period during which he assumes the functions of an irrigation board under subsection (2)(c) or (3), be vested with all the powers, rights, assets, liabilities and obligations of such board and may delegate the control thereof to any officer of the department, and shall, for the purpose of the levy and recovery of rates and the collection of dues under subsection (2)(b), have the same powers and rights as are in terms of this Act vested in the irrigation board concerned in connection with the levy and recovery of such rates or the collection of such dues by that board.

(5) The Minister may, by action in a competent court or in such other manner as he may deem fit, recover the costs of any action taken by him under subsection (3) from the irrigation board concerned.

Accounts of irrigation boards.

104. (1) An irrigation board shall, in the prescribed manner, keep accounts of all moneys received and expended by it, and shall render to the department such reports or statements of account as may be prescribed by regulations.

(2) Any officer of the department authorized thereto by the Minister may at any time examine the accounts, books and records of any irrigation board.

(3) Every irrigation board shall establish a reserve fund and shall from time to time deposit therein such amounts as may be determined by the Minister, being portion of the rates or charges assessed by it in terms of section 98, and no amount so deposited shall be withdrawn from such fund except with the approval of the Minister.

Registration of rights or servitudes with irrigation boards.

105. (1) Every person entitled to any servitude or other right entitling him to the use of water within an irrigation district, acquired before the date of the notice whereby such district was established, shall within a period specified in a notice served upon him by the irrigation board of that district, not being less than three months after the date of service of such notice, apply to such irrigation board to record that servitude or right, and, in default of compliance with the requirements of this section within the period so specified, and, so long as the servitude or right remains unrecorded, it shall not be recognized by the irrigation board for the purpose of the distribution of water by it or for any purpose under this Act.

(2) In considering whether it shall record any servitude or right referred to in subsection (1), an irrigation board shall have regard to all servitudes or rights claimed in respect

of the use of such water, whether registered against title or otherwise lawfully existing, and, where there is no such servitude or right registered against title, the person aforesaid shall set forth the particulars of the servitude or right which he claims to have recorded under this section, and such particulars shall be published in the prescribed manner.

(3) If within a period of three months after the date of publication of such particulars, written objection has not been lodged with the secretary of the irrigation board to the recording of any servitude or right, such servitude or right shall be recorded by the irrigation board, and if any such objection has been lodged, the servitude or right shall not be recorded except upon the order of a water court or other competent court or upon withdrawal of such objection by the person by whom it has been lodged with such irrigation board.

Application for relief from order or act of an irrigation board.

106. (1) This Part shall not be construed as preventing any person aggrieved by any order, act or decision, or a proposed order, act or decision of an irrigation board from making application to a water court for relief:

Provided that where such an order or act has been carried out or decision has been made by the said irrigation board, a person aggrieved thereby shall forfeit his right to make such application to the said court if the application is not made within a period of three months from the making of the order or decision or the doing of the act by such board, unless such person can prove to the satisfaction of the said court that owing to his absence from Swaziland or any other reasonable cause he was unable to make such application within the said period, in which case the said court may allow such further period within which the said application may be lodged, as it deems fit.

(2) A water court may, in making any order arising out of an application made by it under this section, fix such amount of compensation, to be paid to the applicant by the irrigation board concerned, as it deems fit.

Allowances to, and contracts with, members of irrigation boards.

107. (1) A member of an irrigation board shall not, except in so far as the Minister otherwise directs, receive any salary, allowance, fee or reward for, on account of, or by reason of his being a member of such board, or, without the permission of the Minister, enter into a contract with such board exceeding one hundred rand in value or be directly interested in any such contract.

(2) A person who contravenes any provisions of this section shall be guilty of an offence and disqualified from being a member of an irrigation board.

(3) This section shall not be construed as preventing a member of an irrigation board from receiving, in accordance with regulation, an allowance in respect of expenses incurred by him in the performance of his duties as a member.

Ownership of waterworks constructed by irrigation boards.

108. Whenever an irrigation board has, under this Act, constructed or otherwise acquired a waterwork, the rights and privileges of ownership therein shall be vested in such board, unless such board has constructed that work under section 97(5)(c) and has recovered the cost of such work from the owner concerned.

Irrigation board to convene meetings of voters.

109. (1) An irrigation board shall, at least once in every year, convene a general meeting of the voters whose names appear on the voters' list of the irrigation district prepared or revised in terms of section 94 and shall at such meeting lay before the said voters a statement of its accounts in respect of the preceding year and give an account of its activities during such year.

(2) If not less than twenty-five of the voters whose names are shown on the voters' list of an irrigation district or, where there are less than seventy-five such voters, not less than one-third of those voters, consider that it is in the interest of the majority of the persons liable to pay rates or charges to the board of the said district that a special meeting of such persons be held, the irrigation board shall at the request of such voters convene such special meeting.

Regulations as to irrigation boards.

110. The Minister may make regulations relating to --

- (a) the nomination of candidates and the election of members of an irrigation board, and the procedure and method of voting thereat;
- (b) the powers and duties of returning officers in connexion with such elections and in connexion with the first meeting of an irrigation board;
- (c) the quorum for meetings of an irrigation board;
- (d) the appointment of a secretary and other officers or servants of an irrigation board;
- (e) the allowances for expenses which may be made to a member;
- (f) the delegation by an irrigation board of any of its powers to committees and the constitution, quorum, powers and procedure of such committees;
- (g) the manner of summoning and the procedure to be observed at any meeting required to be convened under section 109;
- (h) the service of notices under this Part;
- (i) the persons by whom, the place at which and the manner in which anything shall be done for which provision is made in this Part;
- (j) the returns to be rendered in terms of section 104(f); and the manner in which accounts shall be kept by an irrigation board; and,
- (k) generally, any other matter which he considers it necessary or expedient to prescribe in order that the objects of this Part may be achieved.

Irrigation boards may make by-laws.

111. (1) Subject to subsection (2), an irrigation board may make by-laws not inconsistent with this Act relating to --

- (a) the procedure at its meetings;
- (b) the powers and duties of its officers;
- (c) the method of supervising or controlling the diversion, distribution and the use of water under its control, and the closing of any waterworks belonging

to it at certain times and seasons, whether for the purpose of repairs or for the benefit of any adjoining lands or for any other reason; and,

(d) generally, any other matters which it is deemed necessary to prescribe for the carrying out by the said board of its functions under this Act.

(2) No by-law made by an irrigation board shall be valid unless it has been approved by the Minister and published in the Gazette and no such by-law shall be approved until the expiry of one month after a notice has been published by the board, in a newspaper circulating in the irrigation district of such board and posted outside the principal door of the office of the board, stating its intention to apply for the approval of such by-law.

(3) An irrigation board shall supply copies of all by-laws in force in its irrigation district to any person applying therefor, upon payment of such reasonable sum for each such copy as has been determined by the board, and a copy of all such by-laws shall be kept by the secretary of the said board in the office of such board and shall be open for inspection at all reasonable times by any person free of charge.

PART IX

SERVITUDES

Definition of servitudes.

112. In this Part —

"servitude of abutment" means the right to occupy, by means of a dam, weir, protecting wall or embankment, pump turbine or powerhouse and its appurtenances, the bed or banks of a public stream or land adjacent thereto belonging to another or in respect of which another has acquired any proprietary right;

"servitude of aqueduct" means the right to occupy so much of the land belonging to another or in respect of which another has acquired any proprietary right as may be necessary for or incidental to the passage of water, and includes a right to use, sink in the use of, or construct, on such land, works, including ancillary diversion works, necessary for the passage of water over, under or alongside another work, or to enlarge and extend an existing work;

"servitude of drainage" means the right to occupy so much of the land belonging to another or in respect of which another has acquired any proprietary right as may be necessary or incidental to the drainage of land or disposal of water, whether into the nearest public stream or otherwise, as may be practicable or desirable in the circumstances;

"servitude of storage" means the right to occupy land belonging to another or in respect of which another has acquired any proprietary right by submerging it with water by means of a dam, weir or other work, whether or not such dam, weir or other work has been constructed on such land.

Point on a public stream at which water may be taken.

113. (1) Any person entitled to the use of water of a public stream may, subject to this Act, acquire the right to divert such water at such point on the course of that stream as may be reasonably necessary to enable him to exercise his right to use the said water.

(2) A local authority shall, with the consent of the Minister, be entitled to construct and maintain any waterworks on or over any land for drainage purposes or for the purpose of conveying water to the area of jurisdiction of the said local authority for urban use in that area.

(3) Any such local authority shall, in connexion with the construction or maintenance of any such waterworks, have the same powers as are by section 102 vested in an irrigation board and, for that purpose, the provisions of that section shall, *mutatis mutandis*, apply.

Rights of servitude and of proprietors of dominant and servient tenements.

114. (1) Any person who, having a right to or to the use of public or private water, or being entitled to supervise or control the use or disposal of public or private water, desires to employ it or to increase its employment for or in connexion with any purpose for which such water may be used in accordance with this Act, or to dispose of such water, whether by drainage or in any other manner, shall be entitled to claim under this Act, temporarily or in perpetuity, such servitudes of abutment, aqueduct, drainage or storage as may be necessary for or incidental to the said purpose or for the disposal or drainage of such water:

Provided that —

- (a) no such person shall be entitled to a servitude of drainage over any land situated within the area of jurisdiction of a local authority except with the consent of such local authority;
- (b) a temporary servitude shall not endure for a longer period than three years;
- (c) no proceedings shall be taken for the acquisition of any servitude while a dispute exists as to the right to the water in respect of which the servitude is claimed and proceedings to determine the dispute are pending in a competent court, but, if both such proceedings to acquire any servitude and to determine the said dispute are capable of decision by or are actually pending before the same court, nothing herein contained shall prevent both matters being decided at one and the same time;
- (d) no such servitude shall give the person acquiring it any right or interest in the land on, over or through which the servitude is acquired other than the rights connected with such servitude.

(2) Whenever a servitude of abutment, aqueduct, drainage or storage has been acquired by agreement, or by order of a competent court or the board, or has otherwise been lawfully acquired under this Part or under any prior law, and the proprietor of the dominant tenement desires for any reason to alter or extend the waterworks in respect of which such servitude was acquired, such proprietor shall, notwithstanding any terms or conditions which may have been imposed in connexion with the acquisition of the said servitude, be entitled to claim under this Act such new or additional servitudes as may be necessary for the said purpose.

(3) Any servitude acquired under this Part shall include the right of access to the area in respect of which the servitude has been acquired for the purpose of constructing, enlarging, renewing, replacing, fencing, inspecting, maintaining, repairing or cleaning the waterwork in respect of which the said servitude has been acquired or for any other purpose necessary for the effective enjoyment of the servitude.

(4) The proprietor of any land which is subject to a servitude of aqueduct or drainage may pass any water to which he is entitled or of which he wishes to dispose along the waterwork in respect of which such servitude has been acquired, on payment of such proportion

of the cost of constructing, enlarging and maintaining the said work, and on such other terms as may be agreed upon or failing agreement as may be determined by a water court or by the board:

Provided that the said proprietor shall not be entitled to pass any water along such waterwork in such manner as to prevent or hinder the person who has acquired the said servitude from exercising his rights under such servitude.

(5) The proprietor of land over which a servitude of drainage exists shall be entitled to use on such land the water contained or flowing in any waterwork constructed on such land or in any drain or other channel, other than a public stream, used for the purpose of disposing of the said water, and the said proprietor shall be entitled to claim that any waterwork constructed in the exercise of the said servitude of drainage shall be so constructed as to make available for his use any water flowing therein on his land:

Provided that no such waterwork shall be so constructed as to raise the water level to the detriment of an upper proprietor and that any additional expense which may be incurred for the purpose of making the said water available for use by the proprietor shall be borne by such proprietor.

(6) Whenever a person requires a perpetual servitude of storage or a perpetual servitude of abutment, the proprietor of the land over which such servitude is required may, before the servitude has been acquired, pay or give security for the payment of a share of the cost of acquiring such servitude and of the cost of construction of the waterwork in connexion with which the said servitude is required, as determined by agreement between such proprietor and the person acquiring the servitude or, in the absence of such agreement, by a water court or by the board, and shall thereupon, after completion of the said waterwork, so far as is consistent with the provisions of Part III, be entitled to receive the benefit of such work by using water therefrom to the extent so determined:

Provided that no such benefit may be claimed by the proprietor of the servient tenement if the use of the said water by him would seriously impair the usefulness of the said waterwork to the person desirous of acquiring the servitude or if the said servitude was acquired by a local authority for the purpose of supplying the inhabitants within the area of its jurisdiction with water:

Provided further that any dispute as to the usefulness of the waterwork in question, or the proportion of the water which the said proprietor of the servient tenement may use, or the total cost of the waterwork, or each party's proportionate share of such cost, shall be determined by a water court or by the board at the instance of either of the said proprietors.

(7) If the proprietor of a servient tenement has not acquired a right in terms of subsection (6), he shall not be entitled to abstract or use any water from the waterwork, in respect of which the said servitude of storage or abutment has been acquired, without the permission of the proprietor of the dominant tenement.

(8) A person who desires to construct a waterwork for the conveyance or the drainage or disposal of water shall not construct such work across a road for the construction, maintenance, repair or control of which any lawfully constituted body, including the Government, is responsible unless he has obtained the written permission of the Government or body, as the case may be, and the said person shall construct such waterworks in accordance with such conditions as to construction, maintenance and repair as the Government or said body, as the case may be, may impose in granting the said permission.

(9) Subject to section 115, a servitude of storage shall not, unless it be a condition of any agreement or order of a competent court or of the board establishing it, deprive the

proprietor of the land subject to such servitude or the use of that part of the land which is not subtergered, so long as such use is not detrimental to the enjoyment of the said servitude by the person in whose favour it has been granted or acquired.

Servitude includes the right to take materials for waterworks.

115. (1) Any servitude acquired under this Part shall, unless otherwise provided in the deed of servitude or order of a water court or of the board, as the case may be, include a right —

- (a) to take, from the land subject to the servitude, any material or substance which may reasonably be required for the purpose of constructing, enlarging, renewing, replacing, maintaining or repairing any waterwork or any portion thereof in respect of which such servitude has been acquired, whether such material or substance is used on such land or elsewhere;
- (b) to cut down from the land subject to the servitude or to remove and use any tree, bush, vegetation or other obstacle which may be detrimental to the enjoyment of the servitude by the person in whose favour it has been granted or acquired;
- (c) to deposit, on the land subject to the servitude, any material or substance excavated or removed from the waterwork in respect of which the servitude has been acquired in the process of constructing, enlarging, renewing, replacing, repairing, maintaining or cleaning such work; and

- (d) to occupy temporarily so much land, subject to the servitude, as may be reasonably required during the period of construction of the waterwork in respect of which the servitude has been acquired, for the construction of camps or roads or for the erection on such land of such houses, plant, receptacles or other buildings or structures as may be necessary in connection with the construction of the work, and to occupy permanently so much land as may reasonably be required for the residence of such persons and for workshops or storage purposes as may be necessary in connection with the control, operation and maintenance of the waterworks in question.

- (2) The taking of any material or substance in terms of subsection (1)(d), or the removal and use of any tree, bush, vegetation or other obstacle in terms of subsection (1)(b), or the depositing of any material or substance in terms of subsection (1)(c), or the occupation temporarily or permanently of land in terms of subsection (1)(d), shall be subject to an obligation to pay compensation to the proprietor of the land in question, unless such material or substance is taken or such tree, bush, vegetation or other obstacle is cut down or removed, or such material or substance is deposited within the defined area of the servitude, or such occupation is restricted to the defined area of the servitude.

- (3) Compensation to be paid in terms of subsection (2) shall, in the absence of agreement, be determined by a water court or by the board.

Right to use a waterwork subject to obligation to contribute towards repairs and maintenance.

116. Any person who, by paying a proportionate share of the cost of constructing any waterwork in terms of section 114(1), (5), (6) or (7) or by agreement or in any other lawful manner, has acquired a right to use such work, is liable to pay a like proportion of the cost of maintenance and repair of such work, unless such person has by notice in writing to the proprietor of the dominant tenement surrendered such right.

Person acquiring servitude to construct access bridges, etc..

117. Every person who, under this Part, constructs waterworks for the passage, drainage, diversion or disposal of water which prevent any proprietor passing freely over or onto his land, or check the circulation of water in the irrigation or drainage of such land, shall at his own expense construct and maintain in repair such bridges and other works as will make communication reasonably safe and convenient, and such culverts, aqueducts and other works as are necessary to secure the free circulation of such water, unless he be exempt from such duty by agreement or otherwise.

Mode of acquiring servitude under this part and powers of entry upon land.

118. (1) Any person who proposes to claim a servitude of abutment, aqueduct, drainage or storage, may, after notice to the proprietor of the land in question, enter upon that land and make any investigation and undertake any operations thereon which he may consider necessary for the purpose of determining the extent and nature of the servitude required, and, in the exercise of such powers of entry, such person may -

- (a) search, dig, excavate, bore or carry out any works or investigations which may be necessary for the discovery, gauging or measurement or the establishment of the chemical composition of any water rising from any spring, well or fountain, or flowing in any river, watercourse or channel;
- (b) take any steps necessary to determine the levels, direction or flow or chemical composition of any water contained or flowing in any underground reservoirs or channels; and
- (c) search, dig, excavate, bore and carry out any works necessary to determine the suitability of any site for the construction of storage or other works in relation to the supply of water:

Provided that no entry shall be made into any building or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof:

Provided further than in the exercise of the said powers as little damage as possible shall be caused, and such compensation as may be agreed upon, or failing agreement determined by a competent court, shall be paid by the said person for all damage so caused or otherwise the said person shall repair any damage.

(2) Any person referred to in subsection (1) shall, in any notice claiming a servitude, set forth, according to the nature of the servitude -

- (a) the line of passage along which the water is to be conducted or diverted;
- (b) the locality on which the water is to be stored and the approximate area which will be submerged;
- (c) the nature and locality of any works, including works, if any, referred to in section 117 which it is proposed to construct.
- (d) the quantity and nature of the material required from the said land for the purpose of constructing waterworks and the place from which it is proposed to take such material;
- (e) the land required temporarily for construction camps and permanently for the residence of persons and for workshops or storage purposes necessary in connexion with the operation and maintenance of the works in question;

(f) the compensation which is offered and the manner in which such compensation has been assessed; and

(g) whether a temporary or permanent servitude is claimed and, if temporary, the period of time during which he wishes to enjoy the servitude;

and shall attach to the said notice a plan showing the position, locality and nature of any proposed works in respect of which that servitude is claimed, and, in the case of a servitude of aqueduct or of drainage, the line of passage of the aqueduct or drain to be constructed.

(3) If the proprietor does not, within one month after the service of a notice claiming a servitude, agree to the claim, or to any particulars stated in the notice, or to any other matter necessary for the servitude, and consent to the embodiment of such particulars and other matters in a deed of agreement and to execute such deed notarijly, the claimant may apply to a water court or, subject to section 36(8), (9) and (10), to the board for the settlement of the several matters in dispute.

(4) The person claiming any such servitude shall, when serving notice thereof upon the proprietor of the land affected, transmit by registered post to any mortgagee and to every person shown upon the title deed of such land or in the records of any Government office, in which rights granted under any law relating to prospecting or mining are recorded, to have any interest in such land and whose whereabouts he can readily ascertain, a copy of that notice and of every annexure thereto.

Jurisdiction of a water court or the board as to claims for servitudes.

119. (1) A water court or the board, as the case may be, may, upon the hearing of a claim to any servitude under this Part -

(a) award the same with or without modifications, and subject to such conditions as it deems just;

(b) award or refuse to award compensation for the right of servitude granted;

(c) if the land on which the servitude is claimed is subject to a lease, mortgage, usufruct or other encumbrance, and the lessee, mortgagee, usufructuary or other person in whose favour the land is encumbered claims a share any compensation awarded, determine the claim of the lessee, mortgagee, usufructuary or such other person and the amount, if any, of his share of the compensation;

(d) dismiss the claim, but on the following grounds only, namely -

(i) that the servitude claimed does not fall within the provisions of this Part;

(ii) that the object for which the servitude is claimed could be better attained in another manner;

(iii) that the claim is not made in good faith or that the person claiming such servitude has not satisfied the water court or the board that he has taken all reasonable steps to ascertain the whereabouts of every person on whom any copy of a notice referred in section 118 is, in terms of subsection (4) of that section, required to be served, or to serve such a copy on any such person;

(iv) that the works appertaining to the servitude claimed are not of sufficient utility to justify the acquisition of the servitude;

- (v) that the works appertaining to the servitude will seriously interfere with any Government waterwork or with any waterwork of an irrigation board or the Electricity Board established under section 3 of the Electricity Act, No. 10 of 1963, or the Swaziland Railway established under section 3 of the Swaziland Railway Act, No. 15 of 1962; or
- (vi) that the damage likely to be caused by the proposed works would be greater than the benefits that would be derived therefrom.

(2) In fixing the amount of compensation, a water court or the board may deduct such amount as it thinks reasonable in consideration of any advantage which the proprietor, lessee or usufructuary, as the case may be, of the land on which the servitude is acquired may derive by reason of the servitude.

(3) Compensation awarded by a water court or the board for a temporary servitude shall not exceed an annuity equal to the rental value, as nearly as can be ascertained, of the land to be actually occupied by the work contemplated, together with such amount for actual inconvenience or loss likely to be suffered by the exercise of the right of servitude as a water court or the board may in its discretion determine.

(4) Compensation awarded by a water court or the board for a permanent servitude shall not exceed an amount assessed in accordance with section 68(5)(a).

(5) In fixing the amount of compensation in the case of a servitude of aqueduct in respect of existing works, the water court or the board shall take into account the cost of such works, including any ancillary diversion works, and the cost of acquiring any servitudes in respect of such works and such compensation shall include a proportionate share of the cost, or the value of such works, as the court or the board deems equitable.

Conversion of temporary servitude into permanent servitude.

120. (1) A person who has under this Part or a prior law acquired a temporary servitude, shall be entitled to have such servitude converted into a permanent servitude on payment to the proprietor of the land of such compensation as may be agreed upon or failing agreement determined by a water court or, subject to section 36(8), (9) and (10), by the Board upon application made thereto.

(2) Section 119 shall, as far as possible, be applied in determining the amount of such compensation, but the water court or the Board shall in making any award of compensation have due regard to the amount previously paid in respect of the temporary servitude aforesaid.

Construction and maintenance of works in respect of which servitude has been acquired.

121. (1) Subject to the provisions of this Part, works required for the enjoyment of a servitude acquired under this Part or any prior law shall be constructed and properly maintained solely at the cost of the person acquiring the servitude.

(2) If any canal, furrow or other channel constructed under this Act or any prior law across the land of another person for the purpose of conveying, draining or disposing of water be out of repair or require cleaning, the person having or claiming the right of aqueduct, drainage or disposal in respect of such canal, furrow or other channel shall, if

required in writing by the proprietor of the land to repair or clean the said canal, furrow or channel, carry out the necessary operations within a reasonable time, and if he fails to do so, the proprietor may cause all such work to be done and recover in a competent court the cost thereof from the person having or claiming such right aforesaid.

(3) Any person, having or claiming such a right who knowingly allows it to suffer any such canal, furrow or other channel to be out of repair or to be in such a state as to require cleaning, shall be liable for all damage which may arise therefrom.

Lapse of servitude.

122. A servitude acquired under this Part or any prior law in terms of an order of a water court or other competent body shall lapse if the work proposed to be executed be not completed and the water be not utilized within three years from the date of the order, or within such further period as the said water court or body may have fixed, or within any extended period agreed upon between the parties concerned.

Registration of servitudes.

123. (1) A servitude acquired under this Act, or any similar servitude acquired under any prior law, other than a servitude acquired by expropriation by the Government or an irrigation board, shall not be recognized until registered in manner prescribed by regulation against the respective title deeds of the land against and in favour of which it has been so acquired, and the registrar of deeds shall, upon production of a duly executed notarial agreement or an order of a water court or the board, register the said servitude against the title deeds of such land.

(2) Section 59(3) shall *mutatis mutandis*, apply in respect of the registration of servitudes under this subsection.

(3) For the purposes of the registration of a servitude acquired under this Part, and notwithstanding the provisions of any other law —

- (a) the registrar of deeds shall, if ordered thereto by a water court or the board, accept such plans showing the position of the servitude on the land subject to such servitude as may be indicated by the said court or the board;
- (b) the said registrar may, in the case of a servitude of abutment, aqueduct, drainage or storage acquired otherwise than by an order of a water court or the board, accept a certified copy of a diagram of the land subject to such servitude with the approximate position of such servitude indicated thereon, duly certified by the chief engineer or other officer of the department delegated thereto by him.

PART X

GENERAL AND MISCELLANEOUS

Delegation of powers.

124. (1) The Minister may, by notice published in the Gazette, delegate to the chief engineer or any other officer in the department, any of the powers conferred upon him by this Act other than his power to make regulations under this Act.

(2) Any authority conferred under subsection (1) shall be subject to such conditions and restrictions as may be specified in the notice by which it is conferred, and may be varied or revoked by the Minister, in his discretion, by notice published in the Gazette.

Right of entry upon land.

125. (1) Any person authorized thereto in writing by the Minister may, after reasonable notice to the proprietor or occupier of any land, enter upon such land with such men, animals, vehicles, appliances and instruments and do all such acts thereon as may be necessary for the purpose of making any inquiries or undertaking any investigations with a view to determine the feasibility of constructing, enlarging, extending, altering or rejoining any water-work or for the purpose of erecting construction camps or other preliminary work which the Minister may consider necessary in connexion with any such work or for the purpose of ascertaining whether any provision of this Act or any regulation made or condition imposed thereunder is being complied with and may, for the purpose of gaining access to such land, after like notice enter upon and cross any other land with the necessary men, animals, vehicles, appliances and instruments:

Provided that the provisos to section 118(1) shall, *mutatis mutandis*, apply in respect of any such entry.

(2) Subsection (1) shall, *mutatis mutandis*, apply in relation to any member of an irrigation board or a person authorized thereto in writing by the chairman of an irrigation board.

(3) A member of a water court or the board or a person authorized thereto in writing by the chairman of the board may enter upon any land for the purpose of making any inspection or carrying out any duty which the said member or the board may consider necessary in connexion with the performance of its functions under this Act.

(4) A person who prevents any entry or the exercise of any power authorized by this section or wilfully obstructs or hinders any person so entering in carrying out such person's powers or duties under this Act shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 128(1).

Control of waterworks outside control areas.

126. Section 69(8), (9) and (22) shall apply to any person who, for the purpose of abstracting water from a public stream, has constructed a waterwork at a place which is situated outside a Government water control area.

Service of notices and documents.

127. (1) Any notice, order or other document required by this Act, other than a regulation made under section 62 to be served upon any person, shall be deemed to have been duly served if it has been delivered to such person personally or, if personal service is not possible, if left at or sent by registered post to his last known ordinary residence or published in the Gazette.

(2) Any notice, order or other document required to be served by this Act upon an irrigation board, unless otherwise provided by a regulation made under section 62, shall be

deemed to have been duly served if it has been delivered or left at or sent by registered post to the office of the board or the last known ordinary residence of the chairman or the secretary of the board.

(3) Any notice, order or other document which, purporting to be lawfully made, is issued in good faith under this Act shall be valid, according to the terms thereof, notwithstanding any want of form or lack of authority on the part of any person to issue or authenticate it if the authority is subsequently conferred upon such person.

Offences and penalties.

128. (1) A person who, unless he has the lawful right or authority, the proof whereof shall lie upon him —

- (a) constructs, alters, enlarge or obstructs a waterwork, or destroys, defaces or moves any level mark, beacon or other structure or appliance erected or made in connexion with any such work; or
- (b) interferes with or alters the flow of the water contained in or flowing in or from a waterwork, or interferes with or alters the flow of the water of a public stream, or interferes with the distribution of any such water, or takes public or ground water in excess of the quantity he is entitled to take or at a time when he is not entitled to do so, or uses water in a manner contrary to this Act; or
- (c) while using or being liable for the maintenance of a waterwork, wastes or does not take due precaution to prevent waste of water from any such work, or fails to maintain the work and keep it in repair; or
- (d) being a proprietor of land in respect of which rates or charges have been assessed in terms of section 63(2), 67(5) or 98(1), takes or uses water from the waterworks in connexion with which such rates or charges have been assessed, after the supply of water from such works to the said land has been stopped by the board or, as the case may be, by the irrigation board concerned, or takes or uses water after the board has suspended the permit in terms of which the water may be used, by reason of a default on the part of the said proprietor to pay any such rates or charges; or
- (e) wastes public water; or
- (f) without the written permission of the Minister, alters or in any way interferes with any work referred to section 67(1)(a); or
- (g) aids or abets or permits any act or default referred to in any of the preceding paragraphs; or
- (h) contravenes or permits the contravention of or fails to comply with any provision of section 69(5) or any condition referred to in section 67(3) or any condition imposed in any permit issued by the board under this Act;

shall be guilty of an offence and liable, in the case of a first conviction, to a fine not exceeding two hundred rand or imprisonment not exceeding one month or both, and, in the case of a second or subsequent conviction, a fine not exceeding four hundred rand or imprisonment not exceeding six months, or both.

(2) A person who is convicted of an offence under section 18, 19 or 20 shall be liable, in the case of a first conviction, to a fine not exceeding one thousand rand or imprisonment not exceeding six months or both and, in the case of a second or subsequent conviction, a fine not exceeding one thousand five hundred rand or imprisonment not exceeding nine months, or both.

(3) A person who is convicted of an offence under section 36(6) or 54(4) shall be liable, to a fine not exceeding four hundred rand or imprisonment not exceeding six months, or both.

(4) A person who is convicted of an offence under section 36(5) shall be liable to a fine not exceeding two hundred rand or imprisonment not exceeding three months, or both.

(5) A person who commits any offence against this Act for which no penalty is expressly provided shall be liable, on conviction, to a fine not exceeding fifty rand or imprisonment not exceeding one month, or both.

(6) Any regulations made by the Minister under this Act may impose penalties, not exceeding the penalties referred to in subsection (5), for an offence against such regulations.

(7) A person who has been convicted of any offence under this Act, and who after such conviction persists in the course of conduct which constituted the said offence shall be guilty of a continuing offence and liable, on conviction, in the case of an offence referred to in subsection (2), to a fine not exceeding eighty rand, and, in the case of any other offence to a fine not exceeding twenty rand, in respect of every day that he so persists or has so persisted.

(8) If in any proceedings under subsection (1)(b) in which it is alleged that a person has —

(a) interfered with the distribution of water contained or flowing in or from a waterwork or a public stream, or has taken more water, than he is entitled to take, and it is proved that the said distribution was interfered with or that more water was taken than the said person was entitled to, or that the said water was taken at a time when such person was not entitled to take it, the said person shall be presumed, until the contrary is proved, to have interfered with the distribution of the said water or to have taken more water than he was entitled to or to have taken it at a time of when he was not entitled to take it;

(b) taken water, at a time when he was not entitled to take such water, it is proved that such water was running onto or found on any land or running into or found in any dam belonging to such person, the onus of proving that the said person was entitled to such water or that it was so taken or used without his knowledge shall be upon that person.

(9) A magistrate court shall have power to impose any penalty prescribed by this Act and to award damages in terms of section 129.

Award of damages against an accused in criminal proceedings.

129. (1) Whenever any person is convicted of an offence under this Act and it appears that such person has by that offence caused loss or damage to any irrigation board or proprietor, the court may in the same proceedings at the written request of the irrigation board or proprietor concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

(2) Upon proof of such amount, the court shall give judgment therefor in favour of the irrigation board or proprietor concerned and against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before such court.

Provided that judgment shall not be given under this section for a sum exceeding one thousand rand.

Evidence.

130. (1) A copy of the minutes of the proceedings of any meeting of the board or an irrigation board or of a committee of the board or such irrigation board, purporting to be signed by the chairman of that meeting, and certified under the hand of the chairman for the time being of the board or irrigation board or committee as a correct copy of the minutes of that meeting shall be *prima facie* evidence in all courts of the proceedings of that meeting.

(2) Until the contrary is proved, every such meeting, of the proceedings of which minutes have been so signed and certified, shall be deemed to have been duly convened and held.

(3) Every contract made by the board or by an irrigation board shall be deemed to be duly executed if signed by the chairman and by one or more members or the secretary of the board or irrigation board, as the case may be, authorized thereto by resolution passed at a meeting of the board or the irrigation board.

(4) A notice, order or other document issued under this Act purporting to be issued on the authority of the board or an irrigation board shall, until the contrary is proved, be deemed to have been issued on such authority if signed by the secretary of the board or such irrigation board.