

ACT

To provide for the planning of the optimum development and utilization of the water resources of Zimbabwe and the establishment of water development advisory councils; for the establishment, jurisdiction and composition of the Water Court and for the powers and procedure thereof; for applications for rights to use of public water and for the control thereof by the State in certain circumstances; for the declaration of public water shortage areas and the consequences thereof; for the control of underground water; for the acquisition of servitudes in respect of water and matters ancillary thereto; for the prevention and control of water pollution, for the approval of combined irrigation schemes; for the safety of dams; to amend the Interpretation Act [*Chapter 1*], the Natural Resources Act [*Chapter 150*] and the Sabi-Limpopo Authority Act [*Chapter 156*]; to repeal the Water Act [*Chapter 160*] and the Water Amendment Act, 1975; to amend the Mines and Minerals Act [*Chapter 165*], the Urban Councils Act [*Chapter 261*] and the Roads Act [*Chapter 263*]; and to provide for matters incidental to or connected with the foregoing.

ARRANGEMENT OF SECTIONS

PRELIMINARY

Section

1. Short title and date of commencement.
2. Interpretation
3. Act not to affect certain rights of miners and prospectors to water.

PART I

ADMINISTRATION OF ACT

4. Minister to appoint Secretary for Water Development and other officers.
5. Delegation of powers by Minister and Secretary
6. Powers of officers.
7. Submission of cases by agreement to Secretary.
8. Powers of Secretary in respect of hydrological stations.
9. Establishment, composition, functions and powers of river boards.

PART II

WATER DEVELOPMENT PLANNING

10. Interpretation in Part II
11. Secretary to prepare outline plans
12. Contents of outline plans.
13. Establishment of advisory councils.

14. Membership of advisory councils.
15. Functions and powers of advisory councils.
16. Publication of outline plans.
17. Procedure after publication of outline plans.
18. Approval or rejection of outline plans.
19. Changes to approved outline plans.
20. Effect of operative outline plans.
21. Review of operative outline plans.

PART III

ESTABLISHMENT, JURISDICTION AND COMPOSITION OF WATER COURT

22. Establishment and jurisdiction of Water Court.
23. Appointment and conditions of service of judges.
24. Selection and payment of assessors.
25. Water Registrar.

PART IV

POWERS AND PROCEDURE OF WATER COURT

26. Powers of Water Court.
27. Powers of judges.
28. Decision of Water Court.
29. principles to be observed by Water Court in considering applications for rights to use of public water.
30. Rules of procedure of Water Court.
31. Record of procedure of Water Court.
32. Proceedings of Water Court to be in public.
33. Persons interested in matters before Water Court.
34. Presentation of parties and others before Water Court.
35. Summoning of parties and witnesses before Water Court.
36. Witnesses failing to attend or refusing to be sworn or to give evidence before Water Court.
37. Witnesses giving false evidence before Water Court.

38. Contempt of Water Court.
39. Costs in Water Court.
40. Appeals from decisions of Water Court.
41. Orders of Water Court.
42. Registration of awards orders of Water Court.

PART V

RIGHTS TO PUBLIC WATER

43. Use and vesting of water.
44. Casual use of public water
45. Rights of owners, lessees or occupiers of riparian land to use of public water for primary purposes.
46. Power of Minister to limit quantity of water abstracted for primary purposes.
47. Applications for rights to use of public water for various purposes.
48. Minister may apply for certain rights.
49. Amendment of rights to abstract, control, divert, store or use public water.
50. Minister may cede or authorize exercise by another of rights granted in terms of section 48.
51. Restrictions on cessation of right to use of, or sale or use of, public water.
52. Change of course of public stream
53. Applications for rights to conduct operations in public streams..
54. Details of water storage works to be reported to Secretary.
55. Consent of Minister to be obtained for water storage works of certain size.
56. Safeguarding interests of occupants of Tribal Trust Land.
57. Decisions of Water Court affecting water supply for primary purposes in Tribal Trust Land.
58. Grant of final, provisional or temporary rights.
59. Certain rights to use of public water to enjoy preference over other rights to use of public water.
60. Disposal of public water after use.
61. Provisional, temporary or final rights to attach to land and final rights to be noted on title deeds.
62. Allocation or apportionment of rights to use of public water on consolidation or subdivision of land.
63. Priority of rights to use of public water when volume thereof insufficient to satisfy demand.

64. Responsibility for maintenance of water works.
65. Reservation of areas likely to be required for dam basins or dam sites.
66. Reservation of public water.
67. Public water control areas.

PART VI

PUBLIC WATER SHORTAGE AREAS

68. Declaration of public water shortage areas.
69. Applications of Water Control for exercise of certain powers in public water shortage areas.
70. Powers of Water Court in respect of public water shortage areas.

PART VII

CONTROL OF UNDERGROUND WATER

71. Interpretation of terms in Part VII
72. Application of Part VII.
73. Persons who may abstract and use underground water.
74. Reporting of new boreholes and wells.
75. Reporting of existing boreholes and wells in certain areas.
76. Underground water control areas.
77. Permits for use of underground water in underground water control areas.
78. Underground water shortage areas.
79. Sinking, deepening or altering of boreholes and wells in underground water shortage areas restricted.
80. Maximum rate of abstraction of underground water in underground water shortage areas.
81. Measuring and recording underground water abstracted from boreholes and wells in underground water control areas and underground water shortage areas.

MISSED FROM PAGES 483 TO 484

- 137. Registration of certain rights.
- 138. Repeals and savings
- 139. Amendment of various Acts.

FIRST SCHEDULE: Powers of Officers.

SECOND SCHEDULE: Amendment of Various Acts.

BE IT ENACTED by the President and the Parliament of Rhodesia, as follows:-

PRELIMINARY

Short title and date of commencement.

1. (1) This Act may be cited as the Water Act, 1976.
- (2) This Act shall come into operation on a date to be fixed by the President by notice in the *Gazette*.

Interpretation.

2. (1) In this Act -

"Agricultural Development Authority" means the Agricultural Development Authority established by section 3 of the Agricultural Development Authority Act [*Chapter 100*];

"agricultural purposes", in relation to the use of public water, means the use of water for -

- (a) the irrigation of land; or
- (b) fish farming purposes; or
- (c) the operation of a feedlot in which twelve or more cubic metres of water per day are used for a period or periods in aggregate exceeding six months in any period of twelve consecutive months;

"appointed date" means the date fixed in terms of subsection (2) of section *one*;

"appropriate Minister", in relation to any particular matter, means the Minister -

- (a) who by or in terms of any law is empowered or required to exercise any power or to perform any duty or function in respect of such matter; or
- (b) to whom any function in respect of such matter has been assigned;

"area under the jurisdiction of a local authority" means -

- (a) in the case of a municipal council, the municipal area;
- (b) in the case of a town council, the town area;

- (c) in the case of a rural council, the rural council area;
- (d) in the case of a local board, provincial authority or African council, the area specified in terms of subsection (2);

and includes the area of any African township administered and controlled by any such local authority;

"assessor" means an assessor selected in terms of section *twenty-four*;

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

"Compensation Court" means the Compensation Court established by section 3 of Land Acquisition Act [*Chapter 44*];

"Director of Physical Planning" means the Director of Physical Planning appointed in terms of section 74 of the Regional, Town and Country Planning Act, 1976 (No. 22 of 1976);

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

"electricity undertaking" means an undertaking for the generation of electricity for public use, the plant of which undertaking is rated at the site where it is installed at a capacity of one hundred or more kilowatts;

"existing right" means an existing right to the use of public water granted in terms of this Act or of any enactment repealed by this Act or any predecessor of such enactment;

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

"final right" means a right to the use of public water granted by the Water Court which is not a provisional right or a temporary right;

"floodwater" means any water flowing in a public stream, which water is consequent on rainfall and the entry of which water into the public stream is detectable by any sudden increase in the flow of water in the public stream;

"hydrological station" means a place where measurements and observations of river flow or river level are taken or made, as the case may be, and recorded;

"institutional purposes", in relation to the use of public water, means the use of water for -

- (a) boarding-houses, guest farms, hotels and other like enterprises;
- or

- (b) recreatinal clubs; or
- (c) missions or boarding-schools; or
- (d) a permanent labour force which, excluding the dependants of the labourers concerned, exceeds one hundred labourers;

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

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

"irrigation company" means a company referred to in paragraph (a) of subsection (2) of section *one hundred and eleven*;

"judge" means a judge appointed in terms of subsection (1) of section *twenty-three* and includes the Senior Judge;

"lapsed right" means, subject to the provisions of subsection (7) of section *fifty-eight*, a provisionsl right -

- (a) which has expired through non-compliance with teh conditions imposed on the grant thereof; and
- (b) for which no extension of the period allowed for compliance has been obtained;

"local authority" means -

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

"local authority purposes", inrelation to the use of public water, means the use of water for the purposes of the community within the area under the jurisdiction of alocal authority and of such other persons as may conveniently be supplied iwth water by the local authority;

"mining purposes", in relation to the use of public water, means the use of water for mining purposes;

"Minister" means teh Minister of Water Development of such othr Minister to whom the President may from time to time assign teh adminstratin of this Act;

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

"non-riparian owner" means an owner of land which is ot riparian land;

"normal flow" means that portion, if any, of public water which is not directly occasioned or caused by floods due to rainfall;

"officer" means an officer appointed in terms of subsection (10) of section *four* and includes the Secretary;

"owner", in relation to land, includes -

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

"pollution", in relation to a public stream or private water, public water or underground water, means -

- (a) such contamination or other alteration of the biological, chemical or physical properties of the public stream or water, including changes in colour, odour, taste, temperature or turbidity; or
- (b) such discharge of any gaseous, liquid, solid or other substance into the public stream or water;

as will or is likely to create a nuisance or render the public stream, or private water, public water or underground water, as the case may be, detrimental, harmful or injurious to the health, safety or welfare of the public or any section thereof or to any consumer or user of the water or to any birds, fish or other aquatic life, livestock or wild animals;

"presiding judge" means a judge assisted by not less than two assessors;

"primary purposes" in relation to the use of public water, means the reasonable use of water -

- (a) subject to the provision of the definition of "institutional purposes", for human use or in or about the area of the garden grounds or both of a dwelling-house or for cleaning purposes in a place of business; or
- (b) for the support of animal life, other than fish in fish farms or

animals or poultry in feedlots; or

(c) for the making of bricks for the private use of the owner, lessee or occupier of the land concerned; or

(d) for dip tanks;

"private water" means all water, other than public water and underground water, which -

(a) rises naturally on any land; or

(b) drains or falls naturally on to any land;

so long as it remains on the surface of the land and does not visibly join a public stream;

"provisional right" means a right to the use of public water in provisional form granted by the Water Court for the period within which any conditions imposed by the Water Court shall be complied with;

"public stream" means a watercourse of natural origin wherein water flows, whether or not -

(a) such watercourse or any portion thereof is dry during any period of the year; or

(b) the conformation of such watercourse has been changed by artificial means;

"public water" means all water found on or below the bed of a public stream, including marshes, springs, swamps or vleis forming the source of or found on the course of the public stream;

"public water control area" means an area declared in terms of subsection (1) of section *sixty-seven* to be a public water control area;

"public water shortage area" means an area declared in terms of subsection (1) of section *sixty-eight* to be a public water control area;

"railway purposes", in relation to the use of public water, means the use of water by any person authorized to operate a railway system for the purpose of such operation;

"Registrar" means the Water Registrar appointed in terms of subsection (1) of section *twenty-five*;

"riparian land" means land on which or along the boundary of the whole or any portion of which, a public stream exists;

"riparian owner" means the owner of riparian land;

"river board" means a river board established in terms of subsection (1) of section nine;

"road purposes", in relation to the use of public water, means the use of water by

a road authority as defined in the Roads Act [*Chapter 263*] for the construction or maintenance of a road;

"Sabi-Limpopo Authority" means the Sabi-Limpopo Authority established by section 3 of Sabi-Limpopo Authority Act [*Chapter 156*];

"Secretary" means the Secretary for Water Development appointed in terms of subsection (1) of section *four*;

"Senior Judge" means the Senior Judge appointed in terms of subsection (1) of section *twenty-three*;

"storm-water" means all flow of water directly due to rainfall before such water joins a public stream;

"temporary right" means a right to the use of public water granted by the Water Court for a limited period;

"township" means a group of pieces of land which are used for commercial, industrial, residential or similar purposes or are intended or likely to be used for any such purposes;

"township purposes", relation to the use of public water, means the use of water for the purposes of a township;

"underground water" means all water which is -

- (a) beneath the surface of the ground; and
- (b) not visible on the land concerned; and includes water in boreholes and wells;

"Water Court" means the Water Court established by subsection (1) of section *twenty-two*;

"water storage works" means a dam, reservoir or weir;

"water works" means -

- (a) a borehole, canal, channel, embankment, filter, filterbed, pipeline, pumping plant, purification plant, plant for the generation of hydro-electric power, water storage works or well; and
- (b) any accessory, apparatus, appliance, fitting machinery or other thing constructed, erected or used for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water, or the conservation of rainfall or the development of water power; and
- (c) any land occupied for or in connection with the abstraction, control, diversion, drainage, filtration, passage, purification, storage, supply or use of water, including effluent or waste water; and

- (d) any gauge posts, measuring weirs and other appliances erected or used for undertakings authorized by or in terms of this Act;

and includes any area held, occupied or required for the purpose of being irrigated;

"well" includes amine shaft and any other subterraneous working used for the abstraction of water.

- (2) The Minister may, by notice in the *Gazete* -
 - (a) with the approval of the Minister of Local Government and Housing, declare a local board to be a local authority for the purposes of the definition of "local authority" in subsection (1) and shall specify the area which shall, for the purposes of the definition of "area under the jurisdiction of a local authority" in that subsection, be the area under the jurisdiction of the local board;
 - (b) with the approval of the Minister of Internal Affairs, declare a provincial authority or African council to be a local authority for the purposes of the definition of "local authority" in subsection (1) and shall specify the area which shall, for the purposes of the definition of "area under the jurisdiction of a local authority" in that subsection, be the area under the jurisdiction of the provincial authority or African council.

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

3. Nothing in this Act shall affect the rights conferred on the holders of mining locations or prospectors by the Mines and Minerals Act [Chapter 165] in respect of-

- (a) the use of water for primary purposes; or
- (b) storm water or underground water.

PART I

ADMINISTRATION OF ACT

Minister to appoint Secretary for Water Development and other officers.

4. (1) Subject to the laws relating to the Public Service, the Minister shall appoint a Secretary for Water Development and such other officers as may be necessary for the better carrying out of the provisions of this Act.

(2) The Secretary and any other officers appointed in terms of subsection (1) shall, notwithstanding anything contained in section *five*, be subject to the directions and orders of the Minister.

Delegation of powers by

5. (1) The Minister may delegate to the Secretary such of the powers conferred to him by this Act as he thinks fit, other than the powers conferred on

Minister and
Secretary.

him by section *one hundred and thirty-five*.

(2) The Secretary may delegate to any other officer such of the powers -

(a) and duties conferred or imposed on him by or in terms of this Act; or

(b) delegated to him in terms of subsection (1);

as he thinks fit;

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

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

Powers of
offices.

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

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

(3) The Water Court may, on an appeal made in terms of subsection (2), confirm, vary or set aside the order concerned and make such order in relation to costs or otherwise as it thinks fit.

(4) Subject to the provisions of subsection (2) and (3), a person -

(a) to whom an order referred to in paragraph 5 of the First Schedule has been given; and

(b) who fails to comply with the order referred to in paragraph (a) within such period as may have been specified in such order;

shall be guilty of an offence.

Submission of
cases by
agreement to
Secretary

7. (1) Notwithstanding anything contained in this Act, the parties to a dispute cognizable by the Water Court may agree in writing to apply to the Secretary for his directions on the matter in dispute.

(2) On receipt of an application in terms of subsection (1), the Secretary may, after causing such inquiry or investigation to be made as he considers necessary, give to the parties concerned such directions in writing in the matter in dispute as to him seem equitable.

(3) Directions given in terms of subsection (2) shall be binding on the parties to the dispute concerned unless they are set aside by -

- (a) the agreement in writing of such parties; or
- (b) an order of the Water Court.

(4) A party who is bound by a direction given in terms of subsection (2) and fails to comply with such direction within such period as may have been specified in such direction shall be guilty of an offence.

Powers of Secretary in respect of hydrological stations.

8. (1) If the Secretary -
- (a) wishes to construct or maintain a hydrological station on any land; and
 - (b) is unable to agree on reasonable terms with the owner of the land referred to in paragraph (a) concerning the construction or maintenance referred to in that paragraph;

the Secretary may, subject to the provisions of this section and with the consent of the Minister, construct or maintain a hydrological station on the land concerned.

(2) Compensation shall be paid to any person who suffers loss or deprivation of rights as a result of the exercise of the powers referred to in subsection (1).

(3) Any person who wishes to claim compensation payable in terms of subsection (2) shall, within a period of two months or such longer period as the Minister may, on good cause shown, allow from the date of the exercise of the powers referred to in subsection (1), submit to the Secretary a claim in writing specifying in detail -

- (a) the nature of his loss or deprivation of rights; and
- (b) the compensation claimed by him, including if applicable, any expense or loss which may reasonably be incurred or suffered directly as a result of the exercise of powers referred to in subsection (1).

(4) If the parties cannot agree on the right to compensation or on the amount of compensation payable in terms of subsection (2), either party may, not less than four months after the claim for compensation was submitted in terms of subsection (3), refer the matter to the Compensation Court and the provisions of Parts I and IV of the Land Acquisition Act [Chapter 144], other than the provisions of section 24 and subsection (1) of section 25 thereof, shall, *mutatis mutandis*, thereafter apply:

Provided that -

- (i) the reference in paragraph (a) of subsection (2) of section 26 of that Act to the date of the publication of the preliminary notice in the *Gazette* shall be read and construed as a reference to the date of the exercise of the powers referred to in subsection (1);

- (ii) the parties may agree to refer the matter to the Compensation Court before the expiry of the period of four months referred to in this subsection.

Establishment, composition, functions and powers of river boards.

9. (1) Subject to the provisions of this Act and without derogation from the powers of the Water Court, the Minister may establish such river boards as he considers to be necessary or desirable for the purpose of regulating and supervising the operation of rights to the use of public water within an area fixed by him.

(2) A river board shall -

- (a) subject to the provisions of subsection (2) of section *forty-six*, consist of such number of members appointed by the Minister from persons interested in the public water concerned as the Minister may fix; and
- (b) exercise such functions and possess such powers as may be prescribed for the purposes set out in subsection (1).

PART II

WATER DEVELOPMENT PLANNING

Interpretation in Part II.

10 (1) In this Part -

"advisory council" means a water development advisory council established in terms of subsection (1) of section *thirteen*;

"approved outline plan" means an outline plan which has been approved in terms of subsection (1) of section *eighteen*;

"operative outline plan" means an approved outline plan which has come into operation;

"outline plan" means an outline water development plan prepared in terms of subsection (1) of section *eleven*;

"river system" means a catchment area or group of catchment areas declared to be a river system in terms of subsection (2).

(2) The Minister may, by notice in the *Gazette*, declare any catchment area or group of catchment areas to be a river system for the purposes of this Part.

Secretary to prepare outline plans.

11. (1) The Secretary shall, for the purpose of ensuring the optimum development and utilization of the water resources of Rhodesia, prepare an outline water development plan for each river system in Rhodesia.

- (2) In preparing an outlien plan the Secretary shall -
 - 9a) consult the authorities and bodies which in his opinion are likely to be concerned with the development of the catchment area or catchment areas of the river system concerned and the utilizaton of its water resources; and
 - (b) draw up an inventory of teh resoruces of the catchment area or catchment areas of the river system concerned, and to such extent as he considers necessary, of any contiguous river syste; and
 - (c) have regard to any relevant regional plan prepared in terms of Part I of the Regional Town and Country Planning Act, 1976 (No. 22 of 1976), and to such other mattes as may appear relevant to him.

Conents of
outline plans.

12.

- (1) An outline plan shall -
 - (a) indicate -
 - (i) the major water uses within the river system concerned, including those of the important public utilities, and any major amenity or recreation areas, areas for devlopment and measures for the conservation and improvement of the physical environment; and
 - (ii) the extent to which the actual volumes or the relative proportions of the potential yield or total annual runoff of any catchment area within the river system concerned should be apportioned between national and prival developoment and the allocation within such apportionment of water for the respective uses of different sectors of the economy; and
 - (iii) the manner in which its proposals are justified by the inventory drawn up in terms of subsection (2) of section *eleven*;
 - (iv) the phasing of any development and the order of priorities in respect of the proposals in the outline plan and the reasons therefor;

and
 - (b) state the relationship of the proposals in the outline plan to such major proposals for the use of water as may be -
 - (i) expected to affect the catchment area or catchment areas of the river system concerned; and
 - (ii) set out in the outline plans in respect of any contiguous river systems;

and

(c) specify -

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

and

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

(2) An outline plan shall consist of a statement in writing accompanied by such descriptive matter, diagrams, illustrations and maps as the Secretary may consider appropriate.

(3) The Secretary shall, after having completed an outline plan, refer it to the appropriate advisory council for examination and recommendation.

Establishment
of advisory
councils.

13. (1) Whenever the Minister considers it necessary to do so, he shall, by notice in the *Gazette*, establish a water development advisory council in respect of a river system specified in such notice.

(2) The Minister may, by notice in the *Gazette*, amend or repeal a notice referred to in subsection (1).

Membership of
advisory
councils.

14. (1) Subject to the provisions of subsection (4), an advisory council shall consist of such number of members as may be appointed by the Minister to represent local authorities and other groups and sectors of the economy with an interest in the river system for which the advisory council has been established.

(2) A member of an advisory council shall -

(a) hold office at the pleasure of the Minister:

Provided that a person appointed in terms of subsection (4) shall hold office at the pleasure of the Minister of Local Government and Housing; and

(b) be paid such remuneration and allowances as the Minister with the consent of the Minister of Finance may fix.

(3) The Minister shall designate one of the members of an advisory council to be the chairman thereof.

(4) If a regional planning council is established in terms of section 4 of the Regional, Town and Country Planning Act, 1976 (No. 22 of 1976), for any region the area of which includes the whole or any part of a river system in respect of which an advisory council is established, the Minister shall appoint all the members of the regional planning council to be members of the advisory council:

provided that the Minister may, with the consent of the Minister of Local Government and Housing, so appoint only such members of the regional planning council as he thinks fit.

Functions and powers of advisory councils.

15. (1) An advisory council shall, having regard to any relevant regional plan prepared in terms of Part I of the Regional, Town and Country Planning Act, 1976 (No. 22 of 1976) -

(a) examine and make recommendations to the Minister on an outline plan referred to in terms of subsection (3) of section *twelve*; and

(b) make recommendations to the Minister -

(i) and to any other advisory council on the operation of the outline plan referred to in paragraph (a); and

(ii) on the phasing of any development, the order of priorities in respect of the proposals in the outline plan referred to in paragraph (a) and the allocation of water to the different sectors of the economy;

and

(c) assist generally in the consideration of matters relating to planning within the river system concerned and, if appropriate, other contiguous river systems.

(2) An advisory council may consult or obtain evidence from any representative of the State or of any local authority, statutory body or association of persons engaged in any business, calling profession or other activity of benefit to the public and from any other person who, in the opinion of the advisory council, possesses expert knowledge which would be of advantage to the advisory council in the exercise of the function referred to in subsection (1):

Provided that the Minister may direct an advisory council to consult or obtain evidence from any person specified by him.

Publication of outline plans.

16. (1) After having examined an outline plan, an advisory council shall submit the outline plan, together with its recommendations thereon, to the Minister.

(2) On receipt of the outline plan and recommendation submitted in terms of subsection (1) and after consideration of the same, the Minister shall

- (a) give notice in the *Gazette* and in a newspaper circulating in the area to which such outline plan relates to the places at which, and the term for which, such outline plan will be publicly exhibited and the period within which objections or representations in connexion therewith may be made to the Minister; and
- (b) exhibit at the places and for the term stated in the notice referred to in paragraph (a) copies of the outline plan referred to in that paragraph.

(3) In subsection (2) -

"term" means a term of not less than thirty days.

Procedure after publication of outline plans.

17. (1) The Minister may, if -
- (a) no objections or representations referred to in subsection (2) of section *sixteen* have been made to him within the period specified in the notice referred to in that subsection, submit the outline plan concerned, together with his recommendations thereon, to the President; or
 - (b) objections or representations referred to in subsection (2) of section *sixteen* have been made to him within the period specified in the notice referred to in that subsection, after considering such objections or representations -
 - (i) submit the outline plan concerned, together with his recommendations thereon, to the President; or
 - (ii) refer the outline plan concerned, together with such objections or recommendations, to the advisory council concerned for further examination and recommendation.

(2) After further examination of an outline plan referred to in terms of subsection (1), the advisory council concerned shall submit such outline plan, together with its further recommendations thereon, to the Minister.

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

(4) After considering the outline plan and further recommendation submitted to him in terms of subsection (2), the Minister -

- (a) may refer such outline plan and further recommendations, together with any evaluation report furnished by the Secretary,

to the Water Court for examination and recommendation;

- (b) shall, after taking into account -
 - (i) any evaluation report furnished by the Secretary; and
 - (ii) if he has referred such outline plan and further recommendations to the Water Court in terms of paragraph (a), the recommendations of the Water Court; and
 - (iii) any matters, other than those referred to in subparagraphs (i) and (ii), which he considers to be relevant;

and making such changes to such outline plan as he thinks fit, submit such outline plan, together with his recommendations thereon, to the President.

Approval or rejection of outline plans.

18. (1) On receipt of an outline plan, together with the recommendations of the Minister thereon, the President shall -

- (a) approve the outline plan and fix the date on which it shall come into operation; or
- (b) reject the outline plan;

and cause the Minister to be notified accordingly.

(2) The Minister shall, on receipt of notification in terms of subsection (1), give notice in the *Gazette* of -

- (a) the approval or rejection by the President, the date on which such outline plan will come into operation.

Changes to approved outline plans.

19. (1) If it appears to the Minister that an approved outline plan should be changed, he shall -

- (a) give notice in the *Gazette* and in a newspaper circulating in the area to which the approved outline plan relates of his intention to change the approved outline plan and of the places at which, and the term for which, the approved outline plan embodying the proposed changes will be publicly exhibited and the period within which objections or representation in connexion therewith may be made to the Minister; and
- (b) exhibit at the places and for the term stated in the notice referred to in paragraph (a) copies of the approved outline plan embodying the proposed changes.

(2) The Minister -

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

"term" means a term of not less than thirty days.

Effect of operative outline plans.

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

(2) The Water Court shall not accede to any application for a right to the use of public water within any area to which an operative outline plan relates if such accession would have the effect of granting rights to the use of more public water in the sector of the economy concerned than could be satisfied by the allocation of public water made by the operative outline plan to such sector:

Provided that the Minister may authorize the Water Court to grant temporary rights to the use of the public water so allocated on such conditions as the Minister may specify.

(3) Any area comprising a potential dam basin or potential dam site or both specified in terms of subsection (1) of section *twelve* shall, with effect from the date on which the approved outline plan concerned or any change thereto in terms of section *nineteen* comes into operation, be deemed to be reserved in terms of subsection (1) of section *sixty-five* against the doing of any act specified in such approved outline plan and the provisions of section *sixty-five* shall, *mutatis mutandis*, apply:

Provided that -

- (i) it shall not be necessary to publish any notice in terms of subsection (1) of section *sixty-five*;
- (ii) the reference in subsection (4) of section *sixty-five* to the publication in the *Gazette* of a notice shall be read and construed as a reference to the approval in terms of subsection (1) of section *eighteen* of such approved outline plan.
- (4) The proportion of the potential yield or total annual runoff

specified in terms of subsection (1) of section *twelve* shall, with effect from the date on which the approved outline plan concerned or any change thereto in terms of section *nineteen* comes into operation, be deemed to be reserved in terms of subsection (1) of section *sixty-six* for an indefinite period for future use subject to such conditions, if any, as may be specified in such approved outline plan or any change thereto in terms of section *nineteen* and the provisions of subsections (1), (2) and (9) of section *sixty-six* shall, *mutatis mutandis*, apply:

Provided that -

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

Review of operative outline plans.

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

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

PART III

ESTABLISHMENT, JURISDICTION AND COMPOSITION OF WATER COURT

Establishment and jurisdiction of Water Court.

22. (1) There is hereby established the Water Court of Rhodesia, consisting of judges and assessors.

(2) Subject to the provisions of this Act, all matters cognizable by the Water Court shall be heard by a judge assisted by not less than two assessors.

- (3) The Water Court shall have jurisdiction to hear and determine -
 - (a) applications for the use of public water made in terms of this Act; and
 - (b) disputes concerning the abstraction, appropriation, control, diversion or the use of public water;

and such other jurisdiction as may be assigned to the Water Court by or in terms of this Act or any other enactment.

(4) No court, other than the Water Court, shall have jurisdiction in the first instance to hear and determine an application or dispute referred to in subsection (3).

Appointment and conditions of service of judges.

23. (1) The President shall, subject to the provisions of subsection (2), appoint a Senior Judge and such other judges as he may consider necessary or desirable to be members of the Waer Court.

(2) A person shall not be qualified for appointment as a judge unless he -

(a) is a former judge of the High Court; or

(b) is qualified to practise as an advocate or attorney in Rhodesia and has practised in Rhodesia as an advocate or attorney, whether privately or in the employment of the State, for a period of not less than ten years; or

(c) has been a magistrate in Rhodesia for not less than ten years.

(3) Notwithstanding anything contained in this section, the President may appoint an acting Senior Judge or other acting judges from among persons possessing one or more of the qualifications set out in subsection (2) on such terms and conditions as he may determine in each particular case.

(4) Subject to the provisions of subsection (5), a judge shall not engage in any occupation outside his official duties as a judge for gain or remuneration of any kind whatsoever.

(5) A judge shall perform such judicial duties, other than his judicial duties in terms of this Act, as may be assigned to him by the President.

(6) A judge shall -

(a) be paid such salary and allowances; and

(b) hold office on such terms and conditions;

as may be fixed by the President.

(7) The President may from time to time, with the consent of the judge concerned, vary the salary and allowances or amend the terms and conditions fixed in terms of subsection (6) in respect of such judge.

(8) A judge shall retire on attaining the age of sixty-five years:

Provided that, if, within a period of six months from the date on which he attained the age of sixty-four years, he has, with the consent of the President and subject to the provisions of subsection (9), elected to continue in office after attaining the age of sixty-five years, he shall retire on attaining the age of seventy years.

(9) The President shall not consent in terms of the proviso to subsection (8) to a judge continuing in office after attaining the age of sixty-five

years unless -

- (a) the judge has submitted to the President a medical report on his mental and physical fitness to continue in office; and
- (b) the medical report referred to in paragraph (a) is acceptable to the President.

(10) A judge may, with the consent of the President, retire at any time on or after attaining the age of fifty-five years.

(11) The President may, by giving six calendar months' notice in writing to a judge, require the judge to retire on or at any time after attaining the age of sixty-five years and the judge shall retire with effect from the date specified by the President in such notice.

(12) The President shall fix the terms and conditions subject to which a pension shall be paid to a judge on retirement or to the widow of a judge or retired judge and may thereafter from time to time, with the consent of the judge or retired judge concerned or his widow, as the case may be, amend such terms and conditions.

(13) A judge may at any time resign his office by writing under his hand addressed to the President.

(14) The President, on the recommendation of a board appointed in terms of subsection (15), may for good cause dismiss a judge from office.

(15) The Minister of Justice shall, whenever after consultation with the Minister, he considers it to be necessary for the purposes of subsection (14) appoint a board consisting of -

- (a) a chairman who shall be a judge or former judge of the High Court; and
- (b) two other persons, at least one of whom is qualified in terms of paragraph (b) or (c) of subsection (2) for appointment as a judge.

Selection and payment of assessors.

24. (1) Subject to the provisions of subsection (2), of the assessors referred to in subsection (2) of section *twenty-two* -

- (a) one shall be selected by the presiding judge from a list of persons who -
 - (i) are, or have been for a period of not less than five years, Government water engineers; and
 - (ii) have been nominated by the Minister of Justice as official assessors;and
- (b) one shall be selected by the presiding judge from a list of persons who -

- (i) are not members of the Public Service; and
 - (ii) have been nominated by the Minister of Justice as unofficial assessors.
- (2) Whenever the Water Court is required to hear and determine -
- (a) an opposed application in which the State is an interested party, the presiding judge may -
 - (i) with the consent of the Minister, select a special assessor in lieu of an official assessor; or
 - (ii) after consultation with the Minister, select a special assessor in addition to an official assessor and an unofficial assessor;
- or
- (b) any matter, the determination of which may require special knowledge not ordinarily possessed by an unofficial assessor, the presiding judge may, after consultation with the Minister, select a special assessor in lieu of or in addition to an unofficial assessor; or
 - (c) an application in terms of Part VI, the presiding judge, after consultation with the Minister, may, if no person included in the list referred to in paragraph (b) of subsection (1) is available, select a special assessor in lieu of an unofficial assessor; or
 - (d) an opposed application for a right to the use of public water for mining purposes, the presiding judge shall select a special assessor who is a mining commissioner or assistant mining commissioner or a Government or private mining engineer in lieu of an unofficial assessor.
- (3) An assessor shall, before entering on his duties for the first time, take an oath or make a solemn affirmation before a judge that he will faithfully perform his duties as a member of the Water Court.
- (4) An assessor who is not a person in the full-time employment of the State shall be paid such remuneration and allowances as the Minister of Justice, with the consent of the Minister of Finance, may fix.
- (5) The Minister of Justice may, on good cause shown and after consulting the Senior Judge, dismiss or suspend from office an assessor.
- (6) Whilst an assessor is suspended from office in terms of subsection (5), he shall not carry out any duties as a member of the Water Court.

Water Registrar.

25. (1) Subject to the laws relating to the Public Service, the Minister of Justice shall appoint an officer to be known as the Water Registrar;

(2) The Registrar shall perform the functions and carry out the duties assigned to him by or in terms of this Act.

(3) The Registrar may -

(a) at all reasonable times enter on any land, other than a dwelling-house thereon, without the consent of the owner, lessee or occupier of such land in order to ascertain whether or not public water is being used thereon or in accordance with -

(i) the provisions of this Act; or

(ii) a right to the use of public water conferred by or granted in terms of this Act;

or for the purpose of an inspection *in loco*; and

(b) with the consent of the Minister of Justice, delegate to any member of the Public Service employed under him such of the powers, functions and duties conferred or imposed on him by or in terms of this Act as he thinks fit.

(4) The Registrar shall, on receipt of an application, claim or issue of compensation lodged in terms of this Act, refer such application, claim or issue to the Water Court for consideration and decision;

Provided that the Registrar may, if he considers that such application, claim or issue sets out insufficient particulars of the subject-matter of such application, require the applicant to furnish such additional particulars thereof as the Registrar may specify before so referring such application, claim or issue.

(5) All powers, functions and duties delegated by the Registrar in terms of subsection (3) shall be exercised or performed, as the case may be, subject to the directions and orders of the Registrar.

PART IV

POWERS AND PROCEDURE OF WATER COURT

Powers of
Water Court.

26. (1) The Water Court may, subject to the provisions of this Act -
- (a) accede to an application for a right to the use of public water and grant a temporary right, provisional right or final right, subject to such conditions as it thinks fit to impose, or may refuse such application;
- (b) on the application of any person to whom an existing right has been granted for a revision of the existing right, investigate the matter and make awards or orders thereon;
- (c) on the application of any person in regard to -
- (i) a dispute concerning the abstraction, appropriation,

control, diversion or use of public water; or

- (ii) any matter which by or in terms of this Act may be brought by the person before the Water Court;

investigate such dispute or matter and make awards or orders thereon;

- (d) at the request of the Minister or a judge, investigate any matter concerning the abstraction, appropriation, control, diversion or use of public water and make awards or orders thereon;

- (e) at the request of the Minister -

- (i) investigate, define and record the right to the use of the water of any channel, reservoir or public stream or other source of supply;

- (ii) in the case of any watercourse, the character of which has not already been defined by the Water Court, decide whether such watercourse is a public stream or not;

- (iii) report for his information on -

- A. the use or waste of water abstracted from any public stream;

- B. the advisability of interference with or the removal of any dam, weir or other structure in the course of a public stream and, if such interference or removal is recommended, the compensation, if any, to be paid to any person affected thereby;

- C. any matter arising out of the provisions of this Act;

- (f) do any matter or thing which may or shall be done by the Water Court in terms of this Act or any other enactment.

(2) In the exercise of any power referred to in subsection (1), the Water Court may -

- (a) make all such inspections as may be necessary; and

- (b) call and take expert advice in any matter; and

- (c) distinguish between flood-water storm-water and normal flow; and

- (d) without derogation from anything contained in section *one hundred and fourteen*, revise or cancel any existing right or any award or order made by the Water Court, subject to payment of such compensation as it thinks fit.

Powers
judges.

of

27. (1) Subject to the provisions of this Act, a judge may, if the Water Court is not sitting -

- (a) on an unopposed application or claim therefor -
 - (i) grant rights to the use of public water;
 - (ii) extend the duration of a temporary right or provisional right in terms of subsection (3) of section *fifty-eight*;
 - (iii) grant interdicts in respect of matters cognizable by the Water Court;
 - (iv) cancel existing rights;
 - (v) subject to the provisions of section 44 of the Land Tenure Act [*Chapter 148*], award servitudes;
 - (vi) grant a right applied for in terms of section *forty-nine* or *fifty-three*;
 - (vii) accede to an application in terms of section *sixty-two*;

and

- (b) on an opposed or unopposed application therefor -
 - (i) postpone or further postpone the hearing of a case;
 - (ii) appoint commissioners for the purpose of taking evidence;
 - (iii) authorize the proof of all or any of the facts in a case by affidavit;
 - (iv) on such conditions as he thinks fit, permit an applicant to withdraw his application:

Provided that a judge may not exercise any of the powers set out in this paragraph on an opposed application unless the party applying for the exercise of such power has given notice of his application to the other party.

(2) Notwithstanding anything contained in this Act, the parties to a dispute in a matter cognizable by the Water Court may, if they so desire, state such dispute in writing signed by or on behalf of each such party and submit such dispute to a judge for consideration and decision.

(3) Any award or order made by a judge on a dispute submitted to him in terms of subsection (2) shall -

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

as if it had been made by the Water Court:

Provided that, if the parties to such dispute have agreed in the statement referred to in subsection (2) that the matter in dispute shall be so submitted for final decision, any award or order made thereon by a judge shall be final.

Decisions of
Water Court.

28. (1) Subject to the provisions of subsection (2), all matters or questions requiring to be decided by the Water Court shall be decided by a majority of the members thereof.

(2) The presiding judge shall decide -

(a) any matter of law arising for decision; and

(b) any question whether a matter for decision is a matter of fact or a matter of law; and

(c) any question concerning the admissibility of evidence; and no other member of the Water Court shall have a voice in such decision.

Principles to be
observed by
Water Court in
considering
applications for
rights to use of
public water.

29. Subject to the provisions of section *seventy*, the Water Court shall, in considering applications for rights to the use of public water -

(a) in the case of more than one application for the use of the same public water, give preference, *ceteris paribus*, to the first of such applications to be lodged with the Registrar;

(b) in granting a right to the use of public water for agricultural purposes, having regard to -

(i) the extent and nature of all land, wheresoever situated, irrigable by the public water concerned; and

(ii) the suitability for irrigation of riparian land; and

(iii) the proposed method or possible methods of using the public water concerned;

(c) have regard to the economic aspects of the proposed scheme, undertaking or work;

(d) if such use will result in an effluent requiring treatment and disposal, order the applicant to ensure that the proposed method of treatment and disposal of such effluent complies with the provisions of Part IX and of any requirements referred to in paragraph (a) of subsection (2) of section *one hundred and one*;

(e) take into consideration such matters, other than the matters referred to in paragraph (a) to (d), as may appear to be relevant

to its investigations.

Rules of
procedure of
Water Court.

30. (1) The Senior Judge may, subject to the provisions of subsection (4), make rules for the Water Court providing for any matter which he considers to be necessary or expedient for the purposes of the Water Court.

- (2) Rules made in terms of subsection (1) may provide for -
- (a) the procedure to be followed by the Water Court;
 - (b) the fees which may be charged in connexion with the proceedings of the Water Court;
 - (c) the service of notices and other documents required -
 - (i) for the purposes of any proceedings of the Water Court; or
 - (ii) by or in terms of this Act to be served;
 - (d) the forms to be used and the information to be supplied in connexion with applications for rights to the use of public water.

(3) In any case not covered by rules made in terms of subsection (1), the Water Court shall act in such manner and on such principles as it thinks best fitted -

- (a) to do substantial justice; and
- (b) to carry out the objects and provisions of this Act.

(4) Rules made in terms of subsection (1) shall not have effect until they have been approved by the Minister of Justice and published in the *Gazette*.

Record of
proceedings of
Water Court

31. (1) The Registrar shall cause to be kept and filed in his office a record of all proceedings of the Water Court, including details of every decision thereof and of any reasons therefor.

(2) Subject to the provisions of subsection (2) of section *thirty-two*, the record kept in terms of subsection (1) shall be accessible to the public and copies thereof may be obtained on like conditions and on payment of the same fees as if they were civil records of a court of a magistrate.

Proceedings of
Water Court to
be in public.

32. (1) Subject to the provisions of subsection (2), the proceedings of the Water Court shall be conducted in public unless -

- (a) the parties otherwise agree; and
- (b) the agreement referred to in paragraph (a) is embodied in an

order of the Water Court.

(2) If a certificate in writing, signed by the Minister of Justice, to the effect that it would not be in the public interest for any matter to be publicly disclosed

-

- (a) is produced to the Water Court; and
- (b) requires certain arrangements to be made which are expedient or necessary to prevent the public disclosure of the matter;

the presiding judge shall make such order as may be necessary to give effect to such certificate.

Persons interested in matters before Water Court.

33. (1) Before proceeding to the determination of any matter submitted to it, the Water Court shall be satisfied that all persons who, in its opinion, have an interest which is reasonably likely to be affected adversely by such determination have had due notice of such proceedings.

(2) Any person who has an interest in the determination of any matter submitted to the Water Court may -

- (a) appear before the Water Court; and
- (b) with the consent of the Water Court given on good cause shown, produce such argument or evidence or both before the Water Court as he thinks fit.

(3) An irrigation company or river board or the Sabi-Limpopo Authority shall, if any matter submitted to the Water Court arises wholly or partly within the area of the combined irrigation scheme concerned or of the river board or the Sabi-Limpopo Authority, as the case may be, be deemed to have an interest referred to in subsection (2).

Representation of parties and others before Water Court.

34. Subject to the provisions of subsection (3) of section *fifty-six*, any party or any other person entitled to appear before the Water Court may -

- (a) appear in person; or
- (b) be represented by -
 - (i) any person appointed in writing for the purpose by such party or person; or
 - (ii) an advocate or attorney.

Summoning of parties and witnesses before Water Court.

35. (1) The Water Court shall have power of its own motion or on the application of any party in proceedings before it -

- (a) to summon parties and witnesses; and

- (b) to examine parties and witnesses on oath; and
- (c) to call for the production and to grant inspection of books and documents.

(2) A subpoena for the attendance of parties or witnesses or for the production of books or documents shall -

- (a) be signed by the Registrar; and
- (b) be served in the manner provided for in rules made in terms of subsection (1) of section *thirty*.

(3) A person subpoenaed to give evidence or to produce any book or document or giving evidence before the Water Court shall be entitled to the same privileges and immunities as if he were subpoenaed for the same purpose, or giving evidence, before the General Division at a civil trial.

Witnesses
failing to attend
or refusing to be
sworn or to give
evidence before
Water Court.

36. (1) If any person who has been subpoenaed to give evidence or to produce any book or document before the Water Court fails to attend or to remain in attendance until duly excused by the Water Court from further attendance, the Water Court may, if -

- (a) it is satisfied on oath or by return of the person charged with the service of the subpoena that the subpoena was duly served on such first-mentioned person; and
- (b) no sufficient excuse for such failure seems to it to exist; issue a warrant signed by the presiding judge for the apprehension of such person.

(2) A person in respect of whom a warrant is issued in terms of subsection (1) shall be -

- (a) apprehended by any police officer to whom the warrant is delivered; and
- (b) brought before the Water Court to give evidence or to produce the book or document concerned.

(3) If any person who has been subpoenaed to give evidence or to produce any book or document before the Water Court refuses without reasonable excuse, the onus of proof whereof lies on him, to be sworn as a witness or, having been so sworn, to answer fully and satisfactorily any question lawfully put to him or to produce the book or document, the presiding judge may order such person to be removed and detained in custody, as if he were a prisoner awaiting trial, until the rising of the Water Court or until he sooner consents to do what is required of him.

(4) Nothing in this section contained shall prevent the Water Court from giving judgement in any case or otherwise disposing of the same in the meantime according to any other sufficient evidence taken:

Provided that, if such judgement is given or the case is otherwise disposed of, any person detained in custody in terms of subsection (3) shall thereupon be released.

(5) Any person referred to in subsection (1) or (2) shall be liable, in addition to being detained in custody in terms of subsection (3), to be sentenced summarily by the presiding judge to a fine not exceeding two hundred dollars or to imprisonment for a period not exceeding three months.

PAGE 510 MISSING

- (3) Costs awarded in terms of subsection (10) shall be -
- (a) payable at the discretion of the Water Court in accordance with -
 - (i) the scale of costs for the time being in use in the court of a magistrate or in the General Division in civil cases; or
 - (ii) such scale of costs as the Senior Judge, after consultation with the Minister of Justice, may provide by notice in the *Gazette*.
- and
- (b) taxed by the Registrar.
- (4) A person aggrieved by a taxation of costs in terms of subsection (3) may, within a period of twenty-one days from the date of such taxation, appeal to a judge.
- (5) On an appeal in terms of subsection (4) -
- (a) the judge concerned may confirm, vary or set aside the taxation of costs concerned; and
 - (b) the decision of the judge concerned shall be final.

Appeals from
decisions of
Water Court

40. (1) Subject to the provision of subsections (7) and (14) of section *seventy-seven* and of subsection (12) of section *eighty*, a person who is aggrieved by a decision of the Water Court may lodge an appeal against such decision with the Appellate Division within a period of six weeks from the date on which such decision was announced by the Water Court or within such longer period as a judge of the Appellate Division may allow:

Provided that, if before the hearing before the Water Court commenced the parties lodged with the Registrar an agreement in writing that the decision of the Water Court should be final, no appeal shall lie from such decision.

(2) On hearing of an appeal lodged in terms of subsection (1), the

Appellate Division may, subject to the provisions of this Act -

- (a) confirm, vary or set aside the decision appealed from;
- (b) remit the matter to the Water Court with instruction sin regard to the taking of further evidence or the setting out of further information;
- (c) order the parties or any of them to produce at some convenient time before the Appellate Division such further evidence as shall to it seem necessary or desirable;
- (d) take any course, other than a course set out in paragraph (a), (b) or (c), which may lead to the just, speedy and, as far as possible, inexpensive settlement of the matter;
- (e) make such order as to costs as it thinks fit.

(3) If a presiding judge has ordered the removal and detention of aperson in terms ofsubseciton (3) of section *thirty-six* or subsection (1) of section *thirty-eight* or imposed a fine or imprisonment in terms of subsection (5) of section *thirty-six* or subsection (2) or (3) of section *thirty-eight*, he shall -

- (a) cause to be transmitted to the registrar of the General Division for the consideration of a judge of the General Division in chambers a statement certified by him to be true and correct of the circumstances in which, and the reasons why, he ordered the removal and detention of, or fined or imprisoned, the person; and
- (b) cause the person to be furnished with a copy of the statement referred to in paragraph (a).

(4) On receipt of a statement transmitted in terms of subsection (3), the judge of the General Division concerned may confirm, vary or set aside any order or sentence made or imposed by the presiding judge as seems to him in accordance with real and substantial justice.

Orders of Water Court.

41. (1) Subject to the provisons of this Act, the Water Court may make such award or oder, including an order refered to in subsection (1) of section *thirty-nine*, on any proceedings brought before it as it thinks fit.

(2) An award or order of the Water Court -

- (a) shall be reduced to writing a copy thereof certified by the Registrar shall, if such award or order is made on the hearing and determination of a dispute, be served on each party to the dispute; and
- (b) shall be binding on each party to the dispute concerned, if any, unless such award or order is set aside on appeal in terms of section *forty*.

(3) An award or order of the Water Court for the payment of a sum

of money by a party to a claim or dispute shall have the same effect as an order of the General Division for such payment unless such award or order is set aside on appeal in terms of section *forty*:

Provided that the Water Court may grant a stay of execution on such conditions as it thinks fit pending the determination of the appeal concerned.

Registration of awards or orders of Water Court.

42. (1) An award or order of the Water Court -
- (a) which is final by reason of its not being subject to appeal; or
 - (b) from which no appeal has been lodged within the period referred to in subsection (1) of section *forty*; or
 - (c) from which an appeal has been lodged and not prosecuted or has been dismissed;

or an award or order made on appeal in terms of this Act shall, at the instance and expense of any interested person, be registered against the title to any peice of land to which such award or order refers.

(2) The owner of the peice of land to which an award or order referred to in subsection (1) relaes shall, at the request of the interested person concerned, produce his title deed in respect of such peice of land to the Registrar of Deeds for the purpose of registration.

(3) If an owner referred to in subsection (2) fails to produce his title deed for the purpose of the registration, the interested person concerned may apply to a judge for an order compelling such owner to produce such title deed to the Registrar of Deeds within such period as may be specified in such order.

(4) A judge may, on an application in terms of subsection (3), accede to such application and make an order referred to in that subsection, or refuse such application.

(5) If the title deed refered to in subsection (2) cannot for any reason readily be produced for the purpose of registration, the Registrar of Deeds shall endorse particulars of the award or order concerned on the title deed in the Deeds Registry and in the appropriate registers.

(6) After the endorsements referred to in subsection (5) have been made, no other act of registration shall be made in respect of the piece of land concerned until the award or order concerned has been endorsed on the title deed of the owner of such land.

(7) If the title deed referred to in subsection (6) is for any reason lodged with the Registrar of Deeds he shall retain such title deed until the award or order concerned has been endorsed thereon.

(7) If the title deed referred to in subsection (6) is for any reason lodged with the Registrar of Deeds he shall retain such title deed until the award or order concerned has been endorsed thereon.

(8) An owner of a piece of land who fails without reasonable excuse to comply with an order in terms of subsection (4) shall be guilty of an offence.

PART V

RIGHTS TO PUBLIC WATER

Use and vesting of water.

43. (1) Private water is vested in the owner of the land on which it is found and its sole and exclusive use shall belong to such owner.

(2) All water, other than private water -

(a) is vested in the President; and

(b) shall not be abstracted, apportioned, controlled, diverted or used otherwise than in accordance with the provisions of this Act.

Casual use of public water.

44. Any person may, while he is at any place where there is lawful public access to a public stream, abstract and use public water for the immediate purpose of -

(a) cooking, drinking or washing; or

(b) use in a vehicle; or

(c) watering stock:

Provided that the provisions of this section shall not confer on the owner, lessee or occupier of land which is not riparian land any right to abstract public water for primary purposes.

Rights of owners, lessees or occupiers of riparian land to use of public water for primary purposes.

45. (1) Subject to the provisions of section *forty-six*, an owner, lessee or occupier of riparian land may -

(a) abstract or use; or

(b) subject to the provisions of sections *sixty-five* and *sixty-six* and of Part XI store; or

(c) during the continuance of normal flow entering water storage works, abstract from such water storage works;

(d) on the cessation of normal flow referred to in paragraph (c), abstract from a natural pool inundated by the water storage works concerned;

public water to which he is riparian for primary purposes.

(2) Any owner, lessee or occupier of riparian land who intends to construct water storage works on a public stream for the storage of water for primary purposes shall notify in writing every other owner, lessee or occupier of land riparian to the public stream and contiguous to the proposed water storage works that -

- (a) he intends to construct the proposed water storage works; and
 - (b) such owner, lessee or occupier may, on payment of this proportion of the cost of construction and maintenance of the proposed water storage works, participate in the benefit of such water storage works.
- (3) Any dispute concerning -
- (a) the quantity of public water abstracted, used or stored or the method of abstracting, using or storing public water for primary purposes in terms of subsection (1); or
 - (b) the cost referred to in paragraph (b) of subsection (2) or the proportions of such cost to be paid by the respective owners, lessees or occupiers concerned;

shall be determined by the Water Court.

Power of Minister to limit quantity of water abstracted for primary purposes.

46. (1) Notwithstanding anything contained in this Act, the Minister may, if he thinks it necessary in the public interest to ensure the equitable distribution and use of public water, by notice in the *Gazette* limit the quantity of water which may be abstracted for primary purposes by any person or class of persons within any area from any source of public water or underground water.

(2) A person who abstracts water for primary purposes in contravention of a limitation imposed in terms of subsection (1) shall be guilty of an offence.

Applications for rights to use of public water for various purposes.

47. (1) A person who requires a right to the use of public water for -

- (a) agricultural purposes; or
- (b) electrical purposes; or
- (c) institutional purposes; or
- (d) local authority purposes or township purposes; or
- (e) primary purposes on land which is not riparian land; or
- (f) railway purposes; or
- (f) road purposes; or

- (h) miscellaneous purposes;

shall lodge with the Registrar an application for such right:

Provided that the Minister may, if -

- (a) no provision or no suitable provision exists in this Act for any person who requires the use of public water to obtain a right to such use; and
- (b) in his opinion it is desirable that an application for the right referred to in paragraph (a) should be considered by the Water Court;

authorize the person referred to in paragraph (a) to lodge, or himself lodge on behalf of such person, with the Registrar an application in terms of this subsection.

(2) A person who requires a right to the use of public water for mining purposes shall lodge with the mining commissioner of the mining district in which such right is intended to be exercised an application for such right.

(3) A mining commissioner with whom an application has been lodged in terms of subsection (2) shall transmit the application, together with a report thereon by a Government mining engineer, to the Registrar.

(4) On an application lodged in terms of subsection (1) or (1), the Water Court, subject to the provisions of this Act -

- (a) may accede to such application and grant a right to the use of public water subject to such conditions as it thinks fit to impose, or may refuse such application; and
- (b) if it accedes to such application -
 - (i) shall, if the public water to which such application relates is being beneficially used by any other person by virtue of a right granted in terms of this Act or any other enactment, grant the use of such public water to the applicant on condition that the applicant pay to the person beneficially using such public water such compensation as may be agreed by the applicant and such person or, failing agreement, as may be fixed by the Water Court; and
 - (ii) may, if compensation agreed or fixed in terms of subparagraph (i) is payable to a person deprived wholly or partly of a right to the use of public water for agricultural purposes or institutional purposes and if it considers that such deprivation will render the piece of land to which such right relates unsuitable for the purpose for which it is being used or is *bona fide* intended to be used immediately prior to the date of such application, direct the applicant to purchase the whole of such piece of land at a price fixed by the

Water Court.

(5) If an application lodged in terms of subsection (1) or (2) has been made by a non-riparian owner in respect of a right to the use of public water -

(a) for primary purposes conferred on a riparian owner by section *forty-five*; or

(b) which may be granted to a riparian owner; the Water Court may -

(i) if -

A. the public water concerned is not being beneficially used by the riparian owner; or

B. notwithstanding that the public water concerned is being beneficially used by the riparian owner, it thinks, after having considered a recommendation by the Minister, that the grant of such right to the non-riparian owner is in the public interest; or

C. the appropriate allocation has been made in terms of subsection (2) of section *one hundred and eleven* or section *one hundred and thirteen*;

accede to such application and grant a right to the use of public water subject to such conditions, if any, as it thinks fit to impose; or

ii) refuse the application.

Minister may apply for certain rights.

48. (1) Whenever he thinks it, desirable in the public interest to do so the Minister may lodge with the Registrar an application for the right -

(a) to conserve or use for any purpose whatsoever public waer; and

(b) to acquire or construct any water works; and

(c) to supply, on such terms and conditons as may be agreed, waer from the water works referred to in paragraph (b) to any person requiring the same.

(2) The Water Court may -

(a) accede to an application in terms of subsection (1) and grant the right applied for subject to such conditions as it thinks fit to impose, or refuse such application; and

(b) empower the Minister to acquire any water works or a right to the use of public water which is being beneficially used by any person by virtue of a right granted int erms of this Act or any other enactment on such conditions concerning the payment of

compensatin or otherwise as may be fixed by the Water Court.

- (3) Subject the provisions of subsection (4), the Minister may -
 - (a) for the purposes of any water works or the supply of water referred to in subsection (1) -
 - (i) enter on, expropriate, lease or use any land:

Provided that he may not enter any dwelling-house without the consent of the owner, lessee or occupier thereof;

- (ii) take and use gravel, rock, sand, soil, stone, wood and other materials from, or drain, excavate or tunnel, any land;
 - (b) expropriate any land capable of being irrigated from any water works referred to in subsection (1) and such other land as he may consider necessary to ensure sound and economic farming being practised on the land capable of being so irrigated.

(4) The provision sof Parts I, III and IV of the Land Acquisition Act [*Chapter 144*] shall, *mutatis mutandis*, apply to the exercise by the Minister of his powers in terms of this section.

(5) Whenever the Water Court has granted to the Minister in terms of this section the right to acquire or construct any water works and the Minister has exercised such right, the sole right to allocate water from the water works shall -

- (a) vest in the Minister; and
- (b) not be subject to control by the Water Court;

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

(6) If any owner of land has agreed with the Minister to take water for use on his land from any water works referred to in subsection (5) and the Minister has instructed the Registrar of Deeds in writing to do so, the Registrar of Deeds shall note on the title deeds of such land in the appropriate registers in the Deeds Registry the fact that such an agreement has been made.

(7) The Registrar of Deeds shall not pass transfer of any land referred to in subsection (6) unless the consent in writing thereto of the Minister is obtained.

(8) The Minister may, in respect of water supplied from water works acquired or constructed by him in terms of a right granted in terms of this section, fix a tariff of charges.

(9) In fixing a tariff of charges in terms of subsection (8), the Minister may fix different charges in respect of -

- (a) different river systems of portions thereof; or

- (b) water consumed by different sectors of the economy or different consumers or classes thereof;

and may amend or cancel such charges.

Amendment of rights to abstract, control, divert, store or use public water.

49. (1) Subject to the provisions of subsection (5) of section *fifty-eight*, any person to whom a right to the use of public water has been granted shall, if he wishes -

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

lodge with the Registrar an applicaton for such amendment.

(2) The Waer Court may, on an application lodged in terms of subsection (1), accede to such application and grant the right applied for subject to such conditions as it thinks fit to impose, or refuse such application.

Minister may cede or authorize exercise by another of rights granted in terms of section 48.

50. (1) The Minister may -

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

any right to the use of public water granted to him in terms of section *forty-eight* or portion thereof on such conditions as he may fix and shall, in the case of a cession referred to in paragraph (a), notify the Registrar in writing of such cession an dof the conditions thereof.

(2) When the Minister has ceded a right or portion thereof (hereinafter in this section called "the right") in terms of subsection (1) -

- (a) the order of the Water Court granting the right shall be binding on the Sabi-Limpopo Authority or the Agricultural Development Authority, as the case may be, in so far as is appropriate; and
- (b) the Sabi-Limpopo Authority or the Agricultural Development Authority, as the case may be, shall be regarded for the purposes of section *sixty-three* as though it were a holder who had applied for the right in terms of section *forty-seven* on the

date on which the Minister had originally applied for the right in terms of section *forty-eight*; and

- (c) the provisions of subsections (5), (8) and (9) of section *forty-eight* shall, *mutatis mutandis*, apply in relation to the right as if the reference to the Minister in that subsection were a reference to the Sabi-Limpopo Authority, as the case may be; and
- (d) the provisions of subsections (6) and (7) of section *forty-eight* shall, *mutatis mutandis*, apply:

Provided that -

- (i) such provisions shall apply to an agreement referred to in those subsections whether such agreement is made between the owner of land concerned and the Minister or the Sabi-Limpopo Authority or the Agricultural Development Authority, as the case may be;
- (ii) the Registrar of Deeds shall note an agreement referred to in those subsections on the instructions in writing of the appropriate Minister.

Restriction on cession of right to use of, or sale or use of, public water

51. (1) Subject to the provisions of subsection (2) of section *forty-five*, section *forty-eight* and subsection (2) and (3) of section *ninety-four*, no person other than -

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

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Change of course of public stream.

52. (1) Whenever a public stream which forms the boundary between two or more pieces of land changes its course -

- (a) the boundaries of such pieces of land shall not thereby be changed; and

(b) such change shall not cause a riparian owner to become a non-riparian owner.

(2) An owner of land may, after a change of course referred to in subsection (1), lodge with the Registrar an application to the Water Court to fix -

(a) on the changed course of the public stream concerned a point or points -

(i) to which he shall have a right of access; and

(ii) at which he may take the water thereof; and

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

(3) The Water Court may, on an application lodged in terms of subsection (2), accede to such application and fix the point or points and the line referred to in subsection (2), subject to such conditions as it thinks fit to impose, or refuse such application.

(4) Whenever a riparian owner has been injuriously affected by a change of course referred to in subsection (1), he may lodge with the Registrar an application to the Water Court for the right to construct works necessary to restore the public stream concerned to its former course.

(5) The Water Court may, on an application lodged in terms of subsection (4) -

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

(b) refuse such application.

(6) The Minister may, whenever he thinks it necessary in public interest to do so, lodge or permit in writing any other person to lodge with the Registrar, an application for the right -

(a) to change the course of a public stream;

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

(7) The Water Court may accede to an application lodged in terms of subsection (6) and grant the right applied for subject to such conditions as it thinks fit to impose, or refuse such application.

(8) The Water Court shall, if it grants a right in terms of subsection (5) or (7), determine -

- (a) the extent to which existing rights may be affected by its decision; and
- (b) subject to the provisions of subsection (1)), the compensation to be paid by the applicant if the existing rights referred to in paragraph (a) are extinguished, diminished or interfered with or in respect of any other damage which any owner of property affected may suffer.

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

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

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

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

in so far as may be necessary for or incidental to the exercise of the right.

(10) The provisions of Parts I, III and IV of the Land Acquisition Act [*Chapter 44*] shall, *mutatis mutandis*, apply to the exercise by a person referred to in subsection (9) of the powers referred to in that subsection.

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

Applications for rights to conduct operations in public stream.

53. (1) Subject to the provisions of subsection (4) and of subsections (4) to (11) of section *fifty-two*, a person who wishes to conduct operations which will interfere with-

- (a) the banks, bed or course of a public stream; or
- (b) any marshes, springs, swamps or vleis forming the source, or found along the course, of a public stream;

may lodge with the Registrar an application for the right to conduct such operations.

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

- (3) The Water Court shall, if it grants a right in terms of subsection (2), determine -
- (a) the extent to which existing rights may be affected by its decision; and
 - (b) the compensation to be paid by the applicant if the rights referred to in subparagraph (a) are extinguished, diminished or interfered with or in respect of any other damage which any owner of property affected may suffer.
- (4) The provision of this section shall not apply to -
- (a) the construction of water works in terms of a right conferred by or granted in terms of this Act; or
 - (b) the construction, maintenance or repair of an aqueduct, bridge, culvert, road crossing or hydrological station or works ancillary thereto; or
 - (c) any mining or prospecting operations carried on in terms of the Mines and Minerals Act [Chapter 165] or the Wankie Coalfield Act [Chapter 167] if the Mining Affairs Board certifies to the Water Court that such operations will be carried on in such a manner that there will be no interference with the quality or quantity of public water; or
 - (d) the cultivation or use of wet land as defined in the Natural Resources Act [Chapter 150] or the banks of a public stream if such cultivation or use has been authorized in terms of any regulation made in terms of section 81 of that Act; or
 - (e) the abstraction of sand by a riparian owner from any portion of the bed of the public stream concerned lying within the boundaries of the riparian land of the riparian owner for the purpose of building operations within such boundaries; or
 - (f) any activities carried on by or on behalf of the State or the Rhodesia Railways or a road authority as defined in the Roads Act [Chapter 263]; or
 - (g) a person extracting with the permission of the appropriate district commissioner, sand within Tribal Trust Land for the purpose of building operations therein.
- (5) A person aggrieved by a decision of the Mining Affairs Board referred to in paragraph (c) of subsection (4) may appeal to the Water Court against such decision.
- (6) On an appeal in terms of subsection (5), the Water Court may -
- (a) confirm the decision of the Mining Affairs Board referred to in paragraph (c) of subsection (4) or, if it considers that such decision should be varied or set aside its decision; and
 - (b) make such order in relation to costs or otherwise as it thinks fit.

(7) In this section -

"Mining Affairs Board" has the meaning given by the Mines and Minerals Act [Chapter 165].

Details of water storage works to be reported to Secretary.

54. (1) A person who constructs in a public stream water storage works capable of storing more than five thousand, and not more than five hundred thousand, cubic metres of water shall notify the Secretary in writing of such details of such water storage works as may be prescribed.

(2) Notwithstanding the provisions of Part XI, the Secretary may -

(a) by notice in the *Gazette* and in a newspaper circulating in the area concerned; or

(b) by serving notice in writing on each person concerned;

require any person or class of persons to supply him with such details or further details as may be prescribed relating to any water storage works constructed or to be constructed and capable of storing in excess of five thousand cubic metres of water:

provided that nothing in this subsection shall be construed so as to impose any liability on the Secretary in respect of or to absolve any such person or class of persons from full responsibility for, the safety of such water storage works.

(3) A person who fails to comply with

(a) the provisions of subsection (1); or

(b) any requirement made in terms of subsection (2); shall be guilty of an offence.

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

55. (1) Subject to the provisions of Part XI, a person shall not apply to the Water Court for the right to construct in a public stream water storage works capable of storing in excess of five million cubic metres of water without first having obtained the consent in writing of the Minister.

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

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

Safeguarding interests of occupants of Tribal Trust Land.

56. (1) The President and the Minister shall, in exercising the powers conferred to them by this Act, have due regard to the interests of occupants of Tribal Trust Land.

(2) The Minister of Internal Affairs may, notwithstanding anything contained in this Act or the Companies Act [*Chapter 190*], appoint as a director of an irrigation company or a member of a river board any fit person to represent the interests of the occupants of any Tribal Trust Land included in the area of the combined irrigation scheme concerned or in respect of which the river board is established, as the case may be.

(3) The Minister of Internal Affairs may nominate any fit person to represent the interests of the occupants of any Tribal Trust Land before the Water Court on the hearing of -

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

Decisions of Water Court affecting water supply for primary purposes in Tribal Trust Land.

57. Whenever an award or order or other decision of the Water Court in respect of an application for a right to the use of public water or an irrigation scheme or any other matter is likely, in the opinion of the Water Court, substantially to affect the supply of water for primary purposes of the occupants of any Tribal Trust Land, such award, order or other decision shall not take effect unless the approval of the Board of Trustees for the African Area established by subsection (1) of section 6 of the Land Tenure Act [*Chapter 148*] has first been obtained.

Grant of final, provisional or temporary rights.

58. (1) The Water Court may grant a provisional right or temporary right for such period and subject to such conditions as may be specified in the provisional right or temporary right.

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

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

(4) On the expiry of the period for which a provisional right was granted, the holder of the provisional right shall, if he has not already done so, forthwith submit to the Registrar a report -

- (a) issued by a person approved by a judge; and
- (b) certifying whether or not the conditions imposed on the grant

of the provisional right have been fulfilled in accordance with the requirements of the Water Court.

(5) If the person referred to in paragraph 9a) of subsection (4) certifies that the conditions referred to in that subsection -

- (a) have been fulfilled, the Registrar shall issue a final right on the conditions approved by the Water Court; or
- (b) have been partially fulfilled so as to permit partial use of the provisional right concerned, the Registrar shall notify the holder of such provisional right that he may lodge an application in terms of subsection (6) and of the consequences of his failure to do so; or
- (c) have not been fulfilled or partially fulfilled as referred to in paragraph (b), the Registrar may, on the authority of a judge, record such provisional right as a lapsed right.

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

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

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

(8) Notwithstanding anything contained in this section -

- (a) the Registrar may, on the application of the holder of a provisional right, record the provisional right as a lapsed right;
- (b) a judge may extend the period for which -

- (i) a provisional right which has been recorded in terms of this section as a lapsed right; or
- (ii) a temporary right which has expired;

was granted as if such provisional right or temporary right had not been so recorded or had not expired, as the case may be.

Certain rights to use of public water to enjoy preference over other rights to use of public water

59. (1) No rights to the use of public waer granted by the Water Court, other than rights to the use of public water granted for local authority purposes, railway purposes or township purposes or in terms of section *forty-two*, shall have the effect of depriving -

- (a) a riparian owner of the use for primary purposes of public water to which his land is riparian; or
- (b) an owner of land on which there is a permanent pool of the use for agricultural purposes, institutional purposes, miscellaneous purposes or primary purposes of public water in the permanent pool.

(2) In paragraph (b) of subsection (1) - "permanent pool" means a pool -

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

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

Disposal of public water after use.

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

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

- (a) to the public strem from which it was abstracted; or
- (b) to a public stream, other than the public stream from which it was abstracted, specified by the Water Court at a point fixed by the Water Court.
- (3) The provisions of Part IV shall apply to water returned to a

public stream in terms of this section.

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

(5) On an application in terms of subsection (4), the Water Court may accede to such application and grant the right applied for subject to such conditions as it thinks fit to impose, or refuse such application.

Provisional, temporary or final rights to attach to land and final rights to be noted on title deed.

61. (1) A provisional, temporary or final right in respect of any piece of land shall, subject to the provisions of section *sixty-two*, attach thereto and pass therewith on the transfer thereof.

(2) The Registry shall notify the Registrar of Deeds in writing of the issue, cancellation or revision of every final right and the Registrar of Deeds shall thereupon note such issue, cancellation or revision on the title deed of the piece of land affected thereby in the Deeds Registry and in the appropriate registers.

(3) The owner of any piece of land to which a final right attaches shall, at the request of the Registrar, produce his title deed in respect of such piece for the purpose of the noting referred to in subsection (2).

(4) If an owner referred to in subsection (3) fails to produce his title deed for the purpose of the noting referred to in subsection (2), the provision of subsection (3) to (8) of section *forty-two* shall, *mutatis mutandis*, apply the reference in subsection (3) of that section to an interested person shall be read and construed as a reference to the Registrar of Deeds.

(5) Whenever the Registrar of Deeds is unable to note the issue, cancellation or revision of a final right in terms of subsection (2) because no title to the land affected thereby has been registered, the Registrar of Deeds shall transmit to the Secretary for Lands and Natural Resources a record of all final rights attaching to such land.

(6) On the registration of title to land referred to in subsection (5), the Secretary for Lands and Natural Resources shall cause the record referred to in that subsection to be transmitted to the Registrar of Deeds, who shall thereupon note on the title deeds of such land and in the appropriate registers the issue, cancellation or revision of the final right concerned.

Allocation or apportionment of rights to use of public waer on consolidation or subdivision of land

62. (1) Whenever a piece of land in respect of which a right to the use of public waer has been granted is to be consolidated with another piece of land or subdivided, the owner of the first-mentioned piece of land shall, prior to such consolidation or subdivision, lodge with the Registrar an application for allocation, apportionment or revision of such right.

(2) On an application in terms of subsection (1), the Water Court may accede to such application and make an allocation, apportionment or revision subject to such conditions as it thinks fit to impose, or refuse such application.

(3) The Registrar of Deeds shall not register any consolidation or subdivision of land to which a right to the use of public water attaches unless an allocation, apportionment or revision of such right has been made by the Water Court in terms of subsection (2).

(4) The Registrar of Deeds shall note the allocation, apportionment or revision referred to in subsection (3) on the title deeds of the pieces of land affected thereby and in the appropriate registers when effecting the registration referred to in that subsection.

(5) The Water Court may, whenever -

- (a) there is a consolidation or subdivision of land to which, prior to such consolidation or subdivision, a right to the use of public water has attached; and
- (b) no application is lodged in terms of subsection (1) for the allocation or apportionment of the right referred to in paragraph 9a);

of its own motion or on the application of an interested party allocate or apportion the right referred to in paragraph 9a).

(6) In considering an application lodged in terms of subsection (1) or an allocation or apportionment in terms of subsection (5), the Water Court shall -

- (a) have due regard to the economic aspects of the application, to the soil conditions of the land concerned and to any other matter which appears to the Water Court to be relevant; and
- (b) give preference, *ceteris paribus*, to subdivisions which are riparian land;

and may revise any right to the use of public water concerned.

Priority of rights to use of public water when volume thereof insufficient to satisfy demand.

63. (1) Whenever the volume of public water to the use of which rights have been granted proves insufficient to satisfy all such rights, a holder of any such right shall not, subject to the provisions of subsection (2), exercise his right to the use of public water until the rights to the use of public water of prior holders have been satisfied.

(2) Holders of rights to the use of public water within a priority zone shall, subject to the provisions of section *fifty-nine*, take priority for the purposes of subsection (1) according to the dates on which they lodged their respective applications for rights to the use of public water.

(3) In subsection (2) -

"priority zone" means an area fixed by the Water Court, within which area the priority conferred by that subsection shall operate for the better regulation of the exercise of rights to the use of public water.

REsponsibility
for maintenance
of waer works.

64. (1) The holder of any right to the use of public water shall maintain in efficient repair all water works connected with such right.

- (2) If a right to the use of public water is -
 - (a) relinquished by the holder thereof; or
 - (b) cancelled by the Water Court; or
 - (c) a lapsed right;

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

- (3) A person who -
 - (a) contravenes the provisions of subsection (1); or
 - (b) breaches or demolishes any water works connected with a right to the use of public water without authority in terms of subsection (2);

shall be guilty of an offence.

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

- (a) which is referred to in paragraph (b1) of subsection (6) of section 46 of the Natural REsources Act [*Chapter 150*]; and
- (b) to which the Secretary has consented.

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

65. (1) Subject to the provisions of subsection (3) of section *twenty*, the Minister may whenever he thinks it necessary in the public interest to do so, by notice in the *Gazette* and in a newspaper circulating in the area concerned, reserve any area comprising a potential dam basin or a potential dam sit or both against -

- (a) subdivision in terms of the Regiional, Town and Country Planning act, 1976 (No. 22 of 1976); or
- (b) the construction of permanent improvements therein or thereon; or
- (c) the carrying on of any activity which may have the effect of -
 - (i) enhancing the value of any land in such area; ;or
 - (ii) interfering with -

- A. such dam basin or dam site or both;
 - B. any water works that may be constructed in the future;
in such area; or
- (d) the doing of any two or more acts referred to in paragraphs (a) to (c);

Provided that the Minister shall not reserve such area against the carrying on of any prospecting or mining activity unless the Minister of Mines has agreed thereto.

- (2) A Notice referred to in subsection (1) shall specify -
- (a) the area reserved in terms of that subsection; and
 - (b) the acts against the doing of which the area referred to in paragraph (a) is reserved.
- (3) The Minister shall by registered letter give notice of a reservation in terms of subsection (1) to every owner, lessee or occupier of land in the area in respect of which the reservation is made.

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

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

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

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

(7) If the claimant for compensation and the Minister cannot agree on the right to compensation or the amount of compensation payable in terms of subsection (5), either of them may refer the matter to the Compensation Court.

- (8) The Compensation Court -
- (a) shall determine any matter referred to it in terms of subsection (7); and
 - (b) shall make such order as to costs or otherwise as it thinks fit; and
 - (c) shall award as compensation an annual sum to make good any loss or damage caused by the reservation concerned; and

- (d) may permit such use of the land in the area reserved in terms of subsection (1) as it thinks fit.
- (9) The Secretary shall cause -
 - (a) the area reserved in terms of subsection (1) to be surveyed and beacons by a land surveyor as defined in the Land Survey Act [Chapter 147]; and
 - (b) survey diagrams of the area referred to in paragraph (a) to be prepared.
- (10) As soon as possible after survey diagrams have been prepared in terms of subsection (9), the Secretary shall lodge -
 - (a) two copies thereof with the Registrar of Deeds; and
 - (b) one copy thereof with the Director of Physical Planning.
- (11) Subject to the provisions of subsection (14), the Registrar of Deeds shall, on the lodging with him of survey diagrams in terms of subsection (1), note the reservation concerned on the title deeds of the pieces of land affected thereby and in the appropriate registers.
- (12) A note made in terms of subsection (11) shall not prevent the transfer of the land concerned.
- (13) The Minister may at any time, by notice in the *Gazette* -
 - (a) modify a reservation made in terms of subsection (1) and the provisions of this section shall, *mutatis mutandis*, apply to such modification; or
 - (b) withdraw a reservation made in terms of subsection (1) and cause the Registrar of Deeds and the Director of Physical Planning to be informed of such withdrawal.
- (14) The Registrar of Deeds shall, on the lodging with him of survey diagrams in terms of subsection (1) relating to a modified reservation or on being informed in terms of subsection (13) of the withdrawal of a reservation made in terms of subsection (1) cause the note made in terms of subsection (11) to be altered or cancelled accordingly.
- (15) If the Minister in terms of subsection (13) modifies or withdraws a reservation made in terms of subsection (1), he shall reassess any compensation payable to any person in terms of subsection (5) or (8) shall, *mutatis mutandis*, apply to such reassessment.
- (16) If a person does on any land in an area reserved in terms of subsection (1) any act the doing of which is prohibited in terms of subsection (4) -
 - (a) the Minister may by notice in writing direct the person to restore such land, at his own expense and within such period as is specified in such notice, to the condition in which it was

immediately before the doing of such act; and

(b) the person shall be guilty of an offence.

(17) If a person against whom a direction has been made in terms of subsection (16) fails to comply with the direction within the period specified in the notice concerned -

(a) the Minister may cause to be carried out such work as may be necessary to restore the land concerned to the condition in which it was immediately before the doing of the act concerned and recover from such person by action in a court of competent jurisdiction the cost of such work; and

(b) without reasonable excuse the onus of proof whereof lies on him, such person shall be guilty of an offence and liable to a fine not exceeding two hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(18) The provisions of section *forty-eight* shall apply to any land which is expropriated for the construction of any water works while the area within which such land is situated is reserved in terms of subsection (1).

(19) If the powers conferred on the Minister by this section are exercised by him at the request of the Agricultural Development Authority or the Sabi-Limpopo Authority -

(a) any compensation payable in terms of ; and

(b) any costs incurred by the Secretary in complying with the provisions of;

this section shall, subject to any right of recovery in terms of paragraph (a) of subsection (17), be paid by the Agricultural Development Authority or the Sabi-Limpopo Authority, as the case may be, from its funds.

Reservation of public water

66. (1) Subject to the provisions of subsection (4) of section *twenty* and of this section, the Minister may, by notice in the *Gazette* and in a newspaper circulating in the area concerned -

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

(b) amend the quantity or portion reserved for future use in terms of paragraph 9a) or withdraw such reservation;

subject to such conditons as the Minister may specify in such notice:

Provided that no such reservation or amendment shall have the effect of extinguishing, diminishing or interfering with any existing right.

(2) A right to the use of public waer which would have the effect of reducing the specified quantity of public waer from or portion of, the

potential yield or total annual runoff reserved for future use in terms of subsection (1) shall not be granted by the Water Court to any person other than the Minister.

Provided that the Minister may authorize the Water Court to grant temporary rights to the use of the public water so reserved on such conditions as he may specify.

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

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

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

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

- (a) act or decline to act, as the case may be, in terms of subsection (1); or
- (b) refer such objection or representations to the Water Court or a person appointed in writing by the Minister for investigation and recommendation.

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

(8) The Minister shall, on receipt of a recommendation made in terms of subsection (7), act or decline to act, as the case may be, in terms of subsection (1).

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

Public water
control areas.

67. (1) Subject to the provisions of this section, the Minister may, whenever he thinks it necessary in the public interest to do so, by notice in the *Gazette* and in a newspaper circulating in the area concerned -

- (a) declare any area to be a public water control area; or
- (b) amend the boundaries of a public water control area or cancel the declaration thereof.

(2) No rights to the use of public water in a public water control area shall be granted by the Water Court:

Provided that -

- (i) the Minister may authorize the Water Court to grant such rights to the use of such public water in a public water control area as he may specify;
- (ii) the provisions of this subsection shall not apply to an application by the Minister for a right in terms of section *forty-eight*.

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

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

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

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

- (a) act or decline to act, as the case may be, in terms of subsection (1); or
- (b) refer such objections or representations to the Water Court or a person appointed in writing by the Minister for investigation and recommendations.

(7) The Water Court or a person appointed in terms of paragraph (b) of subsection (6) shall, on receipt of the objections or recommendations concerned, investigate the same and make a recommendation thereon to the Minister.

(8) The Minister shall on receipt of a recommendation made in terms of subsection (7), act or decline to act in terms of subsection (1).

(9) If the Minister has published a notice in terms of subsection (3), no application for a right to the use of public water in the intended public water control area lodged with the Registrar after the date of such application shall be considered by the Water Court until the Minister has acted or declined

to act in terms of subsection (1).

PART VI

PUBLIC WATER SHORTAGE AREAS

Declaration of public water shortage areas.

68. (1) The President may, if in his opinion the flow of water in any public stream has at any time ceased or has fallen or is likely to fall below the level of the usual flow of water in the public stream, by notice in the *Gazette*, declare an area specified in such notice to be a public water shortage area for such period not exceeding twelve months as may be specified in such notice.

(2) The President may, by notice in the *Gazette*, cancel a declaration made in terms of subsection (1).

Application to Water Court for exercise of certain powers in public water shortage areas.

69. (1) The person, including the Minister, who wishes the Water Court to exercise one or more of the powers conferred on the Water Court by section *seventy* in respect of a public water shortage area may lodge with the Registrar an application for such exercise.

(2) The Registrar shall, on receipt of an application in terms of subsection (1) and if the Minister so directs, refer the application to a person appointed in writing by the Minister.

(3) A person appointed in terms of subsection (2) shall, on receipt of an application referred to him in terms of that subsection, as expeditiously as possible -

- (a) prepare a report on such application; and
- (b) transmit to -
 - (i) the Registrar the report referred to in paragraph (a), together with such application; and
 - (ii) the applicant a copy of the report referred to in paragraph (a).

(4) The Registrar shall, on receipt of a report and application transmitted to him in terms of subsection (3), refer such report and application to the Water Court for consideration and decision.

Powers of Water Court in respect of public water shortage areas.

70. (1) On receipt of an application in terms of subsection (1) of section *sixty-nine*, the Water Court may, in respect of a public water shortage area and notwithstanding anything contained in this Act -

- (a) suspend or amend any rights to the use of public water conferred by or granted in terms of this Act;

- (b) make orders in relation to the abstraction, appropriation, control, diversion or use of any water;
- (c) authorize the Minister or any other person to enter on any land for the purpose of -
 - (i) abstracting water from any mine on the land;
 - (ii) sinking boreholes and wells on the land and abstracting water therefrom and conserving, diverting or using such water;

for such purposes and in such quantities as the Water Court may authorize and may make all such other orders as may be necessary in relation to the foregoing matters;

- (d) determine the priority of all or any of the rights to the use of public water shortage area.
- (2) All rights granted in terms of subsection (1) shall lapse on -
 - (a) the expiry of the period for which -
 - (i) such rights were granted; or
 - (ii) the area containing the land in respect of which such rights were granted was declared a public water shortage area;
 - or
 - (b) the cancellation of the declaration of the public water shortage area concerned;

whichever is the earlier.

PART VII

CONTROL OF UNDERGROUND WATER.

Interpretation of terms in Part VII.

- 71.** In this Part -
- "underground water control area" means an area declared in terms of subsection (1) of section *seventy-six* to be an underground water control area;
- "underground water shortage area" means an area declared in terms of subsection (1) of section *seventy-eight* to be an underground water shortage area.

Application of Part VII.

- 72.** The provisions of this Part shall not apply in respect of any borehole or well used solely for or *bona fide* intended to be used solely for -

- (a) obtaining geological information:

Provided that, in the case of such a borehole or well through which underground water rises spontaneously to reach ground level -

- (a) the person sinking, deepening or altering such borehole or wells shall forthwith notify the Secretary in writing of such borehole or well and, if requested by the Secretary in writing to do so, shall forthwith provide the Secretary with such particulars of such borehole or well and of the water concerned as the Secretary may specify; and
- (b) an officer shall, in relation to such borehole or well, have all the powers conferred by subsection (2) of section *eighty-two*; and
- (c) the Secretary may -
- (i) require the person sinking, deepening or altering such borehole or well to seal such borehole or well in such manner as the Secretary may specify for the purpose of preventing pollution or the waste of underground water; and
- (ii) if the person referred to in subparagraph (i) fails to seal such borehole or well in accordance with a requirement referred to in that subparagraph, seal such borehole or well and recover the cost of so doing from such person or from the owner of the land in which such borehole or well is situated by action in a court of competent jurisdiction;
- (b) the abstraction of underground water to enable -
- (i) civil engineering or mining works to be constructed below ground level; or
- (ii) the subterraneous working of -
- A. any mining location as defined in the Mines and Minerals Act [*Chapter 165*];
- B. any mining lease as defined in the Wankie Coalfield Act [*Chapter 167*];

Provided that the Secretary may require any person constructing works referred to in subparagraph (i) or engaged in the subterraneous working referred to in subparagraph (ii) to furnish the Secretary with such particulars as the Secretary may specify of the quantity of underground water abstracted during such period as may be specified by the Secretary and the manner in which such quantity was disposed of.

Persons who may abstract and use underground water.

73. Subject to the provisions of section *forty-six* and of this Part, an owner, lessee or occupier of a piece of land may for any purpose abstract and use underground water from any point on the piece of land.

Reporting of new boreholes and wells.

74. (1) Subject to the provisions of section *eighty-two*, any person who, with the intention of abstracting underground water, sinks or deepens a borehole or well to a depth of or alters or deepens a borehole or well having a depth of more than fifteen metres below ground level shall notify the Secretary in the prescribed manner of such particulars as may be prescribed within a period of thirty days of the completion of such sinking, deepening or altering.

(2) A person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Reporting of existing boreholes and wells in certain areas.

75. (1) If the Minister considers it necessary in the public interest to do so he may, by notice in the *Gazette* and in a newspaper circulating in the area concerned, require the owners, lessees and occupiers of land within an area specified in such notice to notify the Secretary in writing, within such period as may be specified in such notice, of such particulars as the Minister may in such notice specify in respect of any existing borehole or well on such land, whether or not the provisions of section *seventy-four* have been complied with in respect of such borehole or well.

(2) A person who fails or refuses to comply with an requirement in terms of subsection (1) shall be guilty of an offence.

Underground water control areas.

76. (1) Subject to the provisions of this section, the Minister may, whenever he deems it necessary in the public interest to do so, by notice in the *Gazette* and in a newspaper circulating in the area concerned -

- (a) declare any area to be an underground water control area; or
- (b) amend the boundaries of or cancel the declaration of an underground water control area.

(2) The Minister shall publish a notice in the *Gazette* and in a newspaper circulating in the area concerned stating his intention to declare or to amend the boundaries of an underground water control area.

(3) Any interested person may, within a period of thirty days from the date of publication of a notice in terms of subsection (2), lodge with the Secretary objections or representations in writing, together with a full statement of the grounds for, and technical data and evidence supporting, such objections or representations.

(4) If no objections or representations referred to in subsection (3) have been lodged within the period referred to in that subsection, the Minister

may act in terms of subsection (1).

(5) If objections or representations referred to in subsection (3) have been lodged within the period referred to in that subsection, the Minister shall, after considering such objections or representations -

- (a) act or decline to act, as the case may be, in terms of subsection (1); or
- (b) refer such objections or representations to the Water Court or a person appointed in writing by the Minister for investigation and recommendation.

(6) The Water Court or a person appointed in terms of paragraph (b) of subsection (5) shall, on receipt of the objections or representations concerned, investigate the same and make a recommendation thereon to the Minister.

(7) The Minister shall, on receipt of a recommendation made in terms of subsection (6), act or decline to act, as the case may be, in terms of subsection (1).

Permits for use of underground water in underground water control areas.

77. (1) Subject to the provisions of this section, no person shall, with the intention of abstracting underground water, sink or deepen a borehole or well to a depth of, or alter or deepen a borehole or well having a depth of, more than fifteen metres below ground level in an underground water control area otherwise than in accordance with the conditions of a permit in writing issued by the Secretary.

(2) An application for a permit referred to in subsection (1) shall be lodged in such manner and accompanied by such fees and particulars as may be prescribed.

(3) The Secretary shall publish particulars of an application lodged in terms of subsection (2) in the *Gazette* and in a newspaper circulating in the area in which the borehole or well concerned is or is to be situated and any interested person may within a period of thirty days from the date of such publication or such longer period as the Secretary may, on good cause shown, allow, lodge with the Secretary objections or representations in writing, together with a full statement of the grounds for, and the technical data and evidence supporting, such objections or representations.

Provided that the Secretary may, if he considers that the need for the sinking, deepening or altering of such borehole or well is so urgent that any delay would be unduly prejudicial to the applicant, give the applicant permission to proceed with such sinking, deepening or altering and to abstract water from such borehole or well during such period and subject to such conditions as may be specified by the Secretary.

(4) If no objections or representations referred to in subsection (3) have been lodged within the period referred to in that subsection, the Secretary shall -

- (a) issue the permit applied for subject to such conditions as he

thinks fit to impose; or

- (b) if he considers that the issue of the permit applied for would result in interference with the rights of existing users of the underground water concerned or normal flow, refuse the application and, if he has given the applicant permission in terms of the proviso to subsection (3), revoke such permission and make such order as he considers to be necessary in the circumstances.

(5) If objections or representations referred to in subsection (3) have been lodged within the period referred to in that subsection, the Secretary shall refer the application and objections or representations to the Water Court.

(6) On receipt of an application and objections or representations referred to it in terms of subsection (5), the Water Court shall direct the Secretary

(a) to issue the permit applied for subject to such conditions as the Water Court may specify in such direction; or

- (b) to refuse such application and, if the Secretary has given the applicant permission in terms of the proviso to subsection (3), to revoke such permission and order that the borehole or well concerned be sealed in such manner as the Secretary may specify.

(7) A decision of the Water Court in terms of subsection (6) shall be final.

(8) Any person to whom -

- (a) a permit has been issued in terms of subsection (4), (6) or (13); or

- (b) permission has been given in terms of the proviso to subsection (3), which permission has subsequently been revoked in terms of subsection (4) or (6);

shall, within a period of thirty days from the date of completion or abandonment of the work authorized, notify the Secretary accordingly and provide such further particulars of the borehole or well concerned as may be prescribed.

(9) If a person to whom a permit has been issued in terms of subsection (4), (6) or (13) has complied with the provisions of subsection (8), such person shall, if he wishes to abstract water from the borehole or well concerned, apply to the Secretary for the issue of a permit in writing authorizing such person to abstract water from such borehole or well.

(10) An application for a permit in terms of subsection (9) shall be lodged in such manner and accompanied by such fees and particulars as may be prescribed.

(11) On receipt of an application in terms of subsection (10), the Secretary shall, if he is satisfied that the applicant has complied with the provisions of subsection (8), issue the permit applied for subject to such

conditions as he thinks fit to impose.

- (12) An applicant who is aggrieved by -
 - (a) any conditions imposed on the issue of a permit; or
 - (b) the refusal of an application;

by the Secretary in terms of subsection (4) or (11) may appeal to the Water Court.

(13) On an appeal in terms of subsection (12), the Water Court shall direct the Secretary -

- (a) to issue or reissue the permit applied for subject to such conditions as the Water Court may specify in such direction; or
- (b) to refuse the application concerned.

(14) A decision of the Water Control in terms of subsection (13) shall be final.

(15) A person who contravenes the provisions of subsection (1), (98) or (9) shall be guilty of an offence.

Underground
water shortage
areas.

78. (1) The President may, if he deems it necessary in the public interest to do so because it appears to him that the abstraction of water from boreholes or wells in any area will unduly diminish the underground water resources in the area or adversely affect the flow of water in a public stream, declare by notice in the *Gazette* an area specified in such notice to be an underground water shortage area for a period not exceeding twelve months.

(2) The President may, by notice in the *Gazette*, amend the boundaries or cancel the declaration of an underground water shortage area.

(3) The Secretary may, by notice in the *Gazette* and in a newspaper circulating in the area concerned, require the owners of land within an underground water shortage area or any part thereof to notify the Secretary in writing, within such period as may be specified in such notice, of such particulars as may be specified in such notice in respect of any existing borehole or well on that land, whether or not the provisions of section *seventy-four or seventy-five* have been complied with in respect of such borehole or well.

(4) A notice referred to in subsection (3) may be published in respect of an underground water shortage area on the same day as the notice referred to in subsection (1) declaring the underground water shortage area.

(5) A person who fails without reasonable excuse, the onus of proof whereof lies on him, to comply with a requirement made in terms of subsection (3) shall be guilty of an offence.

Sinking,

79. (1) Notwithstanding the provisions of section *seventy-seven*, no

deepening or altering of boreholes and wells in underground water shortage areas restricted.

person shall, in an underground water shortage area, commence to sink, deepen or alter a borehole or well for any purpose otherwise than in accordance with the conditions of a permit in writing issued by the Secretary.

(2) An application for a permit referred to in subsection (1) shall be lodged in such manner and accompanied by such fees and particulars as may be prescribed.

(3) The provisions of subsections (3) to (15) of section *seventy-seven* shall, *mutatis mutandis*, apply to an application made in terms of subsection (2) and to any permit issued as a result of such application.

(4) A person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Maximum rate of abstraction of underground water in underground water shortage areas.

80. (1) The Minister may, by notice in the *Gazette* and in a newspaper circulating in the area concerned, fix a maximum rate per month at which underground water may be abstracted from any borehole or well in an underground water shortage area.

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

(3) subject to the provisions of subsections (6) to (12), no person shall, after the publication of a notice referred to in subsection (1), in any month abstract underground water from any borehole or well in the underground water shortage area concerned at a rate exceeding the maximum rate fixed in terms of subsection (1) for such borehole or well.

(4) The Minister may cause to be investigated the use being made of underground water in an underground water shortage area from any well or borehole for which a permit has been issued in terms of subsection (4), (6) or (13) of section *seventy-seven* or in terms of section *seventy-nine* and may, after having given the holder of such permit not less than fourteen days' notice of his intention to do so, amend the conditions of, or suspend, such permit.

(5) The Minister may appoint a person to advise him in the exercise of the powers conferred on him by this section.

(6) Any person who -

(a) abstracts or desires to abstract underground water from a borehole or well within an underground water shortage area for the purpose of his occupation or trade; or

(b) has carried out water conservation measures or works, the nature and extent of which are approved by the Secretary and which are likely to result in an improvement in the underground water resources in an underground water shortage area;

may apply to the Minister for a permit to abstract underground water from a

borehole or well within the underground water shortage area at a rate higher than the maximum rate fixed in terms of subsection (1).

(7) A local authority or the owner of a township may, whether the area under the jurisdiction of the local authority or the area of the township, as the case may be, is within or outside an underground water shortage area, apply to the Minister for a permit to abstract underground water from a borehole or well within an underground water shortage area at a rate higher than the maximum rate fixed in terms of subsection (1).

(8) The Minister may, on an application in terms of subsection 960 or (7) -

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

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

(10) Any person who is aggrieved by -

- (a) the maximum rate of abstraction of underground water fixed in terms of subsection (1) may, within a period of thirty days from the date of publication of the notice referred to in that subsection; or
- (b) any decision of the Minister in terms of subsection (8) may, within a period of thirty days from the date of such decision;

appeal to the Water Court.

(11) On an appeal in terms of subsection (10) -

- (a) relating to the maximum rate of abstraction of underground water fixed in terms of subsection (1), the Water Court shall -
 - (i) direct the Minister to amend; or
 - (ii) confirm;such maximum rate; or
- (b) relating to any decision of the Minister in terms of subsection (8), the Water Court shall direct the Minister -
 - (i) to issue or reissue the permit applied for, subject to such conditions as the Water Court may specify in such direction; or
 - (ii) to refuse the application concerned.

(12) A decision of the Water Court in terms of subsection (11) shall be final.

(13) A person who contravenes the provisions of subsection (3) shall be guilty of an offence.

Measuring and recording underground water abstraction from boreholes and wells in underground water control areas and underground water shortage areas.

81. (1) The Secretary may, by notice in writing served on the person concerned, require any person who is abstracting underground water from any borehole or well in an underground water control area or an underground water shortage area for any purpose -

- (a) to provide and install a meter or other measuring device for measuring and recording the amount of underground water abstracted from the borehole or well; and
- (b) to submit at such intervals as may be specified in such notice in returns of the underground water abstracted from the borehole or well to the Secretary on forms provided by the Secretary for the purpose.

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

(3) A person who fails or refuses to comply with a requirement in terms of subsection (1) shall be guilty of an offence.

Obligations of holders of permits or permission and persons to whom provisions of section 74 apply.

82. (1) Any person to whom -

- (a) a permit has been issued in terms of subsection (4), (6) or (13) of section *seventy-seven* or in terms of section *seventy-nine*; or
- (b) permission has been given in terms of the proviso to subsection (3) of section *seventy-seven*; or
- (c) the provisions of section *seventy-four* apply;

shall, in respect of the borehole or well concerned, give to the Secretary such particulars in such manner or do such acts, including the keeping of a record or journal, as may be prescribed.

(2) An officer or any person authorized by the Secretary may, in relation to a borehole or well referred to in subsection (1), at all reasonable times -

- (a) enter the land in which such borehole or well is situated; and
- (b) inspect such borehole or well; and
- (c) take samples of the material or underground water abstracted

from such borehole or well; and

- (d) inspect and take copies of any records or journal required to be kept for the purposes of that subsection:

Provided that he shall not in the exercise of the powers conferred on him by this subsection enter or search a dwelling-house without the consent of the occupier thereof.

Permits to attach to land and to be noted on title deeds.

83. (1) A permit issued in terms of subsection (4), (6) or (13) of section *seventy-seven* or in terms of section *seventy-nine* shall -

- (a) subject to the provisions of section *eighty-four*, attach to the piece of land on which the borehole or well concerned is situated; and
- (b) on transfer of the piece of land referred to in paragraph (a), pass with such piece of land.

(2) The Secretary shall notify the Registrar of Deeds in writing of the issue or cancellation of every permit referred to in subsection (1) and the Registrar of Deeds shall thereupon note such issue or cancellation on the title deed of the piece of land concerned in the Deeds Registry and in the appropriate registers.

(3) The owner of any piece of land to which a permit referred to in subsection (1) attaches shall, at the request of the Secretary, produce his title deed in respect of such piece to the Registrar for the purpose of the noting referred to in subsection (2).

(4) If an owner referred to in subsection (3) fails to produce his title deed for the purpose of the noting referred to in subsection (2), the provisions of subsections (3) to (8) of section *forty-two* shall, *mutatis mutandis*, apply and the reference in subsection (3) of that section to an interested person shall be read and construed as a reference to the Secretary.

(5) Whenever the Registrar of Deeds is unable to note the issue or cancellation of a permit in terms of subsection (2) because title to the land affected thereby has not been registered, the Registrar of Deeds shall transmit to the Secretary for Lands and Natural Resources a record of all permits attaching to such land.

(6) On the registration of title to land referred to in subsection (5), the Secretary for Lands and Natural Resources shall cause the record referred to in that subsection to be transmitted to the Registrar of Deeds, who shall thereupon note on the title deeds of such land in the appropriate registers the permit concerned or a cancellation thereof, as the case may be.

Allocation or apportionment of permits to use of underground

84. (1) Whenever a piece of land to which a permit issued in terms of this Part for the use of underground water attaches is to be consolidated with another piece of land or subdivided, the owner of such land may, prior to such consolidation or subdivision, apply to the Secretary in the prescribed manner for

water on consolidation or subdivision of land.

the allocation, apportionment or revision of such permit.

(2) On receipt of an application in terms of subsection (1), the Secretary shall, after having considered the economic consequences of acceding to such application, the soil condition of the land concerned and such other factors as he considers relevant -

- (a) accede to such application, subject to such conditions as he thinks fit, and may permit the use of any water on a piece of land other than that on which the borehole or well concerned is situated; or
- (b) refuse such application .

(3) Subject to any decision made by the Secretary on an application in terms of subsection (1), a permit referred to in that subsection shall attach to the piece of land on which the borehole or well concerned is situated.

(4) The Registrar of Deeds shall -

- (a) if the Secretary has acceded to an application in terms of subsection (2), note the allocation or apportionment concerned; or
- (b) if no application has been made in terms of subsection (1) or such an application has been made and refused, note the attachment referred to in subsection (3);

in the title deeds of the consolidation or subdivisions concerned and in the appropriate registers:

Provided that if the Registrar of Deeds is uncertain of the exact location of the borehole or well concerned, he may decline to act in terms of this subsection until such location has been determined to his satisfaction.

Investigation of use of underground water or Water Court.

85. (1) The Water Court -

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

(2) If the holder of a permit issued in terms of this Part for the use of underground water fails to make use of such permit for a continuous period of three years, the Secretary or, if such holder raises an objection thereto, the Water Court on the application of the Secretary may -

- (a) if not use has been made of such permit, cancel such permit; or

- (b) if partial use has been made of such permit, amend such permit by reducing the quantity of underground water which may be used in terms of such permit by such amount as he or it, as the case may be, thinks fit.

Minister may delegate powers under Part VII to local authorities.

86. The Minister may, after consultation with the local authority concerned and the Minister of Local Government and Housing and after considering the financial resources available to such local authority, by notice in the *Gazette* -

- (a) delegate any of the powers conferred on the Secretary by this Part to a local authority subject to such conditions as he thinks fit to impose; and
- (b) amend or withdraw the powers delegated to a local authority in terms of paragraph 9a).

PART VIII

SERVITUDES IN RESPECT OF WATER

Interpretation of terms in Part VIII.

87. In this Part -

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

"permanent servitude" means a servitude other than a temporary servitude;

"real right" means a real right registered in terms of the Deeds Registries Act [*Chapter 139*] or the Mines and Minerals Act [*Chapter 165*];

"servitude" means a servitude of abutment, a servitude of passage, a servitude of purification or a servitude of storage;

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

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

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

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

- (a) to construct such water works as may be necessary for such filtration and purification; and
- (b) of access to and over the area subject to such right of occupation and use, after giving such notice as is reasonable in the circumstances to the occupier thereof, for the purpose of constructing, inspecting, maintaining and operating water works referred to in paragraph 9a) or for any other purpose necessary for the effective enjoyment of the rights referred to in this definition;

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

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

"temporary servitude" means a servitude with a duration of -

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

otherwise than in terms of Part VIII permissible.

required in connexion with any water works.

Certain persons may claim servitudes and enter on land.

89. (1) Subject to the provisions of this Part, any person -
- (a) who holds a right to the use of public water or a permit for the use of underground water; or
 - (b) who is entitled to control or supervise the use of any water; or
 - (c) to whom the Minister, the Sabi-Limpopo Authority or the Agricultural Development Authority has agreed to supply water from any water works acquired or constructed or to be acquired or constructed by the Minister, the Sabi-Limpopo Authority or the Agricultural Development Authority;

may claim in terms of section *ninety* a permanent or temporary servitude.

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

Method of claiming servitudes.

90. (1) Subject to the provisions of this Part, a servitude shall be claimed by serving on every interested party notice in writing -
- (a) requesting the servitude, which request shall specify -
 - (i) the locality and nature of any waer works which it is proposed to construct; and
 - (ii) the line of passage along which waer is to be conducted or the locality in which water is to be stored or both such line and such locality; and
 - (iii) the duration of the proposed servitude; and
 - (iv) the quantity of gravel, rock, sand, soil, stone or wood, if any, required from the land concerned for the purpose of constructing water works or works incidental thereto; and
 - (iv) that it is intended to register the proposed servitude against the title deeds of th eland concerned; and
 - (vi) that any agreement to such claim is required to be in writing;

and

- (b) inviting him, if he wishes to seek compensation in respect of any loss or deprivation of rights likely to result from the grant

of the proposed servitude, to submit to the claimant, within a period of sixty days from the date of service of such notice or such longer period as a judge may for good and sufficient reason allow, a statement in writing specifying in detail the nature of the loss or deprivation of rights likely to be caused to the interested party as a result of such grant.

- (2) If an interested party referred to in subsection (1) -
 - (a) does not, within a period of sixty days from the date of service of the notice referred to in that subsection or such longer period as a judge may for good and sufficient reason allow -
 - (i) agree in writing to the request referred to in paragraph (a) of that subsection for the registration of the proposed servitude against the title deeds of the land concerned; or
 - (ii) agree in writing with the claimant on the right to compensation, if any, or the amount of compensation payable by the claimant or both, as the case may be ;
- or
- (b) lacks full legal capacity to agree to the request referred to in paragraph (a) of that subsection;

the claimant shall lodge with the Registrar his claim or the issue of compensation or both his claim and the issue of compensation.

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

- 91.** An interested party shall -
- (a) have the right to appear as a party before the Water Court on the hearing of a claim or an issue of compensation or both; and
 - (b) if he appears in terms of the right referred to in paragraph 9a0 -
 - (i) have all the privileges belonging to; and
 - (ii) be subject to all the obligations which are or may be imposed on;

a party to proceedings before the Water Court in terms of this Act.

Powers of Water Court in regard to claims or issues of compensation.

- 92.** (1) Subject to the provisions of this section, the Water Court may, on a claim lodged in terms of subsection (2) of section *ninety* -
- (a) award the same with or without modifications and subject to such conditions as it thinks fit; or
 - (b) dismiss the same on the ground that -
 - (i) the servitude claimed does not fall within the

provisions of this Act; or

- (ii) the object for which the servitude is claimed -
 - A. could better be attained by other means; or
 - B. is not of sufficient agricultural or other utility to justify the acquisition of the proposed servitude;

or

- (iii) such claim is not made in good faith; or
- (iv) the water works concerned are likely to cause more loss or damage or interference with development in the area concerned than would be justified by the benefits that would be derived therefrom;

and shall dismiss such claim if, in the case of servitude referred to in section 44 of the Land Tenure Act [Chapter 148], the Board of Trustees for the African Area has not consented to the granting of the servitude claimed or a condition fixed by such Board in giving its consent cannot be made binding on the claimant.

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

(3) whenever any diagram showing the land affected by, and the situation thereon of, the servitude claimed is sought to be adduced or received in evidence at the hearing of a claim or issue of compensation lodged in terms of subsection (2) of section *ninety* or of both such claim and such issue, such diagram shall not be admissible in evidence before the Water Court unless it has been prepared in accordance with the provisions of the Land Survey Act [Chapter 147].

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

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

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

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

"market value" means the market value of the land affected by the proposed servitude immediately prior to the service of the appropriate notice referred to in subsection (1) of section *ninety*, which value shall

be taken to be the amount which such land would have realized if sold in the open market by a willing seller to a willing buyer, regard being had, when appropriate, to the nature of such land, its location and quality and any other fact which may in the circumstances be relevant.

Rights of owners of land subject to servitudes of passage.

93. (1) The owner of land subject to a servitude of passage may pass along the water works concerned any waer to the use of which he is sentitled on -

- (a) payment of such proportion of the cost of constructing, enlarging, maintaining or repairing such water works; and
- (b) such conditions, other than the payment referred to in paragraph 9a);

as may be agreed or, failing agreement, as may be fixed by the Water Court:

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

- (a) the State, a local authority or the owner of a township; or
- (b) any body corporate -
 - (i) constituted directly by any enactment, including an Order in Council made int erms of the Rhodesia and Nyasaland Act, 1963, of the United Kingdom, and
 - (ii) empowered or required by the enactment referred to in subparagraph (i) to acquire the servitude of passage;

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

(2) A person who in terms of this Part consructs water works for the passage of wtaer, which water works -

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

shall construct, maintain and repair -

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

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

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

(4) In subsection (3) -

"road" and "road authority" have the respective meanings given by section 3 of the Roads Act [Chapter 263].

Rights of owners of land subject to servitudes of storage.

94. (1) A servitude of storage shall not, subject to the terms of any agreement or award by which the servitude of storage has been acquired, deprive the owner, lessee or occupier of the land subject to the servitude of storage of the use, other than use detrimental to the enjoyment of the servitude of storage, of any part, whether submerged or unsubmerged, of such land.

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

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

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

- (a) payment to the holder of the servitude of storage of such share of the costs of constructing, enlarging, maintaining or repairing such water storage works; and
- (b) fulfilment of such conditions, other than the payment referred to in paragraph 9a);

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

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

- (a) the State, a local authority or the owner of a township; or
- (b) any body corporate -
 - (i) constituted directly by an enactment, including an Order in Council made in terms of the Rhodesia and Nyasaland Act, 1963, of the United Kingdom; and
 - (ii) empowered or required by the enactment referred to in subparagraph (i) to acquire the servitude of storage;

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

Rights included
in servitudes.

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

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

- (a) within a distance of five hundred metres of any afforested or cultivated lands, dwelling-houses or other structures, mining works or quarries; or
 - (b) forest land as defined in the Land Tenure Act [*Chapter 148*];
- without the permission of the owner thereof.

(2) Notwithstanding anything contained in subsection (1), the Water Court -

- (a) may, if it considers that the permission of the owner concerned is being unreasonably withheld, authorize the taking of gravel, rock, sand, soil, stone or wood from -
 - (i) within the distance referred to in paragraph (a) of the proviso to subsection (1); or
 - (ii) forest land as defined in the Land Tenure Act [*Chapter 148*];
- (b) shall determine what compensation, if any, is to be paid by the holder of servitude concerned to the owner referred to in paragraph (a) in respect of any loss or damage which may result from any taking authorized in terms of that paragraph.

Lapse of
servitudes.

96. (1) A servitude shall lapse -

- (a) if the water works specified in the relevant request in terms of subsection (1) of section *ninety* are not constructed within a period of three years from the date of acquisition of the servitude or such longer period as may be agreed or, failing agreement, as may be fixed by the Water Court; or
- (b) if the Water Court so orders on the ground of non-use for a continuous period of three years.

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

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

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

Registration of servitudes awarded by Water Court.

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

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

(3) The provisions of subsections (4) to (8) of section *forty-two* shall, *mutatis mutandis*, apply after an application in terms of subsection (2).

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

Registration of servitudes acquired by agreement.

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

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

(3) The provisions of subsections (4) to (8) of section *forty-two* shall, *mutatis mutandis*, apply after an application in terms of subsection (2).

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

Registration of servitudes in Deeds Registry.

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

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

Provided that no such copies shall be lodged with the Registrar of Deeds until after the expiry of the period within which notice of appeal to the Appellate Division from such award may be given under rules governing appeal has been given, until the award of the servitude has been confirmed on appeal or the appeal concerned has not been prosecuted or has been dismissed; or

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

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

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

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

(4) After making a note in terms of subsection 93), no other act of registration shall be made in respect of the piece of land concerned until such servitude has been registered on the title deed of the owner of such land.

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

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

(7) For the purpose of registering a servitude which, in the opinion of the Registrar of Deeds, cannot adequately be defined by description, a diagram prepared in accordance with the provisions of the Land Survey Act [*Chapter 147*] shall be submitted to him showing the land subject to, and the situation thereon of, such servitude.

PART IX

WATER POLLUTION CONTROL

Pollution of
water an

101. (1) Subject to the provisions of subsection (2), a person who causes, permits or allows -

offence.

- (a) any organic or inorganic matter, including water containing such matter, to be discharged or disposed of into a public stream or into any private water, public water or underground waer, whether directly or through drainage or seepage, so as to cause pollution of the public stream, private water, public water or underground waer, s the case may be; or
- (b) any effluent or waste water which has been produced by or results form the use of water for any purpose to be discharged or disposed of into apublic stream or into any private water, public water or underground water, whether directly or through drainage or seepge;

shall be guilty of an offence.

(2) The provisions of subsection (1) shall not apply to a person who -

- (a) causes, permits or allows effluent or waste water which conforms with such requirements relating to standards of quality as may be prescribed for the purposes of this paragraph to be discharged or disposed of into a public stream or into any private water, public water or underground water; or
- (b) is the holder of a prmit issued to him in terms of subsection (3) and complies with the conditions attaching to such permit; or
- (c) discharges or disposes of any matter, effluent or waste water into any waters in accordance with the provisons of the Inland Waters Shipping Act [*Chapter 258*] or the regulations made thereunder.

(3) The Minister, after consultation with teh Mnister of Health, may, notwithstanding anything contained in regulations prescribing requirements referred to in paragraph (a) of subsection (2) -

- (a) issue, subject to such conditons as he thinks fit, permits granting exemption from compliance with the provisions of that pargraph; and
- (b) amend or withdraw any permit referred to in paragraph (a) or amend any conditions subject to which it was issued.

(4) A person who is aggrieved by a decision of the Minister in terms of subsection (3) may appeal against such decision to the Water Court.

(5) In a prosecution for an offence in terms of subsection (1), it shall not be a defence for the accused to prove that he did not act knowingly or wilfully:

Provided that, if teh accused proves that he took due care and all reasonable precautions to prevent the discharge or disposal referred to in that subseciton, such fact shall be taken into account in the assesemnt of teh sentence passed on him.

Secretary may require persons to take certain steps to control or prevent pollution.

102. (1) If, in the opinion of the Secretary, the activities of any person may lead to, or are giving rise to, the commission of an offence in terms of subsection (1) of section *one hundred and one*, the Secretary may by notice in writing require such person to take such steps, including all or any of the following -

- (a) the installation of devices to test and monitor the quality and quantity of gases, liquids or solids -
 - (i) in any public stream, private water, public water or underground water; or
 - (ii) in any effluent or waste water;
- or
- (b) the sinking of boreholes and wells to test and monitor the quality and quantity of any underground water; or
- (c) the provision of facilities for the taking of samples by the Secretary; or
- (d) the testing or monitoring of any effluent or waste water, private water, public water or underground water and the submission to the Secretary of the results of such testing and monitoring; or
- (e) the taking of reasonable measures for the control or prevention of pollution; or
- (f) the construction or installation of works or devices for the control or prevention of pollution;

as the Secretary may specify.

(2) Subject to the provisions of subsection (3), a person who, without reasonable excuse, the onus of proof whereof lies on him, fails to comply with a requirement made in terms of subsection (1) shall be guilty of an offence.

(3) A person who is aggrieved by a requirement made in terms of subsection (1) may appeal against such requirement to the Water Court.

Duties of local authorities in relation to pollution.

103. (1) A local authority shall -

- (a) if it has reason to believe that an offence in terms of subsection (1) of section *one hundred and one* has been or is likely to be committed within the area under its jurisdiction, forthwith report the matter to the Secretary; and
- (b) subject to the provisions of subsection (2), be responsible for controlling or preventing the pollution of any public stream or private water, public water or underground water within the area under its jurisdiction.

(2) The Minister may in writing, subject to such conditions as he thinks fit to impose -

- (a) exempt wholly or in part a local authority from compliance with the provisions of paragraph (b) of subsection (1); and
- (b) amend or withdraw an exemption referred to in paragraph 9a).

Secretary may delegate certain powers to local authorities.

104. The Secretary may, after consultation with the local authority concerned and the Secretary for Local Government and Housing and after considering the financial resources available to such local authority -

- (a) delegate in writing to such local authority the powers conferred on him by subsection (1) of section *one hundred and two*, subject to such conditions as he thinks fit to impose; and
- (b) amend or withdraw in writing the powers delegated to such local authority in terms of paragraph 9a).

Powers of Water Court on appeal.

105. On an appeal in terms of subsection (4) of section *one hundred and one* or subsection (3) of section *one hundred and two*, the Water Court may -

- (a) confirm the decision of the Minister or the requirement of the Secretary or of the local authority concerned, as the case may be, or if it considers that such decision or requirement should be varied or set aside, require the Minister or the Secretary or such local authority to vary or set aside his or its decision or requirement; and
- (b) make such order in relation to costs or otherwise as it thinks fit.

PART X

COMBINED IRRIGATION SCHEMES

Interpretation of terms in Part X.

106. In this Part -

"investigatory committee" means an investigatory committee appointed in terms of section *one hundred and eight*;

"petition" means a petition transmitted in terms of section *one hundred and seven*;

"petitioner" means an owner of land referred to in section *one hundred and seven*;

"scheme" means a combined irrigation scheme referred to in section *one hundred and seven*.

Petitions for schemes.

107. If any two or more owners of land consider that -

- (a) there should be a combined irrigation scheme for the area comprising the land owned by them; and
- (b) recourse should be had to artificial means of storing or supplying water in teh ara referred to in paragraph 9a);

they shall transmit to the Minister a petition in the prescribed form containing particulars of -

- (i) the reasons why the proposed combined irrigation scheme is desirable; and
- (ii) the nature of the proposed combined irrigation scheme; and
- (iii) the boundaries and approximate extent of teh area of the proposed combined irrigation scheme; and
- (iv) any land included in the area refered to in sub paragraph (iii) for use for purposes other than farming purposes and to be used for the general benefit of the owners of land participating in the proposed combined irrigation scheme;

and setting out the names of not less than two and not more than four petitioners who are able and willing to serve on an investigatory committee.

Reference of petitions to investigatory committees.

108. On receipt of a petition, the Miniser shall, if he is satisfied that the petitioners whose names are set out in the petition own not less than ten *per centum* of teh area of the land within teh area of the proposed scheme -

- (a) appoint such petitioners to be members of an investigatory committee and designate one of them to be the chairman of the investigatory committee; and
- (b) refer the petition to the investigatory committee.

Powers and duties of investigatory committees.

109. (1) An investigatory committee shall, on receipt of a petition referred to in terms of section *one hundred and eight*, cause -

- (a) the contents of such petition to be investigated; and
- (b) a civil engineer approved by the Minister to prepare a report on such petition.

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

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

the Minister may specify; and

- (b) furnish copies of the report referred to in paragraph (a) to the owners of land within the area which may be affected by the proposed scheme within such period as the Minister may fix; and
- (c) request the owners referred to in paragraph (b) to notify the investigatory committee concerned within a period of thirty days of receiving such report whether or not they consent to participate in the proposed scheme and, if they do not so consent, whether or not they are opposed to the proposed scheme.

(3) The investigatory committee concerned shall, on the expiry of the period referred to in paragraph (c) of subsection (2), transmit all notifications received by it to the Minister.

(4) If the Minister, on receipt of notifications transmitted to him in terms of subsection (3), is satisfied that the owners of not less than two-thirds of the land within the area of the proposed scheme consent to participate therein or are not opposed thereto, he shall refer the petition concerned to the Water Court for consideration and decision.

(5) If a proposed scheme is -

- (a) approved in terms of section *one hundred and eleven*, expenditure incurred by the investigatory committee concerned in the exercise of its functions in terms of this section shall be a first charge against the cost of the proposed scheme; or
- (b) not approved in terms of section *one hundred and eleven*, expenditure incurred by the investigatory committee concerned in the exercise of its functions in terms of this section shall be borne by the petitioners concerned in such proportions as may be agreed or, failing agreement, as may be fixed by the Water Court.

Consideration
by Water Court
petition.

110. In considering a petition referred to in terms of subsection (4) of section *one hundred and nine*, the Water Court shall have regard to -

- (a) the extent and nature of all irrigable land in the area of proposed scheme and of any other land which is capable of being irrigated by the water which it is proposed to use; and
- (b) the economic aspects of the proposed scheme; and
- (c) such matters, other than those referred to in paragraphs (a) and (b), as appear to the Water Court to be relevant.

Powers and

111. (1) The Water Court may, having considered a petition in terms of

duties of Water Court in relation to petitions.

section *one hundred and ten*, approve, subject to such modifications as it thinks fit, or disapprove the scheme set out in the petition.

(2) The Water Court shall, in approving a proposed scheme in terms of subsection (1) -

- (a) require the petitioners concerned to form within such period as the Water Court may specify a company limited by shares in terms of Part I of the Companies Act [*Chapter 190*] for the purpose of administering such scheme; and
- (b) allocate the quantity of water to be used for agricultural purposes, institutional purposes or miscellaneous purposes within such scheme and impose on holders of individual rights to the use of public water or of permits for the use of underground water the obligation to surrender such rights or permits for the benefit of such scheme as a condition of their participation therein:

Provided that no such surrender of such rights to the use of public water shall have the effect of forfeiting any priority which such rights may enjoy in terms of this Act over rights to the use of public water which are not embraced in such scheme; and

- (c) state the quantity of water allocated to each piece of land in such scheme and the maximum expenditure that may be incurred in carrying out such scheme unless a higher maximum expenditure is agreed by the owners of such pieces of land.

(3) The Water Court may, in allocating the quantity of water to be used within a scheme, allocate for primary purposes such portion of such quantity of water as it thinks fit.

(4) The Water Court shall, if water is allocated for use in terms of subsection (3) -

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

Allocation of water by Water Court for use in schemes.

112. The Water Court may within an existing scheme allocate water for use for primary purposes, agricultural purposes, institutional purposes or miscellaneous purposes on land within the area of such scheme for the benefit of the participants therein.

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

113. (1) The Water Court may, at the request of any owner of land affected by an existing scheme who wishes to participate in such scheme -

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

(2) In ascertaining the cost referred to in paragraph (b) of subsection (1), the Water Court shall have regard to -

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

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

Allocation of water to pieces of land in combined irrigation schemes may be cancelled or revised.

114. The Water Court may, if the holder of a piece of land to which a quantity of water has been allocated in terms of paragraph (c) of subsection (2) of section *one hundred and eleven* fails without sufficient cause to make full beneficial use of such allocation, of its own motion or at the request of the Minister or any interested party, cancel or revise such allocation.

Liability of owners of land benefiting from schemes.

115. (1) Any owner of land whose land is affected by a scheme and for whose land the water from the scheme may be available shall, save when exempted by the Water Court from doing so for good and sufficient reason, be liable to pay to the irrigation company concerned a portion of the moneys which may have been expended on the scheme.

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

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

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

Allocation or apportionment of rights to use

116. (1) Whenever a piece of land within the area of an existing scheme is to be consolidated with another piece of land or subdivided, the owner of such first mentioned piece of land shall, prior to such consolidation or subdivision,

of water on consolidation or subdivision of land in scheme area.

lodge with the Registrar an application for the allocation or apportionment of his entitlement to the use of water and the provisions of section *sixty-two shall, mutatis mutandis, apply.*

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

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

(4) The irrigation company concerned shall -

(a) maintain; and

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

(c) arrange for an equitable distribution of any water diverted or stored by;

any water works constructed in terms of subsection (3).

PART XI

SAFETY OF DAMS AND LARGE DAMS

Interpretation in Part XI.

117. (1) In this Part -

"approved civil engineer" means a civil engineer who has been declared to be an approved civil engineer in terms of subsection (4) of section *one hundred and eighteen;*

"approved civil engineering technician" means a civil engineering technician who has been declared to be an approved civil engineering technician in terms of subsection (4) of section *one hundred and eighteen;*

"appurtenant works" means any works which contribute directly or indirectly to the functioning, operation or safety of a dam or large dam and includes -

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

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

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

- (d) devices or works for measuring flow, movement, pore water pressure, seepage, strain, temperature or uplift pressure, whether in the structure of the dam or large dam or separate therefrom; and
- (e) such works, other than works referred to in paragraphs (a) to (d), as may be declared in terms of subsection (2) to be appurtenant works;

"board of consultants" means a board of consultants appointed in terms of subsection (1) of section *one hundred and twenty-seven*;

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

- (a) has a vertical height of more than eight metres but less than fifteen metres measured from the non-overflow crest of the wall of such structure to the lowest point on the downstream face of such wall; or
- (b) is capable of storing more than five hundred thousand and less than one million cubic metres of water at high flood level; or
- (c) is required to pass a design flood of more than two hundred, and less than two thousand, cubic metres of water per second; or
- (d) is declared in terms of subsection (2) to be a dam;

"dam works" means the alteration, construction, reconstruction or removal of a dam or large dam;

"design flood", in relation to a dam or large dam, means the estimated maximum flow of water resulting from floods or other causes, which flow -

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

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

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

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

- (a) has a vertical height of fifteen metres or more measured from the non-overflow crest of the wall of such structure to the

lowest point on the down-stream face of such wall; or

- (b) is capable of storing one million or more cubic metres of water at high flood level; or
- (c) is required to pass a design flood of two thousand or more cubic metres of water per second; or
- (d) has foundations which, in the opinion of the Secretary as notified to the owner of such structure, may or do occasion special or unexpected difficulties; or
- (e) in the opinion of the Secretary as notified to the owner of such structure, is a dam of unusual design; or
- (f) is declared in terms of subsection (2) to be a large dam;

"owner", in relation to a dam or large dam -

- (a) means the person entitled to divert or store water by means of the dam or large dam; and
- (b) includes the legal representative of any person referred to in paragraph (a) who has died, become insolvent, is a minor or of unsound mind or is otherwise under disability and, in the case of a company, the liquidator thereof;

"registration certificate" means a registration certificate issued in terms of subsection (2) of section *one hundred and twenty*, subsection (2) of section *one hundred and twenty-one*, subsection (2) of section *one hundred and twenty-four* or subsection (2) of section *one hundred and twenty-six*.

(2) The Secretary may, by notice in writing given to the owner of the dam or large dam concerned -

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

for the purposes of this Part.

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

Approved civil engineer and approved civil engineering technicians.

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

(2) On receipt of an application in terms of subsection (1), the

Secretary shall refer the applicaton to an advisory panel for consideration and recommendation:

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

- (3) An advisory panel shall -
 - (a) be appointed by the Secretary; and
 - (b) consist of two or more civil engineers who have wide experience of the design and construction of dams and large dams or such other experience as the Secretary may approve; and
 - (c) consider and make recommendations on applicaitons or matters referred to it in terms of subsection (2) or (5), as the case may be.
- (4) On receipt of a recommendation from an advisory panel on an application in terms of subsection (1), the Secretary shall -
 - (a) if he considers that the applicant possesses the necessary qualificatons for and experience of dam works and is a fit and proper person, accede to the application and, by notice in the *Gazette*, declare the applicant to be an approved civil engineer or an approved civil engineering technician, as the case may be, subject to such conditions relating to the nature and size of dam works which may be designed or constructed or both by the approved civil engineer or approved civil engineering technician as he thinks fit to impose; or
 - (b) refuse the application:

Provided that the Secretary shall, before refusing an applicatiion, afford the applicant an oportunity to satisfy the Secretary that he does possess the necessary qualificatons for or experience of dam works or is a fit and proper person, as the case may be.
- (5) The Secretary may, if he thinks that -
 - (a) the declaration of an approved civil engineer or approved civil engineering technician should be withdrawn; or
 - (b) the conditions subject to which the declaration of an approved civil engineering or approved civil engineering technician was made should be amended;

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

- (6) On receipt of a recommendation from an advisory panel on a matter referred to it in terms of subsection (5), the Secretary shall -

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

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

- (b) take no action in such matter.

- (7) In this section -

"advisory panel" means an advisory panel appointed in terms of subsection (3).

When dam works in respect of dams may be commenced.

119. (1) Subject to the provisions of Part..., no person shall commence any dam works in respect of a dam, other than action referred to in section *one hundred and thirty*, until the expiry of a period of thirty days after -

- (a) an approved civil engineer or approved civil engineering technician has -
 - (i) prepared a design, together with plans and specifications, of the proposed dam works; and
 - (ii) certified the adequacy and safety of such proposed dam works and, in the case of modifications to an existing dam, that the adequacy and safety of such dam will not be prejudiced.

and

- (b) the owner of the dam has submitted to the Secretary in the prescribed manner, together with such fee as may be prescribed, such details of the design, plans and specifications prepared in terms of paragraph (a) as may be prescribed, together with the certificate of adequacy and safety referred to in subparagraph (ii) of that paragraph.

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

- (a) to provide such additional information; and
- (b) to modify such design, plans and specifications in such manner; and
- (c) to provide such additional certificates of adequacy and safety;

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

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

shall be guilty of an offence.

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

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

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

(2) On receipt of the report, plans and completion certificate and any registration certificate or further information submitted to him in terms of subsection (1), the Secretary shall -

- (a) in the case of the construction of a dam, register the dam and issue to the owner thereof a registration certificate in the prescribed form; or
- (b) in the case of dam works other than the construction or removal of a dam, which dam was constructed -
 - (i) before the appointed date, register the dam; or
 - (ii) after the appointed date, amend the registration of the dam;

and issue to the owner concerned a registration certificate in the prescribed form or amend the registration certificate concerned and return it to such owner, as the case may be; or
- (c) in the case of the removal of a dam constructed -
 - (i) before the appointed date and in respect of which no registration certificate has been issued, note such removal; or
 - (ii) after the appointed date, cancel both the registration of the dam and the registration certificate concerned;

(3) The owner of a dam who contravenes the provisions of subsection (1) shall be guilty of an offence.

Reporting of dams in certain areas.

121. (1) If the Secretary considers it necessary or desirable to do so, he may, by notice in the *Gazette* and in a newspaper circulating in the area concerned, require the owners of existing dams within the area specified in such notice to notify him in writing, within such period as may be specified in such notice, of such particulars as he may in such notice specify in respect of such dams, whether or not the provisions of section *one hundred and twenty* have been complied with in respect of such dams.

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

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

(3) A person who fails to comply with a requirement made in terms of subsection (1) or the proviso to subsection (2) shall be guilty of an offence.

When dam works in respect

112. (1) Subject to the provisions of Part V, no person shall commence any dam works in respect of a large dam, other than action referred to in section

of large dams
may be
commenced.

one hundred and thirty -

(a) until -

(i) an approved civil engineer, assisted by such qualified engineers, geologists and other specialists as the Secretary may require, has -

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

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

and

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

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

or

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

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

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

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

(b) to provide such additional information; and

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

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

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

(3) A person who commences dam works in contravention of subsection (1) shall be guilty of an offence.

Supervision of dam works in respect of large dams.

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

- (a) to arrange for the adequate supervision of the progress of the dam works concerned for the purpose of securing compliance with the design, plans and specifications approved in respect of such dam works; and
- (b) to maintain up-to-date drawings of the dam works concerned; and
- (c) if so required by the Secretary, to submit to the Secretary such progress reports on the dam works concerned within such periods as the Secretary may specify.

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

- (a) notify the Secretary in writing of; and
- (b) obtain the approval in writing of the Secretary to; such modifications before causing the same to be made.

(3) The Secretary and any person authorized thereto in writing by him may, at any time during the progress of any dam works in respect of a large dam, have access to such dam works for the purpose of inspection.

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

(5) The owner of a large dam who contravenes the provisions of subsection (1) or (2) or fails to comply with a requirement made in terms of subsection (4) shall be guilty of an offence.

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

123. (1) The owner of a large dam shall, within a period of -

- (a) thirty days from the completion of any dam works in respect of the large dam, notify the Secretary in writing of such completion; and
- (b) one hundred and twenty days from the completion of dam works in respect of the large dam or such longer period as the Secretary may allow, submit to the Secretary -

- (i) a report in the prescribed form; and
- (ii) such plans certified as true and correct by the approved civil engineer concerned of such dam works as completed as may be prescribed; and
- (iii) a completion certificate in the prescribed form of the adequacy, safety and completion of such dam works, signed by the approved civil engineer concerned; and
- (iv) in the case of dam works other than the construction of a large dam, the registration certificate, if any, issued in respect of the dam or large dam.

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

- (a) in the case of the construction of a large dam, register the large dam and issue to the owner thereof a registration certificate in the prescribed form; or
- (b) in the case of dam works other than the construction or removal of a large dam, which large dam was constructed -
 - (i) before the appointed date, register the large dam; or
 - (ii) after the appointed date, amend the registration of the large dam;

and issue to the owner concerned a registration certificate in the prescribed form or amend the registration certificate concerned and return it to such owner, as the case may be; or

- (c) in the case of the removal of a large dam constructed -
 - (i) before the appointed date and in respect of which no registration certificate has been issued, note such removal; or
 - (ii) after the appointed date, cancel the registration of the large dam and the registration certificate concerned.

(3) The owner of a large dam who contravenes the provisions of subsection (1) shall be guilty of an offence.

Periodic inspections of large dams.

- 125.** (1) The owner of a large dam shall -
- (a) cause an approved civil engineer to prepare instructions relating to the maintenance and operation of the large dam; and
 - (b) cause the large dam to be maintained and operated in accordance with instructions prepared in terms of paragraph (a)

and with such additional instructions as the Secretary may from time to time give to him; and

- (c) cause such detailed measurements and observation of the large dam to be made by such person in such manner and at such intervals as the Secretary may require; and
- (d) whenever requested to do so by the Secretary and, in addition, before the end of the month of June or of such other month as the Secretary may specify immediately following -
 - (i) the first season during which water was diverted or stored by; and
 - (ii) the first season during which water spilled from; and
 - (iii) each successive period of five years reckoned from the date of completion of construction of; the large dam, cause a detailed engineering inspection of the large dam to be carried out by an approved civil engineer; and
- (e) within a period of thirty days from the date of completion of -
 - (i) any measurements and observations made in terms of paragraph (c) submit to the Secretary such report thereon as the Secretary may specify; and
 - (ii) any detailed engineering inspection carried out in terms of paragraph (d) submit to the Secretary such report thereon as the Secretary may specify, together with a summary of the maintenance measures carried out since the date of completion of the large dam or the previous such detailed engineering inspection, as the case may be.

(2) The Secretary or any person authorized by him in writing may at any time carry out a detailed engineering inspection of a large dam.

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

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

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

- (a) without reasonable excuse the onus of proof twwhereof lies on him, he shall be guilty of an offence;
- (b) the Secretary may himself remedy the inadequacy of lack of safety concerned as a charge, in the first instance, against moneys appropriated by the Legislature for the purpose and recover the cost of so doing, together with interest on such cost, from such owner by doing either or both of the following -
 - (i) proceeding in a court of competent jurisdiction against such owner; or
 - (ii) if such owner is the owner of the piece of land on which the large dam or a portion thereof is situed, directing that the Registrar of Deeds make a note on the title deeds of such piece of land and in the appropriate registers.

(6) On receipt of a direction made in terms of pargraph (b) of subsection (5), the Registrar of Deeds shallmke the note specified in such direction.

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

(8) If an owner referred to in subsection (7) fails to produce his title deed for the purpose of the noting referred to in subsection (6), the provisions of subsections (3) to (8) of section *forty-two shall, mutatis mutandis*, apply and the reference in subsection (3) of that section to an interested person shall be read and construed as a reference to the Registrar of Deeds.

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

- (a) ranking from the date on which such notice was made; and
- (b) for the amount stated therein, together with interest thereon; until such time as the amount and interest referred toin paragraph (b) have been paid to the Secretary.

(10) The Registrar of Deeds shallnot pass transfer of a piece of land hypothecated int erms of subsection (9) unless the Secretary has by notice in writing, sent to the Registrar of Deeds, released such piece of land from such hypothecation.

(11) A person who contravenes the provisions of subsection (1) or (3) shall be guilty of an offence.

(12) In this section -

"interest" means interest -

- (a) at a rate of five *per centum* pr annum above the current rate of interest charged by the State in respect of loans to

municipalities; or

- (b) at a rate, being a rate less than the total rate of interest referred to in paragraph (a), fixed by the Minister with the consent of the Minister of Finance.

Secretary to receive information concerning, and to approve existing large dams.

126. (1) The owner of a large dam existing at the appointed date shall, within a period of six months from the appointed date, submit to the Secretary such drawings, plans, records and reports relating to the construction of the large dam and its subsequent maintenance and operation as may be available to such owner.

(2) The Secretary -

- (a) may require an owner referred to in subsection (1) to carry out surveys and produce up-to-date drawings of the large dam concerned within such period and in such manner as the Secretary may specify; and
- (b) shall, if he is satisfied with the standard of construction, maintenance and operation of the large dam concerned, register such large dam and issue to the owner thereof a registration certificate in the prescribed manner:

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

(3) The owner of a large dam who contravenes the provisions of subsection (1) or fails to comply with a requirement in terms of paragraph (a), or the proviso to paragraph (b), of subsection (2) shall be guilty of an offence.

Secretary may appoint board of consultants.

127. (1) The Secretary may, if -

- (a) the safety considerations relating to a dam or large dam in his opinion so require; or
- (b) he is not satisfied with the standard referred to in paragraph (b) of subsection (2) of section *one hundred and twenty-six*; or
- (c) the owner of the large dam concerned has failed to comply with a requirement made in terms of subsection (4) of section *one hundred and twenty-five* or the proviso to paragraph (b) of subsection (2) of section *one hundred and twenty-six*;

or shall, if he is requested to do so in writing by the owner of a dam or large dam and such owner gives security for the remuneration, allowances and costs referred to in subsection (4), appoint a board of consultants to report to him on any action to be taken in relation to the dam or large dam concerned or to any design, drawings, plans, records, reports or specifications relating thereto.

- (2) A board of consultants shall consist of two or more engineers who have -
- (a) had wide experience of the design and construction of dams and large dams; and
 - (b) not previously been associated with any dam works in respect of the dam or large dam concerned.

(3) A member of a board of consultants who is not a person in the full-time employment of the State shall be paid such remuneration and allowances as the Minister, with the consent of the Minister of Finance, may fix.

(4) The remuneration and allowances referred to in subsection (3) and any costs incurred by a board of consultants in the exercise of its functions shall be paid out of moneys appropriated by the Legislature for the purpose:

Provided that the Minister may, if he decides that the owner of the dam or large dam concerned should pay the whole or any part of such remuneration and allowances and of any costs so incurred, together with such costs incurred by the State in connection with the exercise by the board of consultants of its functions as the Minister may specify, deduct such whole or part from security given in terms of subsection (1) or recover the same from such owner by action in a court of competent jurisdiction.

(5) If the owner referred to in the proviso to subsection (4) is aggrieved by a decision of the Minister in terms of that proviso, such owner may appeal to the Water Court against such decision.

- (6) On an appeal in terms of subsection (5), the Water Court may -
- (a) confirm the decision of the Minister or, if it considers that such decision should be varied or set aside, require the Minister to vary or set aside his decision; and
 - (b) make such order in relation to costs or otherwise as it thinks fit.

Secretary may require owner to carry out dam works.

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

- (2) If the owner of a dam or large dam -
- (a) carries out the dam works concerned in accordance with a requirement made in terms of subsection (1), the Secretary shall register or amend or cancel the registration of, as the case may be, the dam or large dam concerned and issue a registration certificate or amend or cancel the registration certificate concerned accordingly; or
 - (b) fails, without reasonable excuse the onus of proof whereof lies on him, to carry out any dam works concerned in accordance with a requirement made in terms of subsection (1), he shall be

guilty of an offence; or

- (c) fails to carry out the dam works concerned in accordance with a requirement made in terms of subsection (1), the Secretary may carry out such dam works as a charge, in the first instance, against moneys appropriated by the Legislature for the purpose and recover the cost of so doing, together with interest on such cost, from such owner by doing either or both of the following -
 - (i) proceedings in a court of competent jurisdiction against such owner; or
 - (ii) if such owner is the owner of the piece of land on which the dam or large dam or a portion thereof is situate, directing that the Registrar of Deeds make a note on the title deeds of such piece of land and in the appropriate registers, whereupon the provisions of subsections (6) to (10) and (12) of section *one hundred and twenty-five shall, mutatis mutandis, apply:*

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

Rights of access, inspection, investigation and survey of Secretary and authorized persons.

- 129.** (1) The Secretary or any person authorized thereto by him in writing may -
- (a) have access to the site of any dam works, whether proposed or in progress, or to any existing dam or large dam for the purpose of inspection; and
 - (b) if, in the opinion of the Secretary, it is necessary to do so in order to establish the adequacy and safety or otherwise of any dam works referred to in paragraph (a), carry out surveys and conduct investigations, whether by drilling, excavating, mining or otherwise.
- (2) The provisions of the provisos to paragraph 12 of the First Schedule shall, *mutatis mutandis*, apply in relation to the exercise of any powers in terms of subsection (1).

Procedure in emergencies.

- 130.** (1) The owner of a dam or large dam shall, on learning of any sudden or unprecedented flood or alarming or unusual circumstance or occurrence, whether anticipated or existing, which may affect or is affecting adversely the dam or large dam and in addition to discharging any duty, liability or obligation imposed on him by or under any other law, notify the Secretary as soon as practicable and as fully as possible of such flood, circumstance or occurrence and of any action which such owner proposes to take to deal with the same.
- (2) If the Secretary, whether as a result of being notified in terms

of subsection (1) or otherwise, considers that a dam or large dam is in any way endangered, he shall require the owner thereof to take such action as the Secretary may specify to reduce or remove any danger to persons or property.

(3) The owner referred to in subsection (2) shall, when taking action specified by the Secretary in term of that subsection -

- (a) notify the Secretary immediately after commencing to take such action; and
- (b) report to the Secretary within a period of forty-eight hours after commencing to take such action on the progress and results of such action; and
- (c) comply with such requirements as the Secretary may from time to time make of him.

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

- (a) without reasonable excuse the onus of proof whereof lies on him, such owner shall be guilty of an offence; and
- (b) the Secretary may take such action as he thinks fit as a charge, in the first instance, against moneys appropriated by the Legislature for the purpose and recover the cost of so doing, together with interest on such cost, from such owner by doing either or both of the following -
 - (i) proceeding in a court of competent jurisdiction against such owner; or
 - (ii) if such owner is the owner of the piece of land on which the dam or large dam or a portion thereof is situated, directing that the Registrar of Deeds make a note on the title deeds of such piece of land and in the appropriate registers, whereupon the provisions of subsection (6) to (1) and (12) of section *one hundred and twenty-five shall, mutatis mutandis, apply.*

(5) an owner of a dam or large dam who contravenes the provisions of subsection (1) shall be guilty of an offence.

Liability not to attach to State or Minister or agent or employee of State in certain circumstances.

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

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

PART XII

GENERAL

Service of notices, orders and other documents.

- 132.** (1) Subject to the provisions of subsection (3) -
- (a) any notice, order or other document required by or in terms of this Act to be given to or served on any person shall be deemed to be effectually served if -
- (i) delivered personally to hi; or
 - (ii) left at his abode or place of business; or
 - (iii) sent by registered letter to his address; or
 - (iv) in the case of a person who is absent from and has left no known representative in Rhodesia, published in the *Gazette*.
- (b) service of a notice, order or other document referred to in paragraph (a) on a person authorized to represent another shall be deemed to be service of such notice, order or other document on the person represented.

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

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

Validity of defective notices, orders and other documents.

- 133.** Any notice, order or other document authenticated or issued by any officer in terms of this Act shall be valid from the date of authentication or issue thereof, notwithstanding any -
- (a) defect of form therein; or
 - (b) want of authority on the part of such officer if the exquisite authority is subsequently conferred on such officer.

Offences and penalties.

134. (1) Any person who, without lawful excuse the onus Offences and penalties of proof whereof lies on him -

- (a) alters, enlarges or obstructs any water works or defaces, destroys or moves any beacon, lawful mark or other appliance or structure made or erected in connection with such water works; or
- (b) abstracts, diverts, stores or uses any public water including water -
 - (i) to which the Minister has obtained a right; or
 - (ii) which is subject to the control of the Minister; it terms of section forty-eight; or
- (c) alters or interferes with the flow of the water of any water works or of a public stream or interferes with the distribution of such water or, after service on him of notice form the Minister or any officer authorized by him to refrain from doing so, abstracts more of such water than he is entitled to abstract or uses such water in a manner prohibited by this Act; or
- (d) while liable for the maintenance of or using any water works, to the prejudice of others -
 - (i) fails properly to maintain and to keep in repair; or
 - (ii) wastes or does not take due precaution to prevent the waste of water form;
the water works; or
- (e) wastes the water of a public stream; or
- (f) being the owner of any land, fails, after service on him of notice from the Minister or any officer authorized by him of such failure, to put an end to waste or water resulting from the act or omission of a lessee or occupier or other person deriving rights from such owner and no longer present on the land; or
- (g) constructs any borehole, shaft, well or other work or does any other thing which is intended to have the effect of abstracting water lawfully diverted or stored by another person; or
- (h) interferes with the banks, bed or course of a public stream or any marshes, springs, swamps or velis forming the source of a public stream or found along its course; or
- (i) contravenes the provisions of section *sixty* or of Part VI; or
- (j) hinders or obstructs any officer or person authorized by the Secretary in the exercise of any power conferred on him by this Act; or
- (k) fails to comply with any provision of this Act or with any requirement or order made or conditions fixed in terms thereof with which it is his duty to comply; or

- (l) abates or aids or knowingly permits any act or default referred to in paragraphs (a) to (k);

shall be guilty of an offence and liable, subject to the provisions of subsections (3) and (4) -

- (i) in the case of a first conviction, to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; or
- (ii) in the case of a second or subsequent conviction, to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) A person who is guilty of an offence in terms of Part IX or XI shall be liable, subject to the provisions of subsection (3);

- (a) in the case of a first conviction, to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; or
- (b) in the case of a second or subsequent conviction, to a fine not exceeding two thousand five hundred dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Any person who -

- (a) has been convicted of an offence in terms of subsection (1) or of Part IX or XI; and
- (b) persists, after a conviction referred to in paragraph (a), in the course of conduct which constituted the offence concerned;

shall be guilty of a continuing offence and liable -

- (i) in the case of a conviction of an offence referred to in subsection (1), to a fine not exceeding two hundred dollars; or
- (ii) in the case of a conviction of an offence referred to in subsection (2) to a fine not exceeding five hundred dollars;

for every day or part thereof during which he so persists.

(4) Any person who wilfully or maliciously commits any offence referred to in paragraph (a) or (b) of subsection (1) or in terms of subsection (4) of section *six* shall be liable to a fine not exceeding **five thousand dollars or to imprisonment for a period** not exceeding two years or to both such fine and such imprisonment.

(5) Any person who, otherwise than with the permission of the Secretary, places any poison in any public stream or in private water, public water or underground water shall be guilty of an offence and liable to a fine not

exceeding five thousand dollars or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(6) A person who is guilty of an offence in terms of this Act shall, if no penalty is specially provided therefor, be liable to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(7) For the purposes of this Act, a conviction of an offence in terms of the Water Act [*Chapter 160*] may be treated as previous conviction of the equivalent offence in terms of this Act.

Regulations.

135. (1) The Minister may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in the opinion of the Minister, are necessary or convenient to be prescribed for carrying out, or giving effect to, the provisions of this Act.

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

- (a) the matter of issue, amendment or withdrawal of permits issued in terms of subsection (3) of section *one hundred and one* and the fees to be charged in connection therewith;
- (b) the manner in which samples of any gas, liquid or solid shall be taken by any person for the purposes of Part IX;
- (c) the methods of testing any borehole or well;
- (d) the hire of drills and mechanical equipment belonging to the State;
- (e) the drilling of boreholes, sinking of wells and construction of water works by officers for any person and any fees payable in respect thereof;
- (f) engineering and advice and assistance by officers and any fees payable in respect thereof;
- (g) combined irrigation schemes;
- (h) the functions and procedures of river boards, the election of appointment of members of river boards and the levying and collection of rates and fees by river boards;
 - (i) the powers and procedure of advisory councils established in terms of subsection (1) of section *thirteen*;

(3) The Minister shall, before making regulations prescribing requirements relating to standards of quality referred to in paragraph (a) of subsection (2) of section *one hundred and one*, consult -

- (a) the Minister of Health; and
- (b) the Standards Association of Central Africa.

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

Savings in relation to former water boards

136. (1) Notwithstanding the provisions of subsection (11) of section *one hundred and thirty-eight* -

- (a) any right granted or servitude awarded by a water board in terms of the Emergency Regulations and subsisting immediately before the appointed date shall be of full force and effect as if it had been granted by the Water Court in terms of this Act;
- (b) any thing done by a water board in terms of the Emergency Regulations which was of force or effect immediately before the appointed date shall continue in force and have effect as though it had been done by the Water Court in terms of this Act;
- (c) any thing done by the president of a water board in terms of the Emergency Regulations which was of force or effect immediately before the appointed date shall continue in force and have effect as though it had been done by a judge or the Senior Judge in terms of this Act.

(2) In subsection (1) -

"Emergency Regulations" means the Emergency Powers (Water Boards) (No. 2) Regulations, 1969, published in Rhodesia Government Notice No. 167 of 1969, or the previous Regulations as defined in subsection (1) of section 2 of the first-mentioned Regulations;

"president", in relation to a water board, means the person appointed as president in terms of the Emergency Regulations;

"water board" means a water board established in terms of the Emergency Regulations.

Registration of certain rights.

137. (1) Subject to the provisions of this section, nothing in this Act shall -

- (a) affect any right to the use of public water for primary use conferred by the Water Act [*Chapter 160*] and subsisting immediately before the appointed date, which right would, if granted on or after the appointed date in terms of this Act, be a right to the use of public water for agricultural purposes or institutional purposes;

or

- (b) prevent any person who immediately before the appointed date was abstracting water from the Limpopo River or the Zambezi River from continuing to abstract water from that river at an annual rate not exceeding the highest annual rate at which he abstracted water from that river during the period of five years immediately before the appointed date.

(2) A right referred to in and preserved by paragraph (a) or (b) of subsection (1) shall expire on the 1st December, 1979;

Provided that the holder of such right may, on or before the 31st December, 1979, lodge an application with the Registrar in terms of subsection

(3).

(3) An application lodged in terms of the proviso to subsection (2) shall be in the prescribed form and accompanied by such information concerning the right concerned as the Registrar may specify.

(4) On an application in terms of subsection (3) the Water Court -

- (a) may accede to such application and register the right concerned subject to such conditions as it thinks fit to impose, or refuse such application; and
- (b) shall, if it accedes to such application, fix the priority of the right concerned in relation to other rights registered in terms of paragraph (a) or granted in terms of this Act.

(5) A right registered in terms of subsection (4) shall be deemed to have been granted in terms of this Act.

Repeals and savings.

138. (1) The Water Act [*Chapter 160*] and the Water Amendment Act, 1975 (No. 15 of 1975) are repealed.

(2) Subject to the provisions of this Act and notwithstanding the provisions of subsection (1) -

- (a) the Secretary for Water Development and other officers appointed in terms of subsection (1) of section 150 of the Water Act [*Chapter 160*] and holding office immediately before the appointed date shall be deemed to have been appointed in terms of subsection (1) of section *four*;
- (b) the water courts constituted in terms of Part III of the Water Act [*Chapter 160*] and in existence immediately before the appointed date shall be deemed to have been established as the Water Court by subsection (1) of section *twenty-two*;
- (c) the Senior Judge and other judges appointed in terms of subsection (1) of section 29 of the Water Act [*Chapter 160*] and holding office immediately before the appointed date shall be deemed to have been appointed in terms of subsection (1) of section *twenty-three*;
- (d) an assessor selected in terms of subsection (4) of section 29 of the Water Act [*Chapter 160*] and holding office immediately before the appointed date shall be deemed to have been selected in terms of section *twenty-four*;
- (e) the water registrar appointed in terms of section 34 of the Water Act [*Chapter 160*] and holding office immediately before the appointed date shall be deemed to have been appointed as the Water Registrar in terms of subsection (1) of section *twenty-five*;
- (f) a combined irrigation scheme approved in terms of subsection (1) of section 75 of the Water Act [*Chapter 160*] and in existence immediately before the appointed date shall continue in existence as if it had been approved in terms of subsection (1) of section *one hundred*

and eleven and shall be deemed to be a scheme as defined in section *one hundred and six*;

- (g) an irrigation board elected in terms of section 81 of the Water Act [*Chapter 160*] and in existence immediately before the appointed shall continue in existence for a period of three years from the appointed ate or until replaced by an irrigation company, whichever is the sooner, and the provisions of Part V of the Water Act [*Chapter 160*] and of the Water {Combined Irrigation schemes} Regulations, 1962, published in Rhodesia Government Notice No. 561 of 1962, shall, during such period or until such replacement, as the case may be, continue to apply to such irrigation board;
- (h) subject to the provisions of section *one hundred and thirty-seven* -
 - (i) any rights conferred by or granted; or
 - (ii) any permits granted; or
 - (iii) any servitude awarded;

in terms of the Water Act [*Chapter 160*] and subsisting immediately before the appointed date shall continue in existence thereafter and be deemed to have been conferred by or granted or awarded in terms of this Act;

- (i) any matter or thing lawfully done, made or commenced under the Water Act [*Chapter 160*], which matter or thing immediately before the appointed date was of or was capable of acquiring force or effect, shall continue to have or acquire force or effect, as the case may be, and shall be deemed to have been made, done or commenced under this Act.

Amendment of various Acts.

139. The Act specified in each Part of the Second Schedule

FIRST SCHEDULE (Section 6(1))

POWERS OF OFFICERS

1. To construct, control, establish, maintain and supervise water works.
2. To do the acts referred to in paragraph 1 at the request of any person, other than a Minister or member of the Public Service acting in his official capacity, on-
 - (a) such conditions as may be prescribed; and
 - (b) payment of such charges as may be agreed on between the Secretary and such person.
3. To make estimates, investigations, plans and surveys for water works or hydro-electric power works and to record information obtained by means of such investigations and surveys.
4. To examine and advise on any scheme for the alteration, establishment, maintenance or repair of water works submitted by irrigation boards

referred to in paragraph (g) of subsection (2) of section *one hundred and thirty-eight*, irrigation companies, local authorities, owners, lessees or occupiers of land, river boards or other persons on payment of such fees as may be fixed by the Secretary.

5. To inspect the courses of public streams and water works and subject to the approval of the Minister, to order any person to do such acts and execute such repairs with respect to water works as the officer concerned may deem necessary in the public interest.
6. To obtain and record information concerning the extent of land under irrigation in Rhodesia, the quantity of water used therefor and the amount, nature and value of crops raised thereby.
7. To establish and maintain hydrological stations and record the observations made thereat.
8. Generally to obtain and record information and statistics relating to the hydrological conditions of Rhodesia.
9. To abstract from any public stream water required for the construction of water works.
10. To sink boreholes and wells and obtain and conserve supplies of underground water -
 - (a) in State land or Tribal Trust Land; or
 - (b) at the request of any person under such conditions and on payment of such fees as may be fixed by the Secretary.
11. While engaged in the construction or repair of any water works -
 - (a) to erect huts, tents or other temporary buildings; and
 - (b) to park vehicles and any vehicles used by the officer concerned in such construction or repair and
 - (c) to store any equipment, machinery or supplies to be used by him in connection with such construction or repairs; on any site convenient to him:

Provided that -

- (i) the officer concerned shall cause as little damage as possible to such site or premises;
- (ii) before the exercise of any power conferred by this paragraph, the person in charge of such construction or repair shall give reasonable notice to the owner, lessee or occupier of any land which will be affected by the intended exercise of such power;
- (iii) no hut, tent or other temporary buildings shall be erected within three hundred metres of any dwelling house;

- (iv) if the owner, lessee or occupier referred to in proviso (ii) objects to any site chosen for the erection, parking or storage referred to in subparagraph (a), (b) or (c), such objection shall be referred to the Water Court, which may make such order thereon as it thinks fit;
 - (v) the Minister shall pay to the owner of land affected by the exercise of power conferred by this paragraph in respect of any damage caused thereto such compensation from moneys appropriated by the Legislature for the purpose as the Minister and such owner may agree or, failing agreement, as the Water Court may fix.
12. To enter at all reasonable times on any land, premises or works, whether or not the owner, lessee or occupier thereof has consented thereto, with such animals, appliances, instruments, machinery, men and vehicles, and to do all such acts thereon as are necessary for or incidental to the exercise of the powers of the Minister or of the officer concerned or of any other officer or the discharge of any duty imposed on him by this Act:

Provided that -

- (i) the officer concerned shall cause as little damage as possible to such land, premises or works;
 - (ii) the officer concerned shall not enter any dwelling-house without the consent of the owner, lessee or occupier thereof;
 - (iii) the Minister shall pay to the owner of such land, premises or works in respect of any damage caused thereto such compensation from moneys appropriated by the Legislature for the purpose as the Minister and such owner may agree or, failing agreement, as the Water Court may fix.
13. To exercise any power, other than a power referred to in paragraphs 1 to 12, conferred on the officer concerned by or under this Act or any other enactment.

SECOND SCHEDULE (Section 139)

AMENDMENT OF VARIOUS ACTS

PART I

INTERPRETATION ACT (Chapter 1)

By the repeal of the definition of "Water Court" in sub-section (3) of section 3 and the substitution of -

"Water Court" means the Water Court established by subsection (1) of section 22 of the Water Act, 1976."

PART II

NATURAL RESOURCES ACT [Chapter 150]

1. In subsection (6) of section 22 by the deletion of "water registrar appointed under the Water Act [Chapter 160]" and the substitution of "Water Registrar appointed in terms of subsection (1) of section 25 of the Water Act, 1976".
2. In subsection (6) of section 46 by the insertion, after paragraph (b), of the following paragraph -
 - "(b1) in regard to the matter referred to in paragraph (e) of subsection (4) if the order requires a person to breach or demolish any water works as defined in the Water Act, 1976, unless the Secretary for Water Development has consented thereto; or".
3. In subsection (1) of section 79 by the deletion of "[Chapter 160]" and the substitution of ", 1976".
4. In subsection (1) of section 80 by the deletion of "[Chapter 160]" and the substitution of ", 1976".

PART III

SABI-LIMPOPO AUTHORITY ACT [Chapter 156]

1. In section 26 by -
 - (a) the repeal of paragraphs (b), (c) and (d) of subsection (2) and the substitution of -
 - "(b) the Authority shall be regarded for the purposes of section 63 of the Water Act, 1976, as though it were a holder who had applied for such rights in terms of section 47 of that Act on the date when the appropriate Minister had originally applied for such rights in terms of section 159 of the former Water Act;
 - (c) the provisions of subsection (5) of section 48 of the Water Act, 1976, shall, *mutatis mutandis*, apply:

Provided that -

 - (i) such provision shall apply to an agreement such as is referred to in those subsections as if the agreement has been made between the owner of the land and the appropriate Minister or the Authority;
 - (ii) the Registrar of Deeds shall note an agreement

referred to in proviso (i) on the instruction in writing of the appropriate Minister;

(iii) the subsequent transfer of the land shall be subject to the consent in writing of the appropriate Minister."

(b) the insertion, after subsection (2), of the following subsection -

"(3) In paragraph (b) of subsection (2) -

"former Water Act" means the Water Act [Chapter 160] which was repealed by the Water Act, 1976."

2. In section 27 by the deletion -

(a) in subsection (1) of "[Chapter 160], such servitudes of storage, passage, purification and abutment as defined in Part VII" and the substitution of ",1976, such servitudes of abutment, passage, purification and storage as defined in Part VIII";

(b) in subsection (3) of "VII of the Water Act [Chapter 160]" and the substitution of "VIII of the Water Act, 1976".

3. In paragraph 6 of the Third Schedule by the deletion of "[Chapter 160]" and the substitution of ", 1976".

PART IV

MINES AND MINERALS ACT [Chapter 165]

1. In the definitions of "private water" and "public water" in section 5 by the deletion of "[Chapter 160]" and the substitution of ", 1976".

2. In section 183 by the deletion of "use shall be as defined in the Water Act [Chapter 160]" and the substitution of "purposes shall be regulated by the Water Act, 1976".

3. By the repeal of section 428 and the substitution of-

"428. (1) Nothing in this Act contained shall be deemed to derogate in any way from the powers of the Water Court.

(2) Any order of a mining commissioner which -

(a) is made in terms of this Act; and

(b) affects public water or water works as defined in the water Act, 1976;

shall be provisional only and referred to the Water Court.

(3) The Water Court may confirm, vary or set aside an order referred to it in terms of subsection (2)."

Savings of powers of Water Court.

PART V

URBAN COUNCILS ACT [Chapter 214]

1. In the definition of "public stream" in subsection (1) of section 2 by the deletion of "[Chapter 160]" and the substitution ",1976".
2. In the proviso to section 116 by the deletion of "as defined in the Water Act [Chapter 160] in contravention of the provisions of Part X of that Act" and the substitution of "in contravention of the provisions of Part IX of the Water Act, 1976".
3. In subsection (1) of section 129 by the deletion of "[Chapter 169]" and the substitution of ", 1976".
4. In section 131 by the deletion -
 - (a) in paragraph (a) of subsection (1) of "[Chapter 160]" and the substitution of ",1976";
 - (b) in subsection (3) of -
 - (i) "VI of the Water Act [Chapter 160]" and the substitution of "VIII of the Water Act, 1976";
 - (ii) "water court" and the substitution of "Water Court".
5. In paragraph (i) of subsection (1) of section 270 by the deletion of "[Chapter 160]" and the substitution of ",1976".

PART VI

RHODESIA RAILWAYS ACT [Chapter 261]

In section 41 by the deletion -

- (a) of "[Chapter 160]" and the substitution of ",1976";
- (b) in subparagraph (iv) of paragraph (b) of "use as defined in subsection (1) of section 2 of the Water Act [Chapter 160]" and the substitution of "purposes as defined in subsection (1) of section 2 of the Water Act, 1976".

PART VII

ROADS ACT [Chapter 263]

In section 24 by the deletion of "IX of the Water Act [Chapter 160]" and the substitution of "Vii of the Water Act, 1976".