

# The Water Act, 2003

## Act Number 7 of 2003

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*The Water Act came into effect on 5 March 2003.*

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AN ACT

entitled

An Act to repeal and replace the Water Act, 1967 and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

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## **PART I**

## PRELIMINARY

### Short title and commencement

1. This Act may be cited as the Water Act 2002, and shall come into force on such date as the Minister may by notice in the Gazette, determine.

### Interpretation

2. In this Act, unless the context otherwise provides:

"aquatic environment" means the components of the earth related to, living in or located in or the beds of the shores of a body of water, including but not limited to:

- all organic or inorganic substances;
- living organisms and their habitats including fish;
- habitats and their interacting natural system;

"Authority" means the National Water Authority established by Section 3 of this Act;

"basin" means the area drained by the watershed of the five (5) major rivers, namely Komati, 2. Lomati (Mlumati), 3. Usuthu (Lusutfu), 4. Umbeluzi (Imbuluzi) and 5. Ngwavuma.

"Board" means:

- the Water Apportionment Board established in terms of Section 20; or
- after a River Basin Authority has been established, that River Basin Authority;

"borehole" means a hole dug or drilled into the ground for the purpose of withdrawing water from underneath the surface of the earth;

"dam" means an artificial obstruction in a watercourse built to store or divert water flowing in that watercourse;

"Director" means the Head of the Department of Water Affairs;

"divert" means to take water from a watercourse and includes to cause water to leave the channel of a water course and to make a change in or about a channel that permits all or some of the water to leave the existing channel;

"effluent" means a waste in liquid form or in suspension in a liquid or in emulsion;

"effluent control permit" means a permit issued by the Board in terms of Section 62 of the Act;

"groundwater" means water below the surface of the ground which does not flow in a known or defined channel;

"industrial use" means:

- the use of water by an individual or corporation for any industrial, commercial, manufacturing, mining or processing purpose;
- any other use which will or may alter the chemical, physical or biological quality of the water or surrounding ecosystem;

"Inspector" means a person designated by the Director as inspector;

"Irrigation District" means a body incorporated under Section 73;

"local authority" means a town council or town board, city council, district council, chief's council or other local institution of a similar nature which is constituted in accordance with any law and which has the legal power required to safeguard the health of the inhabitants of the area under its jurisdiction, and to supply water to the inhabitants of the area under its jurisdiction and includes the Rural Water Supply Branch and the Swaziland Water Services Corporation;

"Minister" means the Minister responsible for Water Affairs;

"permit" means a permit issued by the Board under this Act;

"person" includes an individual or group of individuals, a partnership, association, a body incorporated by or under a statute and an un-incorporated board or commission established by or under the provisions of a statute.

"Plan" means the Water Resources Master Plan referred to in Section 10;

"pollution" means the presence in the environment of substances or contaminants, or change in the physical or chemical or biological parameters which substantially alter or impair the usefulness of the environment or are harmful to human or other living things;

"proprietor" means:

- any person who is registered in the Deeds Office as the owner or holder of a concession conveying a land right;
- any person who is registered in the Deeds Office as the holder of any lease or other document by virtue of which a person referred to in paragraph (a) has disposed of any concession mentioned in that paragraph, either in whole or in part;
- any person who is the owner or holder of a land right;
- the liquidator of a company which is a proprietor or the legal representative of any person referred to in paragraph (a) or (b);
- a legal representative of a person who has died or is a minor or is of unsound mind.

"repealed Act" means the Water Act, 1967;

"River Basin Authority" means an authority established by the Minister under Section 33;

"servitude" means a right owned by a permit holder to occupy and use such part of the land belonging to another person for such purposes in connection with the enjoyment of the rights under the permit as the agreement or authority granting the servitude may describe or this Act may imply;

"task force" means a group of persons convened by the Authority to investigate or advise the Authority on any specific matter or matters related to the development or use of water resources;

"use for primary purpose" means the use of water for domestic requirements, sanitation, the watering of animals not exceeding 30 head of cattle or the irrigation of land not exceeding one-quarter hectare adjoining or occupied with a homestead of not more than 10 persons but does not include the use of water by a local authority for distribution to the inhabitants of the area;

"water course" means a natural or artificial water channel or sources of water supply, whether artificially improved or altered or not, and whether usually containing water or not, and includes a lake, pond, river, stream, spring, or water flowing in a known or defined channel underground but does not include groundwater;

"water sport" means an area which or part of which is from time to time a control area likely to be submerged by water whether naturally or artificially, and where such water is or would be suitable for the practice of any water sport by the public and to which the public has a right of access;

"work" means anything capable of or used in connection with diverting, storing, measuring, conserving, conveying, retarding, confining, or using water or with collecting, conveying, measuring, treating or disposing of sewage or liquid wastes, and includes access roads to any of them, and includes the removal of obstructions from the banks or beds of a watercourse.

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## PART II

### NATIONAL WATER AUTHORITY

#### Establishment of the National Water Authority

3. There is hereby established an Authority known as the National Water Authority, which is a body corporate capable of suing and being sued in its corporate name, and with the full power and authority to do all things which may be required or which reasonably appear to be required for or incidental to the carrying out of its objects and the performance of its duties and obligations.

#### Constitution of the Authority

4. (1) Subject to sub-section (7), the Authority shall consist of up-to fifteen members to be appointed by the Minister in accordance with sub-sections (2), (3) (4) and (5), within sixty (60) days of the coming into force of this Act.

(2) Four members shall be persons who hold office as senior officials of the Government from each of the following ministries:

- a. the Ministry of Agriculture and Co-operatives;
- b. the Ministry of Economic Planning and Development;
- c. the Ministry of Natural Resources, and Energy;
- d. the Ministry of Health and Social Welfare.

(3) There shall at all times be three (3) members appointed by the Minister nominated by each of the following:

- a. Swaziland Sugar Association;
- b. Swaziland Citrus Board; and
- c. Swaziland Chamber of Commerce and Industry.

(4) The Minister shall appoint three (3) members who:

- a. shall represent associations, co-operatives and individuals on Swazi Nation Land; and
- b. shall be familiar with at least one of the five major river basins in the country and the major crops grown on Swazi Nation Land.

(5) There shall at all times be one (1) member from each established River Basin Authority nominated by their respective Basin Authorities as contemplated in Section 33.

(6) The six members appointed in terms of sub-sections (3) and (4) will cease to be members after a period of five years from the establishment of the Authority.

(7) After a period of five years from its establishment, the Authority shall consist of nine members, four of whom shall be appointed in the manner provided for in sub-section (2) and five of whom shall be appointed in the manner provided in sub-section (5).

(8) The Minister may appoint as an alternate to any member, a person possessing the like qualifications for appointment as that appointed member.

(9) An alternate is entitled to attend any meeting of the Authority but is not entitled to vote unless the member for whom the alternate is appointed is absent.

(10) A person shall not be a member or an alternate member of both the Authority and the Board at the same time and a person who being a member of the Board is appointed as a member or alternate member of the Authority shall forthwith cease to be a member or alternate member of the Board.

(11) The Secretary of the Authority shall be the Director in terms of Section 17.

### **Period of office and remuneration of members of the Authority**

5. (1) A member of the Authority other than a member referred to in Section 4(2) shall be appointed for a period not exceeding three years, and any person whose period of office as a member of the Authority has expired may be reappointed.

(2) The members of the Authority referred to in Section 4 (2), (3) and (4) and their alternates shall hold office upon such conditions (including payment of a sitting allowance) as the Minister may, in consultation with the Minister of Finance, determine.

(3) Any allowances which are payable under sub-section (2) shall be paid out of the Consolidated Fund.

### **Chairperson, and Vice Chairperson**

(1) The Minister shall designate one member as Chairperson and another member as Vice Chairperson of the Authority and, if the chairperson or the vice chairperson or the secretary ceases to hold office as a member of the Authority, the Minister shall designate other members as new Chairperson, vice Chairperson and secretary.

(2) If at any meeting of the Authority the Chairperson and the Vice Chairperson are absent for any reason and are unable to preside, the members present shall nominate an acting Chairperson.

### **Disqualification, termination of membership and filling of vacancies**

7. (1) A person shall not be appointed as a member or alternate member of the Authority if that person:

- a. is an unrehabilitated insolvent; or
- b. has been convicted of an offence and sentenced to imprisonment without the option of a fine.

(2) The Minister may remove from office any member of the Authority who has been selected or appointed under Section 4 who:

- a. has failed to comply with a condition of the appointment;
- b. in the opinion of the Minister, has been guilty of improper conduct or has habitually neglected his duties as a member of the Authority; or
- c. has, without written permission of the chairperson of the Authority, been absent from three consecutive meetings of the Authority;

(3) If any member of the Authority ceases to hold office, the Minister shall, subject to Section 4 and 6, appoint a person to fill the vacancy on the Authority.

(4) The alternate to a member who has ceased to be a member shall continue to have the authority and rights of an alternate until the appointment as an alternate expires or is terminated.

### **Functions of the Authority**

8. With the approval of the Minister, the functions of the Authority are to:

- a. with the approval of the Minister, prepare, adopt, and subsequently update, the Water Resources Master Plan which shall comply with Section 10;
- b. advise the Minister on the appointments of persons to serve in the Joint Water Commission or any other international or national water commission which may be established pursuant to Section 19 of this Act.
- c. advise the Minister on the promulgation of regulations respecting the setting of fees or charges for covering operation, cost and maintenance of government works, application fees, fees for appeals or charges for use of water;
- d. oversee the work of and provide policy criteria and direction to the Board and to Project Boards, River Basin Authorities and task forces and to approve their budgets before they are submitted to the Minister;

- e. advise the Minister on policy directions relating to water affairs;
- f. co-ordinate the work of different boards, water sector agencies and international water commissions;
- g. recommend policy with respect to the issue, renewal, amendment or cancellation of permits;
- h. hear appeals from the Board, as provided in Section 32;
- i. monitor and recommend policy direction and guidelines to the Swaziland members of the Tripartite Permanent Technical Committee and the Joint Water Commission and any other international water commission;
- j. review and consider recommendations from the Tripartite Permanent Technical Committee, the Joint Water Commission and any international water commission and to make recommendations thereon to the Minister;
- k. determine the proper management of works and ensure that periodic safety inspections are made of all works;
- l. consider, approve, amend or reject development proposals for the development of water resources which may have a significant impact on the use of water resources;
- m. recommend to the Minister the adoption of water quality objectives;
- n. recommend to the Minister time limits for renewal of permits;
- o. cause to be maintained, expanded and continued, the collection of hydrological, meteorological or other water related data and to arrange for the collecting and making available to the Authority, to the Board and to the public of all such data as may be obtained; and
- p. do such other things as the Minister may in writing assign to the Authority.

### Designation of flood risk areas

9. (1) If the Authority is of the opinion that there is or may be a risk to human life or property as a result of flooding, the Authority shall recommend to the Minister to:

- a. designate any area of land as a flood risk area, either generally or on an interim basis; and
- b. specify any acceptable uses with respect to the flood risk area.

(2) Before recommending the designation of flood risk areas, the Authority shall take measures to consult with local land owners and occupants and local authorities.

### Water Resources Master Plan

10. (1) There shall be a Plan prepared and adopted by the National Water Authority after the approval of the Minister.

(2) The Plan shall contain an inventory of the total water resources of Swaziland and a comprehensive programme of action in which the maximum value can be obtained from this resource for the benefit of the people of Swaziland.

(3) The Plan shall include the generally accepted principles of river basin management.

(4) The Plan shall:

- a. be based on all relevant data including but not limited to data of surface water flows, ground water flows, biological state, climatic conditions, agricultural land suitability, forestry and industrial potential;
- b. identify, at a prefeasibility level, opportunities for water resources development including both storage reservoirs and runoff, the river developments for irrigated agriculture, hydroelectric generation and industrial use;
- c. consider potential requirements for domestic consumption, schools clinics and similar institutions.

(5) The Plan shall specifically take into consideration potential developments in the neighbouring countries as well as in the Southern African Development Community.

(6) The objective of the Plan is:

- a. to define criteria for allocation of water;
- b. to secure sufficient water resources for domestic, agricultural and industrial needs;



- c. to determine beneficial and equitable needs within the context of sharing waters of international river basins;
- d. to protect the aquatic environment;
- e. to set down social and economic criteria for evaluating alternative water resources developments;
- f. to set down provisions for integrating water management with land and other resources;
- g. to develop a water pricing policy based on the economic value of water;
- h. to develop water conservation objectives including water quality objectives.

(7) The Authority shall in a form and manner prepared by the Authority and approved by the Minister, consult with the public during the development of the framework for the Plan.

(8) The Authority shall develop and adopt the Plan in stages and shall prepare for the approval of the Minister a schedule and timetable for the proposed development of the Plan.

(9) A final Plan shall consist of:

- a. a summary of the issues considered in the Plan;
- b. a summary of recommendations and policies that must be considered in issuing permits, assessing development of options, integrating water and other resources, conserving the aquatic environment, upholding international obligations.

(10) There shall be a periodic review of the Plan every three years.

### **Powers of the Authority**

11. (1) The Authority shall have all the powers necessary or which reasonably appear to be necessary to achieve its objects and to perform its duties.

(2) Without limiting the generality of sub-section (1), the Authority shall have power:

- a. to recommend to the Minister the incorporation of Irrigation Districts;
- b. to recommend to the Minister the incorporation of Project Boards and River Basin Authorities;
- c. to declare emergencies in respect of water resources either in general or in specified areas, after consultation with the Minister.
- d. to determine the amount of compensation to be granted when the Board has recommended compensation under Sections 42 and 59;
- e. to delegate any authority to inspectors or other persons for the purposes of implementing this Act;
- f. to establish task forces as required;
- g. to engage consultants and advisers to provide technical support where required.

### **Meetings of the Authority**

12. (1) The first meeting of the Authority shall be held at a time and place to be determined by the Minister but no later than four months after the coming into force of the Act and all subsequent meetings shall be held at such times and places as may be determined by the Authority or, if at the close of any meeting the Authority has not determined the time and place for its next meeting, by the Chairperson of the Authority.

(2) The Chairperson of the Authority shall, when directed thereto by the Minister, or on the written demand of not less than five members, call a special meeting of the Authority to be held at a time and place determined by the Minister, or by the members as the case may be.

(3) The Authority shall meet at least twice in each period of twelve months from the coming into force of this Act.

### **Quorum and Chairperson's casting vote**

13. (1) Initially eight members, and after 5 years of coming into force of this Act, six members of the Authority shall form a quorum for any meeting of the Authority.

(2) At all meetings of the Authority the Chairperson or the Acting Chairperson of the Authority shall preside.

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

(4) A decision taken by or an act done under the authority of the Authority shall not be invalid by reason only of an interim vacancy on the Authority or of the fact that a person who is disqualified from being a member of the Authority, or with respect to whose appointment the provisions of this Act had not been observed, sat or acted as a member at the time when the decision was taken or the act was performed or authorised, if the decision was taken or the act performed or authorised by the requisite majority of the members of the Authority present at the time who were entitled to sit and act as members.

### **Committees of the Authority**

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

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

(3) Any allowance which is payable under sub-section (2) shall be paid out of the Consolidated Fund.

### **Budget and Reports**

15. (1) The Authority shall establish its own budget and shall submit it to the Minister for approval and submission to the Minister for Finance as per requirement.

(2) The Authority shall review with the Board and the Director the needs required to carry out under this Act and shall make a submission to the Minister.

(3) The Authority shall, within six months of the end of each financial year, furnish the Minister with a report on the activities of the Authority and of the Board and any other board or task force established by the Authority and upon any other matter which has been referred to it by the Minister.

(4) At the end of every financial year the Authority shall submit a duly audited statement to the Minister.

(5) Every report furnished to the Minister under sub-sections (3) and (4) shall be laid before Parliament as soon as possible after receipt thereof.

### **By-Laws**

16. The Authority may make by-laws to provide for its own procedures for the performance of its work and for its own administration.

### **Director**

17. (1) There shall be an officer of the Director of Water Affairs in the Ministry of Natural Resources and Energy.

(2) The Director shall possess such formal academic qualifications in the field of water resources and have sound experience in water resources management as may be considered appropriate for the office.

(3) The Director shall be appointed by the Minister on the recommendation of the Authority on such terms and conditions as the Minister may determine and for a period not exceeding five years, which may be renewed.

(4) The Director shall be the Secretary of the Authority and the duties and responsibilities of his office include:

- a. heading the Department of Water Affairs;
- b. providing technical support and advice to the Authority;
- c. arranging with other ministries for the provision of technical advice and co-operation when required for the preparation of plans or assisting in the work of task forces;
- d. designating inspectors for the purposes of carrying out this Act;
- e. ensuring that appropriate measures including legal action are taken against violators of this Act.

### **Department of Water Affairs**

18. (1) There shall be established within the Ministry of Natural Resources and Energy a Department of Water Affairs consisting of professional, technical, administrative, clerical and other staff as may be required to enable the Department of Water Affairs to perform its duties.

(2) The Minister may designate to be included in the Department of Water Affairs, a Section or a Department of the Ministry and such other staff members of the Public Service as may be required to support the work of the Department as and when required.

(3) The Department of Water Affairs shall be the secretariat for the National Water Authority under Section 17.

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## **PART III**

### **INTERNATIONAL WATER BODIES**

#### **International Water Bodies**

19. (1) The Joint Water Commission established by the Governments of Swaziland and the Republic of South Africa, the Komati Basin Water Authority established by the Governments of Swaziland and the Republic of South Africa and similar commissions, committees or authorities which have been or may be established between the Governments of Swaziland, the Republic of South Africa, and the Republic of Mozambique are recognized.

(2) An amendment or addition to the terms of reference of the Joint Water Commission shall not be made without the written approval of the Minister, upon the recommendation of the Authority.

(3) The Minister shall, after consultation with the Authority, appoint the appropriate number of persons to be the representatives of the Government on a commission, committee or authority and the same persons may be appointed to more than one commission, committee or authority.

(4) The representatives of the Government of Swaziland shall be appointed for a period not exceeding three (3) years and shall be eligible for re-appointment.

(5) The Minister may, after consultation with the Authority, appoint any person to be advisor to the representatives.

(6) The representatives and advisers may not be in the full time employment of the Government.

(7) The leader of the delegation of representatives may be the Director or the alternate of the Director.

(8) All proper expenses of the representatives and the advisers and the remuneration of any representative or adviser who is not in the full time employment of the Government shall, after approval by the Authority, be paid out of the Consolidated Fund.

(9) The commission, committees, and authorities shall carry out their work in accordance with policy guidelines and directives of the Authority, and any relevant treaties, having regard to the requirement of the Plan.

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## **PART IV**

### **WATER APPORTIONMENT BOARD**

#### **Establishment of the Water Apportionment Board**

20. (1) There is hereby established a Board to be known as the Water Apportionment Board.

(2) The Board shall dissolve soon after the last of the five basin authorities become established in terms of Section 33.

#### **Constitution of the Board**

21. (1) The Board shall consist of nine members, who shall be appointed by the Minister in accordance with sub-sections (2), (3) and (4).

(2) Four members shall be in the employment of the Government and be senior officers in the Ministry of Agriculture and Co-operatives, Swaziland Environment Authority, Ministry of Health and Social Welfare and Ministry of Natural Resources and Energy.

(3) Three members shall be persons who are not in the employment of the Government and will be nominated by each of the following agencies:

- a. Swaziland Chamber of Commerce and Industry;
- b. Swaziland Sugar Association or Swaziland Citrus Board; and
- c. Swaziland Water Services Corporation.

(4) There shall be two members of the Board representing Swazi Nation Land farmers and small growers on Title Deed Land.

(5) The members shall be appointed for a single renewable period not exceeding three years on such terms and conditions as the Minister may determine.

(6) The Minister shall appoint as an alternate to a member a person with similar affiliation as that member.

(7) An alternate member shall be entitled to attend any meeting of the Board but shall not be entitled to vote unless the member for whom the alternate is appointed is absent.

(8) If a member or alternate is to be appointed from a list referred to in sub-sections (3) and (4), the Minister shall by notice in writing invite the organisation or organisations concerned to recommend the name of the person to be appointed to the Board within a specified period.

(9) If the recommendations required under sub-section (8) are not lodged with the Minister within the period stated in the Minister's notice inviting such recommendations, the Minister may appoint such person or persons as the Minister considers suitable for the appointment or appointments from the appropriate organisation(s) referred to in sub-sections (3) and (4).

#### **Chairperson and vice chairperson**

22. The Minister shall designate one of the members as Chairperson and another member as Vice Chairperson of the Board and if the Chairperson or Vice Chairperson is absent or unable to perform the

functions of Chairperson or Vice Chairperson, the members shall designate one member to act as Chairperson.

### **Disqualification, termination of membership and filling of vacancies**

23. (1) A person shall not be appointed to hold office as a member or an alternate member of the Board if that person:

- a. is an unrehabilitated insolvent;
- b. has been convicted of an offence and sentenced to imprisonment without the option of a fine; or
- c. is of unsound mind.

(2) After consultation with the relevant organisation the Minister may remove from office any member of the Board, which he appointed under Section 21 if that member:

- a. has failed to comply with a condition of the appointment;
- b. in the opinion of the Minister, has been guilty of improper conduct or has habitually neglected the duties as a member of the Board; or
- c. has been absent from three consecutive meetings of the Board and did not provide written notice giving good reasons for being absent.

(3) If any member of the Board ceases to hold office, the Minister shall, with due regard to Section 21, appoint a person to fill the vacancy on the Board.

(4) The alternate to a member who has ceased to be a member shall continue to have the authority and rights of an alternate until the appointment as an alternate expires or is terminated.

### **Meetings of the Board**

24. (1) Meetings of the Board shall, subject to sub-section (2), be held at such times and places as may be determined by the Board or, if at the close of any meeting the Board has not determined the time and place for its next meeting, the Chairperson of the Board shall determine that time and place.

(2) The Chairperson of the Board shall, when directed thereto by the Authority, or on the written demand of three members of the Board, call a special meeting of the Board to be held at a time and place determined by the Authority or by the three members of the Board as the case may be.

(3) Members of the Board and their alternates in making decisions shall exercise their discretion independently and not as agents of the Department or organisation which they represent.

### **Quorum, decision and Chairperson's casting vote**

25. (1) Six members of the Board shall form a quorum for any meeting of the Board.

(2) The Chairperson of the Board shall preside at all meetings of the Board.

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

(4) A decision taken by or act done under the authority of the Board shall not be invalid by reason only of an interim vacancy on the Board or of the fact that a person who is disqualified from being a member of the Board, or with respect to whose appointment the provisions of this Act had not been observed, sat or acted as a member at the time when the decision was taken or the act was performed or authorised, if the decision was taken or the act performed or authorised by the requisite majority of the members of the Board present at the time who were entitled to sit and act as members.

(5) Where a member has a vested interest in a matter being considered by the Board, such that it would constitute a conflict of interest, that member shall declare the interest and not be part of the deliberation of the Board on that matter, as the Board may determine.

## Committees of the Board

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

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

## Administrative and other work of the Board

27. (1) The Secretariat established under Section 18 shall support the work of the Board.

(2) If the Secretariat lacks skill in a certain area, the Board may secure that skill in or out of Government for as long as it may be necessary.

## Powers of the Board

28. (1) The Board shall have all the powers necessary or which reasonably appear to the Board to be necessary to achieve its objects or to perform its duties.

(2) Without limiting the powers of the Board set out in sub-section (1) the Board shall have the power:

- a. to consider, amend, grant or reject an application for a permit or an effluent control permit;
- b. to issue a permit or an effluent control permit containing such terms and conditions as it deems appropriate;
- c. to issue well drilling and groundwater abstraction permit containing such terms and conditions as it deems appropriate;
- d. subject to the provisions of this Act, to amend or cancel any permit, an effluent control permit or well drilling permit or a groundwater abstraction permit;
- e. to ensure that inspections, inquiries and tests are made to see if any breach of the terms or conditions of a permit, an effluent control permit or of this Act is being or has been committed;
- f. to take such steps as may be appropriate to enforce the terms and conditions of a permit, an effluent control permit, a well drilling permit or a groundwater abstraction permit;
- g. to ensure that devices in the field are properly constructed, operated and maintained;
- h. to ensure that dams are constructed, operated and maintained safely and recommend to the Authority safety guidelines appropriate for various types of dams;
- i. to inspect any works to ensure that they are constructed, operated or maintained in a safe condition and without undue wastage of water;
- j. to liaise with the Swaziland Environment Authority for the setting of periodic review of effluent standards;
- k. to issue instructions to the holder of any permit or effluent control permit or owner or operator of any works to put the works into a safe condition at the expense of the permit holder or owner or operator, and if such instructions are not obeyed promptly, to have the work done by others and to recover the costs in any court of competent jurisdiction;
- l. to delegate by written authority to any person or persons any power which the Board may have under the provision of this Act as set out in such written authority;
- m. to delegate to any association of permit holders, whether legally incorporated or not, the authority to distribute the total permitted quantity of water among its members as it may decide and to exercise such powers of the Board related to the enforcement of permits or of the provisions of this Act within the area of the association's control as the Board may in writing provide;
- n. to prepare a budget and submit it to the Authority for approval and forwarding to the Minister;
- o. to pass bylaws to provide for its own procedures for the performance of its own work and its own administration.

## Establishment and keeping of registers

29. The Board shall establish and keep, in the prescribed form, registers of all permits and temporary permits issued, varied, withdrawn or cancelled by it under this Act or the repealed Act.

## Inquiries by the Board and hearing of applications for servitudes

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

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

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

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

(4) Any person who has been summoned to give evidence at such inquiry shall be entitled to receive as witness fees and expenses, an amount equal to the amount, which would have been received as witness fees, and expenses if summoned to attend at a criminal trial in the High Court.

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

- a. having been summoned to give evidence at an inquiry under sub-section (1), he fails to attend at the time and place specified in the summons, or fails to remain in attendance until the conclusion of the inquiry, or until excused from further attendance by the member of the Board presiding at the inquiry, or fails to produce any book, document or thing in that person's possession or custody or under that person's control, which that person has been summoned to produce, without having sufficient cause; or
- b. having been summoned under sub-section (1), or called under sub-section (2), the person refuses to be sworn or to make affirmation as a witness after being directed by the Board to do so; or
- c. without sufficient cause, he refuses to give evidence or refuses or fails to answer fully and satisfactorily to the best of that person's knowledge and belief any questions lawfully asked.

(6) If requested to do so by any witness or any other person and on good cause shown to the satisfaction of the Board, the Board shall hear the evidence in camera.

(7) If any person who is entitled to claim any servitude in terms of Section 53 is unable to reach an agreement with the person from whom the servitude is claimed as to the terms of the servitude or the compensation, if any, to be paid in respect thereof, either of the parties to the dispute may in writing submit the matter in dispute to the Board for decision and the Board shall, after making such investigation and inquiry as to it may appear necessary, make such order in regard to the matter in question as it may deem just, and any order so made shall be binding upon the said parties.

(8) In determining any matter mentioned in sub-section (7), the Board may, upon the application of any of the parties to the said dispute, make such order as to costs as it may deem just in accordance with the scale of costs under the provisions of Section 18 of the Acquisition of Property Act, 1961.

(9) An order made by the Board under sub-section (7) shall, if the Board so directs, be registered by the Registrar of Deeds against the title deed of any land to which the order refers and shall be recorded in the appropriate registers in the Deeds Office, and the proprietor of any such land shall produce the title deeds for the purpose.

(10) A person who, during any sitting of the Board wilfully insults a member thereof or any other person attending at such sitting, or wilfully obstructs or interferes with any such member or other person in the execution of the duties required to be performed in terms of this Section, or wilfully interrupts the proceedings of the Board or otherwise misbehaves in the place where the Board is sitting, shall be guilty of an offence and liable on conviction to the penalties mentioned in Section 90.

## Annual Reports

31. The Board shall, within four months after the end of each financial year, furnish the Authority with a report on the activities of the Board during that financial year and upon any other matter with which the Authority may require the Board to deal.

## Appeals from decisions of the Board or Authority

32. (1) Any person aggrieved by a decision of the Board may appeal to the High Court on one or more of the following grounds:

- a. that the person was improperly refused the right to appear before the Board as a party;
- b. that the Board exceeded its jurisdiction;
- c. that the Board failed to exercise a jurisdiction which it was required to exercise;
- d. that the Board found that no compensation was payable;
- e. that the amount or value of compensation arrived at by the Board is wrong;
- f. that there was an error in law appearing on the face of the decision itself.

(2) The rules of the High Court shall apply to such an appeal.

(3) A party aggrieved by a decision of the Board may also appeal to the Authority.

(4) An appeal against a decision of the Authority may be made to the High Court on a point of law only.

(5) Any appeal from a decision of the Board shall be taken by instituting proceedings in the High Court or by filing a notice of appeal with the Authority within three months from the date the decision appealed against is made, unless the High Court or the Authority, as the case may be, extends the time on good cause shown.

## River Basin Authorities

33. (1) The Minister shall within five years of coming into force of this Act, establish upon the recommendation of the Authority and subject to sub-section (7), five River Basin Authorities by notice in the Gazette.

(2) River Basin Authorities shall be established to implement a management plan under the Water Resources Master Plan dealing with a specific geographical basin area.

(3) The notice shall state the name of the River Basin Authority and shall define its objects, powers and areas within which it shall operate.

(4) A River Basin Authority shall be a body corporate capable of suing and being sued in its own name and shall have such other powers as a body corporate may have.

(5) The composition of a River Basin Authority shall be determined by regulation, but subject to the following:

- a. a River Basin Authority shall consist of among others representatives of all the relevant water sectors in the basin in question;
- b. water sector representative for purposes of the composition of the River Basin Authority shall be elected by interested or affected stakeholders;
- c. election of representatives will occur by nomination within sixty days after notice in the Gazette and two newspapers in circulation in the affected areas;
- d. the Authority shall appoint one of the nominated candidates of each water sector to become a member of the River Basin Authority;
- e. in the event of the failure of any of the water sectors to nominate candidates, the Minister may appoint representatives for these water sector;
- f. for the purposes of this Section, water sectors are classified as belonging to one of the following user sectors: domestic, agriculture, forestry, conservation and mining/industry.



(6) The objects of a River Basin Authority are to conform to and to implement the Water Resources Master Plan, and to advise the Authority on basin issues.

(7) The powers, duties and functions of River Basin Authorities shall be laid down by the minister, and shall include the following:

- a. to keep a data base of basin information, including water availability and water demand data, and to monitor and keep record of changes in water conditions in the basin;
- b. to issue, amend and renew or suspend water permits;
- c. to impose water restrictions on all water users in times of water shortage;
- d. to investigate the need for water resources development and management and to advise the Authority on the need to appoint Project Boards;
- e. to investigate the need for inter-basin transfers, to negotiate it with other basin authorities, and to advise the Authority in respect thereof;
- f. to arbitrate user disputes;
- g. to monitor and control water quality and enforce effluent regulations;
- h. subject to the approval of the Authority, to levy and collect rates and charge to defray part or all costs of the River Basin Authority;
- i. have authority over Irrigation Districts, Project Boards and User Associations.

(8) The powers and objects may be altered, expanded or reduced from time to time by the Minister on the recommendation of the Authority by notice in the Gazette.

(9) All powers vested in the Board shall automatically be transferred to each River Basin Authority as soon as that River Basin Authority is established.

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## **PART V**

### **PERMIT FOR THE USE OF WATER**

#### **The Right in Water**

34. (1) All water found naturally in Swaziland is hereby declared a national resource.

(2) There shall be no private right of property in any water found naturally in Swaziland.

(3) A right to divert, store, or use water shall not be acquired by prescription.

(4) It shall not be necessary for any person or community to obtain a permit for the use of water for primary purposes.

#### **Application for a permit**

35. (1) An application for a permit shall be made to the Board.

(2) Every person who applies for a permit under this Act or to renew or amend a permit shall comply with the regulations with respect to filing the application, giving notice of such application and paying the prescribed application fee, if any, and shall furnish such information, plans and specifications as the Board may require.

(3) An application shall clearly indicate the intended use of water to be made under the permit.

(4) The Board shall give prompt notice to the Authority on every application received.

(5) The Board may issue, renew or amend a permit without the consent of the Authority unless such permit does not conform to the Water Resources Master Plan, in which case the consent of the Authority shall be necessary.

## Objections to application

36. (1) Any person who considers that rights of that person would be adversely affected by the granting of the permit applied for, may, within thirty (30) days of receiving notice of the application, or such longer period as the regulations may provide, file an objection in writing with the Board, giving full reasons for the objection.

(2) On receipt of an objection referred to in sub-section (1), the Board shall consider the objection, hear the objector and its decision shall be final.

## Powers of the Board with respect to an application

37. (1) The Board may, with respect to any application for a permit:

- a. refuse the application;
- b. amend the application in any respect;
- c. grant the application in whole or in part;
- d. require additional information, plans or specifications; or
- e. issue to the applicant one or more permits on such terms and conditions as the Board considers proper.

(2) With respect to any application for the renewal of a permit, such renewal shall not be refused without good reason.

(3) Without limiting the Board's discretion, a permit may contain:

- a. limitations as to the time or hours of the day when water may be diverted, stored, or used;
- b. authority to divert, store, or use different quantities of water at different times of the year; or
- c. the specifications as to the records to be maintained by the permit holder.

(4) The permit shall be made appurtenant to specifically defined land, or to a specific industrial undertaking, or to a specific local authority or person which will distribute the water generally to members of the public.

(5) A permit to divert or store water shall specify the point at which the water is to be diverted from the watercourse or the place of storage.

(6) A permit to divert or use water for agricultural purposes shall specify the methods to be used to collect surplus or used water and the point at which surplus or used water is to be returned to the watercourse.

(7) A permit to divert or use water for an industrial undertaking shall specify the volume which may be consumed in the process of the undertaking and the point at which the water shall be returned to the watercourse.

(8) A permit to divert or use water for a local authority shall specify the volume to be consumed and the point at which the water shall be returned to the watercourse.

(9) A permit to divert or use water for agricultural or industrial purposes or for a local authority shall require the permit holder to install and maintain adequate devices to measure and record the flow rate and volume of water diverted or used.

(10) Subject to Section 93(9) a permit shall be renewed every five years or such other period as may be prescribed by regulation.

## Emergencies

38. (1) In an emergency whether natural or otherwise, the Board or its authorised delegate may by notice, suspend a permit or a temporary permit in whole or in part and may give instructions to the holder of the permit or temporary permit as to the diversion, storage or use of water as the Board or its delegate may deem appropriate.

(2) The notice and instruction referred to in sub-section (1) shall be given by such means as may seem to the Board or its authorised delegate to be appropriate, but if not given in writing, they shall be confirmed in writing as soon as may be reasonably practicable.

### Drought Conditions

39. (1) If at any time it is found that due to climatic conditions there is insufficient water available in any watercourse to satisfy all permit holders according to the quantities permitted to them, the Board shall by notice served by registered mail on all permit holders on that watercourse, reduce proportionately the amount of water allowed to the permit holders.

(2) A permit holder of water for domestic consumption or stock watering need not be required to reduce the amount of water allowed in the permit.

(3) Notwithstanding sub-section (2), a permit holder for water used for domestic consumption or stock watering may be required to reduce the amount allowed in the permit in the event of more serious drought.

### Change in flows

40. (1) If it is found that for any reason beyond the reasonable control of the Board the natural flow in a watercourse available to all users has dropped so that more water is permitted to be diverted, stored, or used than is available in the watercourse, the Board shall hold a public hearing into the matter and thereafter may amend any or all permits to divert, store, or use water from that watercourse in an equitable and fair manner as the Board may deem appropriate.

(2) A compensation shall not be payable in respect of any reduction ordered by the Board pursuant to Sections 38, 39 and 40.

### Cancellation

41. (1) Every permit and all rights under it are subject to cancellation or variation in whole or in part by the Board, if:

- a. the permit holder has applied for cancellation;
- b. the permit holder has failed for three successive years to make use of the water for the purpose and in the manner authorised by the permit;
- c. the permit holder has failed to complete the construction of the works authorised by the permit within the time specified by the permit;
- d. the permit holder has failed for two successive years to pay any fees due to the Board with respect to the permit;
- e. the permit holder has for six months failed to pay any water bailiffs fees payable;
- f. the permit holder has failed to comply with this Act, the regulations, or any term or condition of the permit, or of an effluent permit, or any term or condition of an effluent permit issued in conjunction with the permit;
- g. the permit holder has failed to comply with a lawful order of the Board or of its duly authorised delegate; or
- h. the permit holder made a material misstatement in the application for a permit or in information provided to the Board with respect to such application
- i. it is in the public interest to do so.

(2) If the Board proposes to cancel a permit in whole or in part on any ground specified in sub-section (1), it shall give notice by registered mail to the permit holder and to the proprietor of any lands or undertaking to which the permit is appurtenant, and shall cause a notice of its intention to be published in a local newspaper once a week for three consecutive weeks.

(3) If the Board, within four weeks of the mailing of the notice or the last publication of the notice in a local newspaper, has received an objection to the proposed cancellation from a person claiming to be interested in the permit, the Board shall hold a hearing within eight weeks, and shall then decide whether to cancel the permit in whole or in part or to allow the permit to remain in effect and, if so, subject to such amended or additional items and conditions as the Board may consider proper.

## Compensation in the event of cancellation

42. (1) There shall be no compensation paid in the event of a permit cancelled in terms of Sections 41 (1) (a) to (h).

(2) If the Board decides in terms of Section 41(1)(i) that the permit should be cancelled in whole or in part in the public interest it shall also decide whether compensation will be paid and the amount of compensation payable for such cancellation and the party or parties, including the Government, who should pay such compensation and the party or parties to whom such compensation should be paid.

(3) In deciding the amount of compensation payable the Board shall apply *mutatis mutandis* the provisions of Section 15 of the Acquisition of Property Act, 1961.

(4) Compensation shall be paid on cancellation or not later than three months from the date of cancellation.

## Transfer of permit

43. (1) Every permit which is made appurtenant to land shall pass with the proprietorship of that land.

(2) Every permit which is made appurtenant to an industrial undertaking shall, subject to the provisions of Section 63 and Section 69, pass with the proprietorship of the undertaking.

(3) The Board shall upon receipt of evidence of the transfer of proprietorship and upon payment of the prescribed fee, if any, apportion the rights under the permit proportionately among the new parcels of land and shall issue new permits appurtenant to the new parcels of land and shall thereupon cancel the prior permit.

(4) If land to which a permit is appurtenant is sub-divided, the Board shall upon the request for the sub-division, and on payment of the prescribed fee, if any, apportion the rights under the permit among the new parcels of land and shall issue new permits appurtenant to the new parcels of land and shall thereupon cancel the prior permit.

## Duties of the permit holder

44. The holder of a permit shall at all times:

- a. divert, store, or use the water strictly in conformity with this Act and with the terms and conditions of the permit;
- b. avoid, as far as may be reasonable, any inefficiency or waste in the use of the water;
- c. keep such records as may be called for and permit the Board or its authorised delegate to inspect and make copies of such records at all reasonable times;
- d. maintain all works in a safe condition and carry out all orders of the Board or its authorised delegate with respect to the repair of works within the time specified in such order or if no time is specified within a reasonable time;
- e. renew the permit on time;
- f. surrender the permit as soon as it is no longer wanted; and
- g. comply with all lawful orders of the Board or Authority.

## Watercourse used for Swazi law and custom

45. Notwithstanding this Act a permit or temporary permit issued by virtue of this Act, no works shall be constructed and no water shall be diverted, stored, or used from or in any watercourse or portion thereof which:

- a. is sacred with special significance and has been declared by local authority; or
  - b. has been gazetted by any lawful authority for such purpose.
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## **PART VI**

### **GROUNDWATER**

#### **Borehole drilling permit**

46. (1) A person shall not drill or sink a borehole or well on any land or expand an existing drilled or bored well without having applied for and obtained a drilling permit from the Board.

(2) Subject to Section 54, in an application for a drilling permit under sub-section (1), the applicant shall supply the Board with the following information:

- a. the exact location of the intended borehole site;
- b. the estimated duration of completion of the works;
- c. the methods of borehole surface completion and the estimated depth of the well;
- d. reason for the borehole or expansion of the well.

(3) Notwithstanding sub-section (2), a person may not apply for a drilling permit unless:

- a. the applicant holds the necessary drilling qualifications;
- b. the applicant is a registered company in Swaziland whose memorandum and articles of association relate to water works and in particular borehole drilling;
- c. the applicant possesses sufficient working capital to ensure the development and carrying out of the drilling operation.

(4) Every person who applies for a borehole drilling permit under this Act shall comply with the regulations with respect to filing the application, giving notice of such application and paying the prescribed application fee, if any.

(5) In considering an application for a drilling permit, the Board shall have regard to the following matters:

- a. the qualifications of the applicant and the ability to ensure that the drilling works is carried out optimally and safely;
- b. the suitability of the location cited for drilling;
- c. the manner and scale in which the applicant intends to drill;
- d. the methods of any pump test to be undertaken;
- e. the manner in which the applicant intends to rehabilitate disturbance on the surface which may be caused by the drilling;
- f. the potential environmental impact;
- g. the potential effect on other permit holders and users of groundwater in the area;
- h. the reasons for the application.

(6) When issuing a drilling permit, the Board may impose terms and conditions including:

- a. the tests to be done to determine long term yield and aquifer characteristics and other related tests;
- b. water quality tests and reports which must be prepared;
- c. limiting the space between the wells;
- d. prescribing the records to be maintained by the driller and submitted to the Board.

#### **Completion or abandonment of borehole drilling**

47. The driller of any borehole or well shall within ten days of the completion or abandonment of the drilling works, notify the Board in writing and send a completed copy of the record as required in terms of Section 46 (6) together with the following:

- a. the log of the lithology and depth of the geological formations drilled through;
- b. the depth of the borehole or well;
- c. levels at which water is struck and subsequently rests.

## Permit for groundwater abstraction

48. (1) A person shall not abstract groundwater without a permit having been applied for and obtained from the Board.

(2) A permit for abstracting water may contain such terms and conditions as the Board considers proper.

(3) Without limiting the general discretion of the Board as set out in sub-section (2), a permit may contain provisions:

- a. limiting the amount of water to be abstracted;
- b. limiting the rate of abstraction;
- c. prescribing the use or uses or the place to which or on which water may be used;
- d. limiting the times of year or the times of day during which water may be abstracted.

## Abandonment of a borehole

49. If a permit holder no longer intends to use a borehole or well for abstraction of groundwater, the permit holder shall advise the Board and take such measures as prescribed by regulation to securely close the borehole or well and prevent pollution of groundwater sources.

## Abstraction permit for existing borehole or well

50. (1) Everyone who owns or controls a borehole or well shall, within six months of the date of the commencement of this Act or such other period as the Board may allow, supply the Board with all relevant information on all boreholes or wells drilled before the commencement of this Act.

(2) A person who is the owner of a borehole or well and who uses that borehole or well shall, within two years of this Act coming into force or within such longer period as the Minister may by notice in the Gazette allow, apply to the Board for an abstraction permit in terms of Section 48.

(3) When an abstraction permit has been issued, a person referred to in sub-section (2) shall not use the borehole or well except in accordance with the terms and conditions of that permit.

## Interdependency of the permits

51. The Board shall not issue a borehole drilling permit unless the application for that permit is accompanied by a groundwater abstraction permit under Section 48.

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## PART VII

### SERVITUDE

#### Exclusion of Swazi Nation Land

52. This part of the Act does not apply to servitudes over Swazi Nation Land except as specifically provided in Section 61.

#### Acquisition of servitude

53. (1) A holder of a permit or holder of an effluent control permit or a person who intends to use water for a primary purpose may acquire by agreement, or subject to the provisions of Section 58 by application, a servitude over the land of another person in order to enjoy the benefits of that permit or any rights under this Act.

(2) A servitude may be permanent or temporary, but a temporary servitude shall be for a period not longer than three years.

### Power of entry upon land and mode of acquiring servitude

54. (1) Any person who requires a servitude may, not earlier than sixty days after giving a written notice to the proprietor of the land in question and to the Board, enter upon that land and make any investigations and undertake any operations thereon which that person may consider necessary for the purpose of determining the extent and nature of the servitude required, and, in the exercise of such powers of entry, such person may:

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

(2) Notwithstanding the provisions of sub-section (1), a person shall not enter into any building or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof.

(3) In the exercise of the powers under sub-section (1) as little damage as possible shall be caused, and such compensation as may be agreed upon, or failing agreement, determined by the Board, shall be paid by the person causing the damage for all damage so caused or otherwise the person shall repair any damage.

(4) Any person referred to in sub-section (1) shall, in any notice to the proprietor claiming a servitude, set forth, according to the nature of the servitude:

- a. the point of diversion which is proposed;
- b. the line of passage along which the water is to be conducted or diverted;
- c. the locality on which the water is to be stored and the approximate area which will be submerged;
- d. the nature and locality of any works which it is proposed to construct;
- e. the location and area of any land required for the disposal of waste or effluent;
- f. the quantity and nature of the material required from the land for the purpose of constructing works and the place from which it is proposed to take such material;
- g. the land required temporarily for construction camps and permanently for the residence of persons and for workshops or storage purposes necessary in connection with the operation and maintenance of the works in question;
- h. the compensation which is offered, if any, and manner in which such compensation has been assessed; and
- i. whether a temporary or permanent servitude is required and, if temporary, the period of time during which the person wishes to enjoy the servitude; and shall attach to the notice a plan showing the position, locality and nature of any proposed works in respect of which that servitude is claimed.

(5) If the proprietor does not, within one month after the service of a notice claiming a servitude, agree to the claim, or to any particulars stated in the notice, or to any other matter necessary for the servitude, and to the embodiment of such particulars and other matters in a deed of agreement and to execute such deed by a notary, the claimant may apply to the Board for the settlement of the several matters in dispute.

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

### Rights conferred by servitude

55. (1) A servitude obtained under this Act, unless the agreement specifically provides to the contrary, shall include the right for the holder to:

- a. occupy and use so much of the land of another as may reasonably be required for the construction, reconstruction, operation, maintenance, repair, or improvement of works for diverting, storing, or using water, or for the drainage of land;
- b. take and remove from the land within the boundaries of a servitude any material or substance which may not be required for the works;
- c. bring onto the land within the boundaries of a servitude any material or substance which may be required for the works;
- d. cut down, remove or destroy any tree, vegetation, rocks or other obstruction which may be a danger to the works, subject to any applicable law;
- e. construct, maintain and occupy residences, workshops or storage facilities which may be required for employees of the permit holder in order to operate and maintain the works;
- f. secure an undertaking by the proprietor of the land over which the servitude is obtained not to do or permit others to do anything, inside or outside the boundaries of the servitude, which may in any way endanger the security of the works or interfere with the enjoyment by the owner of his rights under the permit; and
- g. secure for a temporary servitude, the right to construct, maintain and remove all camps, access roads or other facilities reasonably required for the construction, reconstruction, repair or improvement of the works.

(2) Subject to any applicable law, the holder of the servitude may in addition to rights under the servitude cut down any tree or remove any rock or other object which may be or may become a danger to the security of the works whether such tree, rock or other object is within or without the boundaries of the servitude.

(3) Upon the application of the proprietor or permit holder the Board shall determine whether in exercising rights under sub-section (2), the permit holder shall pay compensation to the proprietor for any tree, rock, or other object removed and for any damage caused in such removal.

### Use by servient proprietor

56. If the proprietor of the land over which a servitude is obtained is also a permit holder, that proprietor may also use the works constructed on such servitude for the benefit of that proprietor, provided the proprietor pays a proper proportion of the costs of construction, reconstruction, operation, maintenance, repair, or improvement of the works, and provided further that the use made of the works by the proprietor does not prevent or hinder the owner of the servitude from exercising the rights to the full benefit of the permit of the owner of the servitude.

### Crossing roads, etc.

57. A servitude to cross a public road, a railway line, or surface or underground installation of any public utility or local authority shall include a requirement that the permit holder shall obtain the consent of the entity owning or controlling such road, railway line, or installation as to the nature of the works and the methods of construction, operation, and maintenance of the works.

### Application for servitude

58. (1) If the holder of a permit or holder of an effluent control permit or a person who intends to use water for a primary purpose and the proprietor of the lands over which a servitude is required cannot reach agreement as to the terms and conditions of the servitude or the compensation to be paid, the permit holder or such other person may apply in writing to the Board for authority to obtain a servitude. The applicant shall serve a copy of such application on the proprietor of the land over which the servitude is required.

(2) If a servitude is granted by agreement, the grantee of the servitude shall submit to the Board a certified copy of such agreement and the terms of compensation if any.

(3) The Board shall in terms of Section 30, hold a hearing on the application within sixty days and may grant a servitude containing such terms and conditions, and on payment of such compensation, if any, as the Board deems appropriate or it may refuse the application.



(4) The holder of a permit or holder of an effluent control permit or a person who intends to use the water for primary purposes may not exercise any rights under the servitude granted by the Board until there has been an agreement on or determination of the terms of payment of the compensation awarded by the Board.

(5) Upon satisfaction that the terms of sub-section (2) or (4) on compensation have been fulfilled, the Board shall send a certified copy of the grant to the Registrar of Deeds in terms of Section 30 (9).

(6) The Registrar of Deeds shall make a notation of the servitude against the title deeds of the land subject to the servitude and in favour of the lands to which the permit is appurtenant.

### **Claims of misuse**

59. (1) If any dispute arises between the owner of a servitude and the proprietor of the land subject to the servitude from any alleged use or misuse of the terms and conditions of the servitude or from any damage alleged to have been incurred by either party due to the wrongful or negligent act or failure to act of the other, the aggrieved party may apply for redress in writing to the Board and shall serve the other party with a copy of the application.

(2) The Board shall hold a hearing and shall inquire into the matter and shall make such order as it deems appropriate.

### **Person acquiring servitude to construct access bridges, etc.**

60. Every person who constructs works for the passage, drainage, diversion or disposal of water which prevent any land being passed over freely or onto by the owner of the land, or which check the circulation of water in the irrigation or drainage of such land, shall at the expense of that person construct and maintain and repair such bridges and other works as will make passage or other communication reasonably safe and convenient, and such culverts, aqueducts and other works as are necessary to secure the free circulation of such water, unless that person be exempt from such duty by agreement or otherwise.

### **Servitude over Swazi Nation Land**

61. (1) If a holder of a permit or holder of an effluent control permit or a person who intends to use the water for a primary purpose wishes to obtain a servitude, whether temporary or permanent, over Swazi Nation Land that person shall first obtain the agreement of the Minister as to terms and conditions of the servitude requested and the compensation payable, if any.

(2) The Minister may direct the permit holder or the primary purpose user to apply to the Board as provided in Section 53.

(3) In the event of failure to reach any agreement and upon receipt of the application by the Board, the Board shall hold a hearing into the matter.

(4) After the hearing the Board shall recommend to the Minister whether a servitude should be granted and, if so, the terms and conditions thereof and the amount of compensation payable, and if the servitude is a temporary servitude, the Minister may grant the servitude on such terms and conditions as the Minister may deem fit; if the servitude is to be a permanent servitude, the Minister may, with the specific written consent of the Ngwenyama, grant such servitude upon the terms recommended by the Board or on such other terms as the Ngwenyama may require.

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## **PART VIII**

### **CONTROL OF POLLUTION**

#### **Effluent control permit**

62. (1) A person who:

- a. is using water for an industrial purpose or local authority purpose; or
- b. applies for a permit or amends a permit to divert, store, or use water for an industrial purpose or local authority purpose, shall at the same time apply to the Board for an effluent control permit.

(2) A person who applies to take or who takes water for an industrial use or local authority use and who proposes to discharge or does discharge the effluent directly into a watercourse or into a ditch or conduit where the effluent will or may reach a watercourse without further treatment shall apply to the Board for an effluent control permit.

(3) Where a person applies to take or takes water for industrial use from a local authority which also removes effluent from the public generally, the local authority may refuse to supply or to continue to supply water to such person unless the person ensures by treatment or otherwise that the quality of the effluent meets such standards as the local authority may require.

### **Interdependence with a permit**

63. The Board shall not issue a permit or amend an existing permit for the diversion, storage, or use of water for an industrial purpose or use by a local authority unless it issues an effluent control permit at the same time.

### **Application for an effluent control permit**

64. (1) A person who applies for an effluent control permit or who applies to amend an existing effluent control permit shall comply with the regulations with respect to filing an application, giving notice of such application and paying the prescribed fee, if any, and shall furnish such information, plans and specifications as the Board may require.

(2) The information to be provided to the Board shall include, but not be limited to:

- a. the process or processes to be used to treat the effluent;
- b. the anticipated change in the temperature of the water, if any, and the methods and degree of cooling to be employed;
- c. the chemical or biological constituents of the effluent both before and after treatment;
- d. the method of locating and disposing of any substances removed in the treatment process;
- e. the estimated total daily and annual volumes of effluent to be discharged;
- f. the rate or rates of discharge;
- g. the location of the point of discharge and the nature of the receiving water;
- h. the anticipated dispersion and dilution of the effluent; and
- i. the nature of soils, vegetation, and depth to the water table in the proposed sludge disposal area or in the area of the discharge of the effluents to be discharged onto or under land.

### **Power of the Board on effluent control**

65. (1) With respect to an application for an effluent control permit or for an amendment to an existing effluent control permit, the Board may:

- a. refuse the application;
- b. amend the application in any respect;
- c. grant the application in whole or in part;
- d. require additional information, plans, or specifications; or
- e. issue to the applicant one or more effluent control permits on such terms and conditions as the Board considers proper.

(2) Without limiting the discretion of the Board, an effluent control permit may contain:

- a. limitations as to the time or hours of day when the effluent may be discharged;
- b. limitations on the quantity of effluent to be discharged either generally or at specified times;
- c. the chemical or biological constituents and temperature of the effluent to be discharged;
- d. methods of monitoring the receiving waters and of the effluent and the maintenance of records;
- e. the method of the disposal of any sludge and the location of such disposal area;

- f. a requirement that the quality of the effluent be upgraded to higher standards over a period of time;
- g. requirement that the permit holder prepare within a stated time a shut down plan for the approval of the Board which plan shall indicate the procedures to be followed upon a temporary shut down or a permanent closure of the undertaking to ensure that there is no danger of continued pollution; or
- h. a requirement that quarterly inspection reports of waste water quality data be submitted to the Board or at such other shorter period as the Board may prescribe.

(3) The Board shall enforce such effluent standards as shall be prescribed by the National Water Authority and be in conformity with standards prescribed by the Swaziland Environment Authority.

### **Cancellation of an effluent control permit**

66. (1) Every effluent control permit and all rights or obligations under it may be cancelled by the Board in whole or in part, if:

- a. the permit holder has failed for three successive years to comply with the terms and conditions under the effluent control permit;
- b. the permit holder has failed to complete the construction of the works authorised or required by the effluent control permit within the time specified by the effluent control permit;
- c. the permit holder has failed for two successive years to pay any fees or charges due to the Board with respect to the effluent control permit;
- d. the permit holder has failed to comply with the Act and/or any regulations under the Act;
- e. the permit holder has failed to comply with a lawful order of the Board or its duly authorised delegate; or
- f. the permit holder made a material misstatement in the application for an effluent control permit or in information provided to the Board with respect to such application.

(2) If the Board proposes to cancel an effluent control permit in whole or in part on any ground specified in sub-section (1), it shall give notice by registered mail to the permit holder.

(3) If the Board, within four weeks of the mailing of such notice, has received an objection to the proposed cancellation from the permit holder, the Board shall hold a hearing and shall then decide whether to cancel the effluent control permit in whole or in part or to allow the effluent control permit to remain in effect subject to such amended or additional terms and conditions as the Board may consider proper.

(4) A cancellation or amendment of an effluent control permit shall not relieve the permit holder of any liability for past or continuing pollution.

### **Suspension of an effluent control permit**

67. (1) Whenever the Board is of the opinion that an emergency exists which poses a threat to the health or safety of persons or of the environment and which arises out of the operation of the permit and whether such emergency arises out of a fault of the permit holder or not, the Board may by order suspend an effluent control permit forthwith for such period as the Board considers necessary.

(2) The permit holder shall immediately on receipt of the suspension order cease the discharge of the effluent and shall immediately take such steps as are necessary or as may be ordered by the Board to overcome the emergency and, so far as may be possible, to avoid a repetition thereof.

(3) Before the permit holder is heard, he has to cease discharge of the effluent or otherwise comply with the order of the Board.

### **Special powers of the Minister**

68. (1) Without limiting the general powers under this Act, the Minister may on the recommendation of the Authority, order such steps to be taken by such person or persons in a specified time as may be necessary or as may appear to be necessary to avoid any pollution, stop pollution from occurring or to clean up a polluted condition whether or not the person has been charged under this Act.

(2) In carrying out his power under sub-section (1), the Minister may:

- a. suspend an effluent control permit;
- b. stop or shut down any industrial undertaking or activity which is the source of pollution;
- c. submit a plan to remedy the contravention;
- d. minimize or remedy the adverse effects on the:
  - i. aquatic environment;
  - ii. human health, safety of property;
- e. restore or reclaim an area satisfactory to the Minister; or
- f. specify the period of time when the order must be complied with.

(3) If such order of the Minister is not obeyed within the specified time, the Minister may out of revenues and funds of Swaziland take any steps to avoid the pollution or to clean up a polluted condition and may recover the costs in any court of competent jurisdiction from the person or persons who were ordered to perform the work or who caused the polluted condition.

### **Transfer of effluent control permit**

69. (1) The proprietor of an industrial undertaking for which an effluent control permit has been issued and who proposes to acquire this undertaking shall apply to the Board for the transfer of that permit, specifying in that application the identity of the person who proposes to acquire the undertaking.

(2) The Board may approve the transfer upon such terms and conditions, if any, as the Board may consider appropriate.

(3) In the alternative the Board may refuse to consider such application until the applicant has taken such steps as the Board may consider necessary to clean up any polluted conditions or has given such security as the Board may require to guarantee such clean up.

(4) Subject to sub-sections (2) and (3) the Board upon receipt of evidence of the transfer of the proprietorship and upon payment of the prescribed fee, if any, shall issue a new effluent control permit in the name of the new proprietor and shall cancel the prior effluent control permit.

(5) The new effluent control permit may contain additional or different terms and conditions to the existing one.

### **Exemption under repealed Act**

70. The holder of an exemption order under the repealed Act shall apply for an effluent control permit within six months of the coming into force of this Act.

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## **PART IX**

### **WATER SPORT CONTROL**

#### **Establishment of water sport control areas**

71. Upon the recommendation of the Authority, the Minister may, by notice published in the Gazette, establish an area defined in such notice to be a Water Sport Control Area.

#### **Regulations in respect of Water Sport Control Areas**

72. (1) Upon the recommendation of the Authority, the Minister may make regulations in respect of a Water Sport Control Area.

(2) Without limiting sub-section (1), the regulations may provide for:

- a. the control over and the use of the area or parts thereof for navigation or for any sport which is practiced upon or in water;
  - b. the control over and use of water craft and appliances of whatever nature upon or in the water in the area or parts thereof;
  - c. the control in the area or parts thereof of activities arising from or incidental to navigation or any water sport;
  - d. the use of the land between the boundaries of the area and the surface of the water for purposes arising from or incidental to navigation or any water sport; and
  - e. fees payable to the Board in respect of the use of the area or parts thereof for any activity arising from or incidental to navigation or any water sport.
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## **PART X**

### **IRRIGATION DISTRICTS AND WATER USER ASSOCIATIONS**

#### **Establishment of Irrigation Districts**

73. (1) The Minister may from time to time upon the recommendation of the Authority establish Irrigation Districts by notice in the Gazette.

(2) The notice shall define the boundaries of the district and shall state a name by which the District shall be known.

#### **Irrigation District to be a body corporate**

74. (1) Where two thirds of the permitted users of water in an area petition the Authority to incorporate an Irrigation District, the Authority shall recommend to the Minister of this intended incorporation.

(2) Where the Minister agrees to the incorporation he shall then publish a notice in the Gazette of the intention to incorporate the Irrigation District.

(3) Any person objecting to this incorporation shall lodge the grounds therefore to the Authority within 21 days of the publication of the notice.

(4) The Authority shall thereafter consider any objection submitted to it and further recommend to the minister who shall then decide on the incorporation.

(5) The notice of incorporation under sub-section (2) shall provide:

- a. the number of members of the board of directors, the term of office, which shall not be longer than three years, although retiring members may be eligible for re-election;
- b. the definition of eligible electors in the Irrigation District and the method of establishing the list of eligible electors. Electors may have multiple voting rights proportioned to permitted water volumes or cultivated hectarage;
- c. the definition for calculating the rateable value of lands in the Irrigation District for apportioning rates and charges;
- d. the procedure for nominating and electing the first members of the board of directors and for subsequent elections; and
- e. any objects, powers or duties in addition to those provided in Section 75 as may seem to the Authority to be desirable and on advice from the Board.

(6) Upon incorporation the Irrigation District shall be a body corporate capable of suing and being sued in its own name and shall be governed by a board of directors.

#### **Functions of an Irrigation District**

75. (1) An Irrigation District shall exercise control over the operation and maintenance of works in the district and the distribution of permitted volumes of water in accordance with permits and for the benefit of persons in the district and such other functions as may be set out in the notice of incorporation.

(2) Without derogating from sub-section (1), the Irrigation District shall also:

- a. exercise such powers of the Board with respect to the enforcement of permits or this Act as the Board may in writing delegate, including the power to appoint water bailiffs or inspectors;
- b. take all reasonable steps to avoid the waste or misuse of water;
- c. levy and collect rates and charges, subject to the approval of the Board, to defray the costs of the district;
- d. maintain true accounts of its receipts and expenditures and to make them available for inspection by the Board and the electors; and
- e. hold general meetings of eligible electors at least once per year and at such meetings disclose its accounts and a statement of its activities.

(3) The board of directors may pass by-laws necessary to enable them to properly fulfil their obligations.

### **Water Users Association**

76. (1) The holders of permits appurtenant to land and undertakings in a defined area or of permits relating to water in a defined watercourse or river system or portions thereof may form an association with the objective of maximizing the benefits from such permits to members of the association and promoting the more efficient use of permitted water.

(2) The permit holders shall obtain approval of the Board to form an association and shall provide information as the Board may require.

### **Delegation of powers by the Board**

77. (1) The Board may delegate by notice in writing to any water user association such powers of the Board as it deems appropriate and as are set out in the notice of delegation.

(2) Such powers may include but are not limited to:

- a. the power to pool some or all of the permits held by the members and to distribute the permitted water equitably and in accordance with the objectives of the association, provided the total quantities permitted by all the permits are not exceeded;
- b. appointing water bailiffs with authority to enforce the terms of the permits or of the distribution under the pooled arrangements;
- c. appointing inspectors with authority to enforce the provisions of this Act.

### **Costs of Water User Association**

78. All costs and expenses incurred by a Water User Association shall be borne by the members of the Association in such proportion as the members may agree.

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## **PART XI**

### **PROJECT BOARDS**

#### **Establishment of Project Boards**

79. (1) The Minister may from time to time upon the recommendation of the Authority after consultation with the relevant River Basin Authority establish project boards by notice in the Gazette.

(2) A project board shall be established for new developments requiring new capital input or organization.

(3) The notice shall state a name for the project board and shall define its objects, powers and location within which it shall operate.

(4) Upon establishment the project board shall be a body corporate capable of suing and being sued in its own name and shall have such powers as a body corporate may have.

(5) The management of a project board shall be elected by the relevant water users and shall hold office for a period not exceeding 3 years but shall be eligible for re-election.

(6) Unless otherwise stated in the gazette establishing the board, a board shall be responsible for regulation of its own affairs and procedures at meetings.

(7) The notice of establishment shall set out the objects of the project board which shall include the construction and/or operation and/or distribution of water to permit holders and may include such other objects as may be recommended by the Authority.

(8) The notice of establishment shall define the powers a board may exercise which powers may include, but not be limited to:

- a. the power, with the consent of the Minister and the Minister of Finance, to borrow money;
- b. the power to levy charges and assessments on the distribution of water to defray in whole or in part the capital, operation and maintenance costs incurred by the project board;
- c. such other powers as may be recommended by the Authority.

(9) All charges and levies raised in accordance with sub-section 8(b) shall be specifically for the project concerned and shall be determined in conjunction with the affected stakeholders to ensure and protect the long-term viability of the project.

(10) The project board shall keep a separate account for all money received and its accounts shall be audited by an accredited accounting firm approved by the Authority.

(11) A project board shall present an audited statement of account and a report of its activities to the Authority at least once during each year of the project activities.

(12) The objects and powers of a project board may be altered, expanded or reduced from time to time by the Minister on the recommendation of the Board through the Authority by notice in the Gazette.

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## **PART XII**

### **MISCELLANEOUS**

#### **Special Provisions Relating to the Great Usuthu (Lusutfu) and Little Usuthu (Lusushwana) Rivers**

80. (1) If at the request of the Electricity Board the Board has issued a permit under the repealed Act to a person in the Special Area which contains conditions requiring periodic reductions in the quantity of permitted water, the permit issued under this Act shall contain the like provision.

(2) If the Board reduces for a period the quantity of water which may be diverted, stored, or used under a permit referred to in sub-section (1), the Board shall send a notice to the permit holder by registered post setting forth the period which such reduction shall be made and the nature of the reduction and shall, in such notice, direct the permit holder to take such steps as may be specified in the notice to give effect to such reduction.

(3) The Electricity Board shall pay to any person who is ordered to reduce the quantity of water as provided in sub-section (2) such compensation arising out of such reduction as may be agreed upon, or failing agreement, determined by the Authority.

(4) For purposes of this Section, "The Electricity Board" means the Board established under Section 3 of the Electricity Act 1963.

(5) "Special Area" means the area defined in the schedule in Notice No. 61 of 1964 dated the nineteenth day of May 1964 and declared in that notice to be a special river control area in terms of Section 18 of the Electricity Act, 1963.

### **Alteration of watercourse**

81. (1) A person shall not alter or divert a watercourse without a permit from the Board.

(2) If a watercourse is diverted from its original channel by natural causes or otherwise, the ownership of the lands on the banks of the original course and the boundaries of such lands shall not be affected.

(3) If a watercourse is diverted by natural causes or otherwise and any works of a permit holder are thereby damaged or rendered of less or no effect, the permit holder shall apply to the Board for an amendment to the permit holder's permit, or for a new permit to move the point of diversion or alter affected works, or both, so that the permit holder may obtain the full benefit of the permitted quantities of water.

(4) Amendments made under sub-section (3) may be for a stated temporary or permanent period.

### **Re-establishing original channel**

82. (1) If a watercourse has been diverted by natural causes, any holder of a permit whose point of diversion is downstream of the point of such natural diversion may apply to the Board to return the watercourse to its original course.

(2) An application under this Section shall be made within five years of the natural diversion occurring.

### **Temporary permit**

83. (1) The Board may on the application of any person issue a temporary permit for the diversion, storage, or use of water which is of a temporary or non-recurring nature.

(2) A temporary permit shall only authorize the diversion, storage, or use of water which is available after the requirements of all permit holders on the same watercourse have been met in full.

(3) A temporary permit may be for any period or periods up to a maximum of three years but it shall not be renewable beyond three years.

(4) A temporary permit shall not provide the holder with any preference or other right in an application for a permit.

(5) A person applying to the Board for a temporary permit shall pay the same administrative fee, if any, and shall provide the Board with the same information as is required for an application for a permit and shall in addition satisfy the Board that the use is of a temporary or non-recurring nature.

(6) The Swaziland Railway, as defined in Section 2 of the Swaziland Railway Act No. 15 of 1962, may in an emergency for construction or maintenance purposes apply for a temporary permit to the Board without paying a fee or providing the full information required by sub-section (5) and the Chairperson of the Board or any member may give authority in writing for the use of such water as has been requested and the provision of sub-section (2) shall not apply.

(7) If the exercise of the rights under a temporary permit by the Swaziland Railway causes damage or loss to any person holding a permit on the river or to any person lawfully using water from the watercourse, the Swaziland Railway shall pay such person or persons such compensation as may be agreed or, failing agreement, may be ordered by the Authority.

### **Recording of permits on Title Deed Land**



84. (1) Whenever a permit has been issued under this Act for the diversion, storage, or use of water on land described in such permit, the Board shall, by notice in writing, direct the Registrar of Deeds to note such permit on the title deed of that land.

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

(3) The document conveying the direction or notice referred to in sub-sections (1) and (2), respectively, shall set forth:

- a. a description of the land in question and the number and date of its title deed;
- b. the name of the proprietor of the land;
- c. the number and date of the permit to be noted, cancelled, withdrawn or substituted, as the case may be, and, where applicable, shall be accompanied by a copy of the relevant permit duly certified by a person authorised thereto by the Board, and the Registrar of Deeds shall cause the said copy to be filed of record in the deeds office.

(4) The Registrar of Deeds shall upon receipt of any notice or permit and free of charge make the necessary notes on the relevant title deeds and shall file the certified copy of such permit or notice as a document of record in the deeds office.

### Collection of fees and charges

85. (1) Where a fee or charge has been prescribed pursuant to a regulation, the Board shall be entitled to recover the amounts payable from:

- a. the proprietors of the land in respect of which fees or charges have been assessed; or
- b. the person entitled to use the water.

(2) Fees or charges assessed in respect of water used on land shall be a charge upon the land in respect of which the fees or charges have been assessed, and any person who becomes the proprietor of any such land shall be liable for any such fees or charges which remain unpaid at the time when becoming the proprietor.

(3) The Board may, in addition to any action it may take in terms of sub-section (1) for the recovery of any fees or charges referred to there in and which have not been paid on due date, stop the supply of water from the works in question to the land in respect of which such water is supplied, or to the person who is being supplied with water, or suspend the permit in terms of which the water is being used, as the case may be, until the said fees or charges have been paid, and the Board shall not be obliged, after the amount due has been paid, to supply any water so stopped or to pay any compensation for any loss sustained by any person consequent upon the stopping of the said supply of water or the suspension of the said permit.

(4) Where fees or charges have been assessed as referred to in sub-section (1) or (2) in respect of any land, the Board shall in writing advise the Registrar of Deeds accordingly, and thereupon no transfer of such land or any interest in such land shall be passed by the said Registrar until a certificate signed by a person authorised thereto by the Board has been produced stating all fees or charges assessed on such land have been paid.

(5) A suspension of a permit or the supply of water under sub-section (3) shall not relieve any person in respect of the period of such suspension, of any fees or charges assessed under this Act or regulations.

### Powers of Inspectors

86. (1) Every inspector appointed under this Act shall be furnished with a certificate signed by the Director stating that the inspector has been designated as an inspector for the purposes of this Act.

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

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

- a. without previous notice, at any time enter upon any land and at all reasonable times enter any premises to ensure compliance with the Act and, after having informed the person who is for the time being in charge or control of such land or premises of the purpose of the visit if any such person can readily be found thereon, make such examination or inspection of any such land or premises;
- b. take gaugings or readings of any water contained in or flowing in any works or which is being used to irrigate any area, as the inspector may deem necessary;
- c. at any reasonable time, while the inspector is upon the land or upon or in any premises or otherwise, question any person;
  - i. who uses or intends to use water on the said land; or
  - ii. who has constructed supplied or is constructing any works or supplying any component thereof in connection with such use;
  - iii. who is an employee of a person mentioned in paragraph (ii) in the presence of or apart from others; or
  - iv. who discharges effluent;
- d. require from any person or employee the production then and there, or at a time and place fixed by the inspector, of any book, list, record, notice, data print outs, or other document which is or has been upon or in the premises or in the possession or custody or under the control of such person or employee if in the inspector's opinion examination of that book, list, record, notice or document is necessary for the purpose of the inspection;
- e. examine and make extracts from and copies of any such books, list, record, notice, print out or document, and require from such person or employee an explanation of any entries in any such book, list, record, notice or document, and seize any such book, list, record, notice, or document if the inspector believes on reasonable grounds that an offence has been committed;
- f. take samples of any substance or thing or effluent;
- g. conduct tests or take measurements;
- h. initiate any actions which are reasonable for carrying out an inspection.

(4) For the purposes of carrying out an investigation under this Act, an inspector may:

- a. enter any premises or gain access to any place, except for a private dwelling, where the investigator has reasonable ground to believe that an offence has been committed under this Act and there is in place something that may be evidence as to the commission of an offence;
- b. seize anything the investigator believes, on reasonable grounds, may provide evidence of the commission of an offence under this Act.

(5) A person or employee referred to in sub-sections (3) or (4) shall at all times provide such reasonable facilities as are required by an inspector for the purpose of exercising the powers under this Section or Act.

(6) A person who:

- a. hinders or obstructs an inspector in exercising powers or the performance of duties; or
- b. without valid excuse, refuses or fails to answer to the satisfaction of the inspector any questions which an inspector has put to that person; or
- c. refuses or fails to comply with any reasonable requirement of an inspector in the exercise of powers or performance of ones duties under this paragraph; or
- d. wilfully furnishes to an inspector any information which he reasonably knows to be false or misleading;

shall be guilty of an offence.

### Liability for Damage

87. Every holder of a permit, a temporary permit or an effluent control permit, or a person who uses water without such a permit, shall take reasonable care to avoid causing damage to land, works, undertakings, crops, trees, or other property and shall make full compensation to the owner for any damage or loss resulting from the construction, operation or maintenance of the holder's works or from the use of the water without a permit.

### Right of entry into land

88. (1) Any person authorised thereto in writing by the Director or the Board may, after reasonable notice to the proprietor or occupier of any land, enter upon such land with such men, animals, vehicles, appliances and instruments and do all such acts thereon as may be necessary for the purpose of making any inquiries or undertaking any investigations with a view to determine the feasibility of constructing, enlarging, extending construction camps or other preliminary work which the Director or the Board may consider necessary in connection with any such work or for the purpose of ascertaining whether any provision of this Act or any regulation made or condition imposed thereunder has been contravened:

- a. Provided that a person shall not enter upon any land, building, or an enclosed space attached to a dwelling except with the consent of the occupier of that building or dwelling;
- b. Provided further, that in the exercise of any power of entry under this sub-section as little damage as possible shall be caused on the building or enclosed space.

(2) The person making an entry under sub-section (1) shall repair any damage caused or pay such compensation for any damage caused as may be agreed upon with the occupier, or failing such agreement determined by the Authority.

(3) A member of the Authority or of the Board or a person authorised thereto in writing by the chairperson of the Authority, or authorized person or or Board may enter upon any land for the purpose of making any inspection or carrying out any duty which the member of the Authority or Board or person authorized may consider necessary in connection with the performance of any functions under this Act.

(4) A person who prevents any entry or the exercise of any power authorised by this Section or willfully obstructs or hinders any person so entering in carrying out such person's powers or duties under this Act shall be guilty of an offence and liable, on conviction, to the penalties prescribed in Section 90.

### Service of notices and documents

89. (1) Any notice, order or other document required by this Act to be served upon any person shall be deemed to have been duly served if it has been:

- a. delivered to such person personally or,
- b. where personal service is not possible, left at or sent by registered post to the person's last known ordinary residence published in the Gazette and newspapers circulating in the area.

(2) Any notice, order or other document required to be served under this Act upon the Authority, the Board or an Irrigation District or Project Board shall be deemed to have been duly served if it has been delivered or left at or sent by registered post to the office of the Authority, the Board, or Irrigation District as the case may be or, in the case of an Irrigation District only, to the last known ordinary residence of the chairperson or the secretary of that Irrigation District.

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

### Offences and penalties

90. (1) A person, unless that person has the lawful right or authority, the proof whereof shall lie upon that person, who:

- a. constructs, alters, enlarges or obstructs works or destroys, defaces or moves any level mark, beacon or other structure or appliance erected or made in connection with any work; or
- b. interferes with or alters the flow of the water contained in or flowing in or from works or interferes with or alters the flow of the water of a watercourse, or interferes with the distribution of any such water, or takes water, including groundwater, in excess of the quantity entitled to the person or when the person is not entitled to do so, or uses water in a manner contrary to this Act; or
- c. while using or being liable for the maintenance of works, wastes or does not take due precaution to prevent waste of water from any such works, or fails to maintain the works and keep it in good repair; or
- d. being a proprietor of land in respect of which fees or charges have been assessed, takes or uses water from the works in connection with which such fees or charges have been assessed, after

the supply of water from such works to his land has been stopped by the Board or, as the case may be, by the Irrigation District concerned, or takes or uses water after the Board has suspended the permit in terms of which the water may be used, by reason of a default on the part of the proprietor; or

- e. obstructs an inspector in the exercise of the duties of the inspector under this Act; or
- f. wastes water; or
- g. aids or abets or permits any act or default referred to in any of the preceding paragraphs; or
- h. falsifies any records required to be kept under the Act or mixes substances which will change the nature of any samples required to be kept under this Act;
- i. contravenes or permits the contravention of or fails to comply with any provision of this Act or with any condition imposed in any permit, groundwater permit, borehole drilling permit, or effluent control permit issued by the Board under this Act,

shall be guilty of an offence and liable, in the case of a first conviction, to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding five months or both, and, in the case of a second or subsequent conviction, a fine not exceeding ten thousand Emalangeni or imprisonment not exceeding ten months, or both.

(2) Any person who causes or permits any water to become polluted shall be guilty of an offence and liable, in the case of a first conviction, to a fine not exceeding fifty thousand Emalangeni or imprisonment not exceeding five years or both, and in the case of a second or subsequent conviction, to a fine not exceeding one hundred thousand Emalangeni or imprisonment not exceeding ten years or both.

(3) In a prosecution under this Section:

- a. the owner or lessee or occupier of any land or an agent or servant of the owner, lessee or occupier;
- b. the owner, operator, manager, employee or person responsible for any works or industrial undertaking,

may be charged with an offence under this Act.

(4) If a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorised or acquiesced in or participated in committing that offence is guilty of the offence and liable to the punishment for the offence, whether or not the corporation has been prosecuted for or convicted of that offence.

(5) A person who contravenes any provision of this Act for which no penalty is expressly provided shall be liable, on conviction, to a fine not exceeding one thousand Emalangeni or imprisonment not exceeding one month, or both.

(6) Any regulations made by the Minister under this Act may impose penalties, not exceeding the penalties referred to in sub-sections (1) or (2) for an offence against such regulations.

(7) A person who has been convicted of any offence under this Act, and who after such conviction persists in the course of conduct which constituted the said offence shall be guilty of a continuing offence and liable, on conviction:

- a. in the case of an offence referred to in sub-section (2), to a fine not exceeding one thousand Emalangeni; or,
- b. in the case of any other offence to a fine not exceeding two hundred and fifty Emalangeni,
- c. in respect of everyday that the person so persists or has so persisted or as may be recommended in the effluent control regulations.

(8) If in any proceedings under sub-section (1) it is alleged that a person has:

- a. interfered with the distribution of water contained or flowing in or from a works or a watercourse, or has taken more water than the person is entitled to take, and it is proved that the said distribution was interfered with or that more water was taken than the said person was entitled to, or that the said water was taken at a time when such person was not entitled to take it, the said person shall be presumed, until the contrary is proven, to have taken more water than the person was entitled to or to have taken it at a time when the person was not entitled to take it;

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

### Award of damages in criminal proceedings

91. (1) Whenever any person is convicted of an offence under this Act and it appears that such person has by that offence caused loss or damage to any Irrigation District, Project Board, Board, Authority, Water Users Association or proprietor concerned as the case may be, the court may in the same proceedings at the written request of the Irrigation District, Board, Water Users Association or proprietor concerned, as the case may be, and in the presence of the convicted person, enquire summarily and without pleadings into the amount of the loss or damage so caused.

(2) Upon proof of such amount, the court shall give judgement therefore against the convicted person in favour of the Irrigation District, Board, or Authority, Water Users Association or proprietor concerned, as the case may be, and such judgement shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before such court:

(3) A judgement shall not be given under this Section for a sum exceeding two thousand Emalangeni.

### Evidence

92. (1) A copy of the minutes of the proceedings of any meeting of the Authority or the Board or an Irrigation District or a committee of the Authority or the Board or such Irrigation District, purporting to be signed by the chairperson of that meeting, and certified under the hand of the chairperson for the time being of the Authority or Board or Irrigation District, or committee as a correct copy of the minutes of that meeting shall be prima facie evidence in all courts of the proceedings of that meeting.

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

### Transitional Provisions

93. (1) The title of the Government in any works or in lands used in connection with any works obtained or held under any provision in the repealed Act shall continue under the provision of this Act.

(2) Any agreement of any kind entered into by the Government or the Minister on behalf of the Government with any person for the operation or maintenance of any works may be transferred by the Government or the Minister to the Authority as agent of the Government and the Authority or its duly appointed delegate may there after exercise all the rights and shall be liable for all the obligations of the Government or the Minister under such agreement.

(3) Any claim by the Government or the Minister against any person or any claim by a person against the Government or the Minister arising out of a provision in the repealed Act which has not been finally settled when this Act comes into force shall be finally settled under the provision of the repealed Act as if the repealed Act had not been repealed.

(4) The liability of any person for unpaid charges, assessments, loans or similar matters shall continue notwithstanding the repeal of the repealed Act and the Authority or agent of the Government or the Minister may recover the same under the provisions of the repealed Act.

(5) All regulations made pursuant to the provisions of the repealed Act shall, in so far as they are not inconsistent with the provisions of this Act, remain in full force and effect.

(6) All servitudes granted or continued by the provisions of the repealed Act shall remain in full force and effect so long as they are not inconsistent with this Act.

(7) All orders, directions, permits, apportionment, exemptions, or permits made or issued under the repealed Act and all powers delegated or authorisations given to inspectors under the repealed Act and

which are valid and subsisting at the date this Act comes into force shall in so far as they are not inconsistent with the provisions of this Act remain in full force and effect.

(8) Any application to the Board for a hearing or for reconsideration of any decision or any application to a water court which has been duly filed prior to the coming into force of this Act shall be continued under the provisions of the repealed Act until all appeal processes have been exhausted or abandoned.

(9) A person, who at the coming into force of this Act, was lawfully diverting, storing, or using water from a watercourse pursuant to a permit or apportionment under the repealed Act, or under the provisions of the Mining Act, No. 5, 1958, or pursuant to the exercise of a legal right, may continue to divert, store or use such water provided the person makes application to the Board in the proper form for a permit under this Act to divert, store, or use the same flow rate subject to an annual volume as may be determined by the Board within two years of this Act coming into force, or within such longer period as the Minister may, by notice in the Gazette, allow.

(10) Upon receipt of an application in the proper form, the Board shall within one hundred and twenty days and on payment of the prescribed fee, if any, issue a permit or permits under this Act authorising the applicant to divert, store, or use the same flow rate of water as previously allowed subject to an annual volume as may be determined by the Board.

(11) Such permit or permits may contain such terms and conditions as the Board may deem appropriate under the provisions of this Act including, but without limitation, the requirement that the permit holder installs and maintains measuring devices to record the rate of flow and volume of water diverted or used.

(12) Upon the issue of a permit or permits under this Act all the former rights of the holder to divert, store, or use water from a watercourse shall be merged into the rights granted to a permit holder under the provisions of this Act, and such person shall have no right to divert, store, or use any water from a watercourse except as provided in such permit or permits.

(13) If a person referred to in sub-section (9) does not make application to the Board in proper form for a permit under this Act within the time provided in sub-section (9), that person shall forthwith cease to have any right to divert, store, or use any water.

(14) The Board appointed under the repealed Act shall continue in office for a period of six months after the enactment of this Act.

### **Power to make Regulations**

94. (1) The Minister, after consultation with the Authority, may make Regulations for purposes of this Act.

(2) Without limiting sub-section (1), the regulations may provide for:

- a. the procedure for making applications and giving notice thereof;
- b. the information to be submitted with applications;
- c. requiring applicants to pay administrative fees on the making of applications and prescribing the amount of such fees;
- d. prescribing time periods for the renewal of any permit;
- e. the practice and procedures for hearings by the Board;
- f. the practice and procedures for hearing appeals by the Authority;
- g. requiring applicants or appellants to pay administrative fees for a hearing before the Board or for an appeal to the Authority and prescribing the amount of such fees;
- h. prescribing water quality objectives;
- i. establishing a charge for the use of water;
- j. prescribing procedures for securing closed wells;
- k. delineating different categories of dams and establishing safety criteria for the construction, maintenance and operation of each category;
- l. establishing guidelines for drilling boreholes;
- m. the establishment of Basin Authorities;
- n. prescribing time limits for renewal of permits;
- o. the incorporation and management of irrigation districts and Project Boards;
- p. the setting of fees and prescribing the amount of fees to be paid by the users of government works to contribute to the capital, operation and maintenance costs of such works.

## Repeal

95. The Water Act, 1967 is repealed.