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# GOVERNMENT OF BOTSWANA

MINISTRY OF MINERAL RESOURCES AND WATER AFFAIRS

## DOMESTIC WATER LEGISLATION

FINAL REPORT

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FINAL REPORT ON  
DOMESTIC WATER LEGISLATION FOR BOTSWANA

I. INTRODUCTION

The Government of Botswana in cooperation with the Swedish International Development Agency (SIDA), initiated a review of domestic water legislation for Botswana. The result of the review is presented in this report. The work has been financed by SIDA and partly by the World Health Organization, WHO. The following three consultants worked respectively under the auspices of SIDA and the United Nations Food and Agriculture Organization, FAO.

Bertil Hawerman	Swedish Water and Waste Water Works Association, Stockholm Sweden
Gudmund Naeslund	Viak Consulting Engineers Stockholm Sweden
Gregory K. Wilkinson	Legal Officer FAO Legislation Branch Acting as Consultant Rome Italy.

(1) Project Background

Terms of reference for the consultancy work were presented by the Ministry of Mineral Resources and Water Affairs on June 16, 1981. Mr. Hawerman and Mr. Naeslund, as the technical experts delivered a background paper on December 15, 1981 and a draft Intermediate Report on January 29, 1982. Mr. Caponera, Chief of the FAO Legislation Branch acting as consultant to the Government under a project financed by UNDP/FAO, visited the country from February 7 to February 17, 1982 for the purpose of familiarising himself with certain of Botswana's water problems - both national and international. Thus, an Inventory and Analysis of Existing Water Legislation, was prepared in Rome by FAO in March 1982.

On November 16, 1982, the legal experts, Mr. Caponera and Mr. Wilkinson met Mr. Naeslund and Mr. Hawerman in Gaborone. Mr. Hawerman, Mr. Naeslund and Mr. Wilkinson prepared this final report and Mr. Wilkinson drafted the Water Legislation which appears in annexures I and II of this Report.

(ii) Objectives of the Project

The purpose of this study was to review the existing legal and institutional framework for water resources management in Botswana and to critically analyse that framework from both the technical and legal points of view. Based upon that critical analysis, the project's purpose is to propose necessary changes in the existing legal and institutional framework for water resources management and to implement those proposals through legislative changes that will meet Botswana's present and future need to rationally protect and develop its water resources in a prudent manner that is consistent with the country's National Development Plan. The importance of this project purpose is brought into sharp focus when it is considered in the context of the Government's ambitious water-related goals for the six-year period ending in 1985:

- (a) to reduce drudgery and improve public health levels by:
  - (1) keeping existing water supplies operating;
  - (2) installing new supplies so as to reach all villages by 1985;
  - (3) taking action against pollution;
  - (4) allowing for private water connections in larger villages, thus helping to redress the urban/rural imbalance in water supply service.
  
- (b) to provide adequate domestic water to urban areas without subsidy;
  
- (c) to assist the growth of productive employment opportunities for Botswana's residents :
  - (1) by providing the water required for industry and mining;
  - (2) by enabling farmers to have water at critical times of the year;
  - (3) by ensuring this additional water can be provided for the planned development of the livestock sector;
  - (4) by maintaining a vigorous training and localisation programme.
  
- (d) to provide a sufficient water resource planning and data collection ability to ensure that actions taken under parts (a), (b) and (c) also are not inconsistent with the country's long-term interests.



## II. CONCLUSIONS AND RECOMMENDATIONS OF THE SIDA TECHNICAL EXPERTS

### (i) Water Supply

Water needed for a man to survive is 2-5 l/pd (litres per person and day) but for a decent hygiene some 20-30 l/pd is required. The water consumption in a house furnished with modern facilities is much higher and amounts to 150-200 l/pd or more. The use of water - saving installations in new houses or when replacing older ones opens the possibility of reducing the latter figure. An appropriate water pricing policy is another factor governing water consumption. Village water supplies in Botswana are designed to satisfy a daily consumption of 20 l/pd. Water is generally served in these areas by public stand pipes. There is, however, considerable demand for private connections (private standpipes or house connections). Today some 30,000 inhabitants out of 150,000 in the Gazetted water works areas in villages have access to private connections. Opportunities for private connections in the smaller villages are limited by District Council capacity.

In Botswana, the Water Utilities Corporation is the agent for water supply in urban areas (towns). It operates on a commercial basis since the governmental policy for these areas is that consumers should meet the cost of supplying their water. Most villages are dependent on groundwater for their water supply. The Department of Water Affairs is the agency responsible for design and construction of water supply in villages and thus has assumed responsibility for operation and maintenance of water supply systems in the 17 major villages. The Department of Water Affairs is responsible for drilling boreholes not only for the villages but also to meet other governmental demands, notably for agriculture and road construction. Borehole drilling for private water supply is normally carried out by private contractors. Finally, the District Councils are responsible for operation and maintenance in the smaller villages. The governmental policy for villages is that standpipe water is free but that the price of water for private connections will be kept in line with urban tariffs.

The Department of Water Affairs has made substantial progress in its implementation of the Village Water Supplies Programme. By November, 1982, 179 villages (including the 17 major villages supplied by the Department of Water Affairs) out of a total of 354 had completed water supply schemes. The rate of implementation is now some 45 new villages per year. One reason for the smooth running of the programme is an efficient use of available man-power and equipment; a second appears to be an effort made to involve the village community at the initial stages of the design and construction process. Once constructed, the responsibility for new water schemes is then handed over to the appropriate District Council. In this regard, it is important to stress that the training of new operators must keep pace with the high yearly rate of new completed schemes.

As a result of development and consequently raised standards of living, a second generation of water supplies is now needed in certain villages, mainly major villages, because the capacity of present systems is too limited to meet current and future demands. A substantial increase in water demand has been experienced; brought about by population growth, institutional, commercial and industrial growth as well as the increase of private connections for homes. The governmental capacity to match today's and future demand for water has gradually expanded but still requires increased resources.

The Department of Geological Survey is responsible for the long term scientific survey and evaluation of the nation's groundwater resources and has nearly completed a nationwide hydrogeological mapping project. The Department of Water Affairs is responsible for a surface water survey and is working on regional planning including both groundwater and surface water usage. Special studies of sand river beds are also under way as part of the ongoing investigations. Due to the scarcity of water resources these longterm planning activities are very important and should be encouraged.

Water quality is also a factor that needs more attention. Settlements with pit latrines and other activities close to boreholes have increased the risk of pollution of the drinking water supply. Partly for this reason a Water Quality Surveillance Programme has been carried out. In addition, community health education is provided, with the aim of raising the awareness of water users about the beneficial health effects of handling water in a hygienic manner.

Notwithstanding the Government's extended programme of development and education, our study of the expanding water supply programme reveals a need for the following :

- a preassessment procedure for the withdrawal and use of water which should be administered in combination with a similar procedure for waste water discharges.
- more stringent conditions for the siting and drilling of boreholes for water supply;
- better reporting of drilling results from private drillers to the Geological Survey;
- protection areas for surface water supplies and groundwater supplies should be established and conditions set for the use of these areas;
- national standards for drinking water should be issued and requirements set for periodical examination of publicly used drinking water;
- users of water should have the obligation to deal with water carefully ;

- water conservation measures, for instance water saving equipment, should be used as far as possible;
- re-use of water in industries should be practised.

In sum, it must be recognized that water is a limiting parameter in the development of Botswana and there will continuously be a need for balancing competing water use interests. Human water consumption has the highest rank but decisions must be made on the priority of other vital demands for water. Sensible use and reuse of water is thus an essential condition for rational water management.

(11) Waste Water

As Botswana continues to develop, the management of waste water discharges will assume even greater importance. The most rational way of dealing with water pollution is at an early stage of a planned activity. Proper siting of an establishment, for instance a new industry, is, in many cases, a key element in avoiding or reducing the costs of water protection. The separation of different industrial waste water streams, the use of ecologically suitable processes and land disposal, where applicable, of pretreated waste water are other important aspects. Experience from many countries shows that a carefully developed programme can be implemented with no negative effect on the competitiveness of industry. At the same time it should be emphasized that a company which fulfils the legal requirements set by the water authority should have some guarantee that it can carry on its business for a reasonable length of time without having to re-tool for new pollution-related requirements.

Water pollution in Botswana is still a confined problem, but increasing water use for different industrial and municipal purposes is beginning to increase the visibility of the problem. The consultants have come to the conclusion that in order to secure a rational use of water

resources, a pre-assessment procedure should be introduced in proposed legislation. This means that all proposed uses and discharges for domestic and public purposes, agricultural purposes (irrigation) and industrial and commercial purposes should be examined by an authority at the planning stage, before any firm commitments on construction are made.

The responsibility for the construction and operation of sewers and treatment plants in the towns rests with the Town Council. In the villages, the Building Department under the Ministry of Works and Communications is responsible for sewers when needed (for instance for hospitals, schools, administrative buildings). In two major villages, Molepolole and Mochudi, a more extended sewerage system has been constructed and is also operated by the Building Department.

(iii) Administration

In Botswana, cooperation between different responsible water-related entities seems to be good and substantial progress is being made. It seems, however, possible to improve efficiency through certain organizational changes. The consultants propose that the existing Water Apportionment Board be reconstituted and broadened. It should be explicitly given the function of deciding all vital water matters and its purview should cover the whole water cycle. The Director, Department of Water Affairs should also be given a key position as : (1) the presenter of cases to the Board, and (2) as the executor of the Board's decisions. For that reason an increase in staff is required. There is also a need for a strengthened water planning function within the Ministry to keep pace with the growing diversity of problems.

It should be understood that the supply of water for domestic and industrial purposes and the disposal of used water are two activities closely linked together. Rational distribution and use of water affects positively the collection and treatment of waste water. In countries where water is a scarce resource, it is even more important to control the use of water from the point of withdrawal to the point of discharge and to consider the effect

of water exploitation on the environment and upon downstream water users. New governmental or municipal buildings (hospitals, schools, administration buildings) as well as shopping centres and private water connections need, in most cases, coordinated planning of water supply and waste water systems. Manpower resources can thus be better used, and the fixing of charges for use and disposal can be simplified.

In 1980 it was decided that the Department of Water Affairs should be the governmental institution for planning and construction of waste water systems in the villages and thus should have the responsibility for both water supply and sewerage. Additional manpower and funds have, however, not yet been made available for that purpose.

In our view, the operation and maintenance of local water supply and waste disposal schemes ought not to be the responsibility of the central authority - the Department of Water Affairs - but of the District Council as soon as sufficient and competent staff are available. A decentralization such as this would appear to have a positive effect and would decrease bureaucracy. Thus, the importance of staff training at all levels to meet this manpower requirement should also be underlined.

In principle, the consultants believe that the administration of water supply and waste water systems should rest in one and the same administrative body. How this should be arranged and the time schedule for it needs further consideration, however, and lies outside the frame of this work. Pending an amalgamation of water supply and waste water administrations, nonetheless, a close coordination between them is recommended.

### III. CONCLUSIONS AND RECOMMENDATIONS OF THE FAO LEGAL EXPERTS

Analysis of the existing water legislation of Botswana shows a number of technical and institutional impediments to the rational management of the country's water resources. Discussions with a variety of persons engaged in the day-to-day planning and management of Botswana's water confirmed the existence of these problems and also elicited a number of creative proposals to deal with these problems. In many instances, these suggestions have been incorporated into the draft legislation found in Annexures I and II of this Report.

In this section of the Report, we shall describe - from a legal perspective - the problems found to exist in Botswana's present water legislation. Immediately following a description of each problem found to exist, we shall describe the proposed recommendation of the legal experts which has been incorporated into the draft legislation developed as a part of this project. In setting forth the problems discovered and recommendations offered, we shall attempt to proceed logically from the more general topics of legislative purpose, planning and administrative structure to the more specific subjects of water use, waste discharge, driller's licensing and so forth.

1. Problem : Lack of Statement of Purpose in the Existing Legislation

The existing Water Act of Botswana contains no statement of purpose or guidelines against which to measure the propriety of management decisions made by the country's water administrators. Instead, it is a nuts and bolts law that focuses on the mechanics of water rights registration and exercise rather than attempting to describe the larger concerns that should be involved in every water administration decision.

Recommendation

The new Water Act should begin with a clear statement of purpose and guiding principles that should govern every water administration decision whether it involves the issuance of a use permit, a discharge permit, the declaration of a special protection area or the issuance of a driller's licence.

2. Problem : The Lack of any Legislation Concerning Water Planning at the Ministry Level

Nowhere in the existing Water Legislation of Botswana is there any provision for the development of water policy plans which will guide the day-to-day decisions of the country's water administration. Discussions with Ministry of Mineral Resources and Water Affairs officials disclosed, however, that water policy planning does take place in the Ministry; that developed plans are submitted to the Ministry of Finance and Development Planning and do become part of the National Development Plan.

Recommendation

The new Water Act should formally provide for overall planning and coordination at the ministerial level.

3. Problem : The Lack of a Clearly Drawn Institutional Framework for the Administration of Water Resources

The existing Water Act provides for a Water Apportionment Board, whose membership is left undefined, and a Water Registrar; but fails to draw clear lines of responsibility between the two. Nor does it describe the Department of Water Affairs and the variety of technical support roles to be played by that Department. Further, the existing Act sets forth a multitude of so-called "inherent rights" but fails to provide in any detail for administrative regulation of those rights once they are "registered".



### Recommendation

A National Water Board should be established whose functions are described with specificity. The Board should be given independence to make decisions which implement Botswana's water policy through the issuance or denial of permits to use water, discharge pollutants and declare special protection areas. Its independent character can be more definitely established by the elimination of the position of the Water Registrar and the stipulation that the Department of Water Affairs (whose functions should be described in some detail) will serve as a technical advisor to the Water Board. This differentiation of function will be affirmed by the fact that the Director of Water Affairs is an advisor to and not a member of the Water Board. While the precise membership of the Board may be established by regulations, it is recommended that consideration be given to including as members, representatives from the Ministries of Finance and Development Planning; Agriculture; Commerce and Industry; Health and Local Government and Lands. In addition it is recommended that such regulations consider extending membership on the Board to the Planning Officer of the Ministry of Mineral Resources and Water Affairs; the Director of the Geological Survey as well as to a representative from the Farming Community, the Tribal Administration and the Business Community.

Finally, the powers of the administrative infrastructure as a whole are clarified by the prospective elimination of "inherent rights" and the provision of the power to regulate those "inherent" or "existing rights" which have already been registered. With the exception of such prior rights all proposed uses of water and discharges of pollutants will require a permit issued by the Board.

4. Problem : The Lack of Standards for the Issuance of a Water Right

Existing legislation provides for the issuance of a water right in certain instances, but fails to provide any specific standards to guide the issuance of such a right.

#### Recommendation

The new Water Act should provide for the issuance of water use permits by the Water Board and should set forth specific standards to guide their issuance. Such standards should include consideration of the impact on other water users; the effect of the requested permit on domestic water supplies; whether the application is for a private borehole in an established waterworks area; consideration of waste, water re-use, environmental impact and so forth. To speed up the permit process, simple non-controversial permits should be dealt with by a rapid assessment process and quick board approval. More complex and controversial permits should be analyzed in more detail by the department of Water Affairs and critically examined at a Board hearing, where not only the Department and the applicant, but interested members of the public are given the opportunity to be heard.

5. Problem : The Lack of any Institutional Structure for the Control of Waste Discharges and Water Pollution

The existing water legislation of Botswana provides no orderly institutional means for dealing with the problems of waste discharges and water pollution. A few random provisions are found in the Water Act dealing very generally with pollution and with the return of water used in mining and forestry operations; a few random provisions are found in the Waterworks Act dealing with pollution (undefined) of domestic water supplies and a few provisions are found in the Public health Act dealing with nuisances.

#### Recommendation

The new Act should require the issuance of waste discharge permits and give the new Water Board the power to issue them. Further, the Board, with the technical assistance of the Department of Water Affairs, should be given the power to examine and, if necessary modify, the details of any proposed waste discharge including its siting; its constituent contents; the industrial processes which will produce it; its quantity; and the waste treatment, if any, proposed by the discharger. Compliance with appropriate

effluent limitations which will eliminate or minimise the pollution impact of the discharge should be made a condition of any permit so issued. Such waste discharge permit should be required before any proposed discharge - not yet being made - is commenced and should be required of all existing discharges within 3 years of the effective date of the new Water Act.

Further, the existing penalties for pollution now found in the Waterworks Act should be strengthened, and new remedies should be added to provide for the compensation of the Government (for environmental damages) and third parties (for private damages) injured by unauthorized waste discharges.

6. Problem : The Lack of a Coherent Procedure to Enforce Compliance with Water Use and Waste Discharge Permits

Existing legislation provides some authority for the present Water Apportionment Board to take steps to control unauthorized water usage. The provisions are scattered throughout the law and could be strengthened. Further, the water authorities, including the Water Utilities Corporation, should be given increased authority to terminate service where water is wasted and misused; also the penalties for water waste and misuse should be increased.

Recommendation

The new Water Board should be given broad authority, in cooperation with the Department of Water Affairs, to investigate compliance with the terms and conditions found in water use and waste discharge permits and the authority to vary or terminate such permit rights in cases of non-compliance, waste or misuse or where a water use or waste discharge is no longer reasonable in the circumstances. The various water authorities, including the Water Utilities Corporation should be given the power to quickly cut off service in cases of waste or misuse and should be provided with the enforcement tool of increased monetary penalties in order to deter would-be water wasters and misusers.

7. Problem : The Lack of any Effective Control Over Drillers

Existing legislation provides no licensing procedure which ensures that borehole drillers are competent to perform their task. Further, a great deal of unauthorized drilling, much of it perpetrated by companies located outside the country, occurs. Finally, while the present Boreholes Act requires the submission of hydrogeologic data to the Director of the Geological Survey, such information is rarely provided in the case of privately drilled boreholes.

Recommendation

The Director of Water Affairs should be given the power to licence drillers on the basis of competency standards developed in consultation with the Director of the Geological Survey. No drilling of water yielding boreholes should be permitted except by a driller so licensed. Further, conditions should be attached to each and every licence so issued which require the reporting of the hydrogeologic data described in the present Boreholes Act. In addition, no driller should be permitted to bring a drilling rig into Botswana unless he is in possession of a driller's licence issued by the Director. Also, no land owner or occupier should be authorized to drill a borehole unless he has previously applied to the Water Board for a water use permit; stated in the application who his driller will be and; that driller appears in the registry of licensed drillers kept by the Director. Enforcement of these provisions should be obtained by a fine in the case of a first offence and forfeiture of the drilling rig and possible criminal prosecution for repeat offences.

8. Problem : Lack of Authority to Create Special Protection Areas

An increasing problem in Botswana is the need to provide protection to existing boreholes and catchment areas used for domestic water supplies. Cattle may be allowed to graze or bathe in public water supplies; check dams and small catch basins may limit the flow in catchment areas used for runoff

to domestic waterworks and, pesticides may be used too close to boreholes or in catchment areas to prevent their infiltration to existing or proposed domestic water sources. In these circumstances, among others, a special protection area may be needed for the water source; existing legislation, however, is weak on this subject. Apart from the spacing of boreholes and the power to alter water rights in cases of drought or an overextended water supply, the existing law is silent on the matter.

#### Recommendation

Provide the new Water Board with the authority to protect boreholes and catchment basins, from threats to either water quality or water quantity. The Board should, of course, recognize the need to maximize water use among various users and thus, should exercise the power to create special protection areas with care. The power to create such areas and limit the activities which may be undertaken within such areas is nonetheless a power that the Board must have as the possibility of conflicting water uses increases in accordance with Botswana's growth in all sectors of its economy; domestic, commercial, agricultural and industrial.

#### 9. Problem : Lack of a Mechanism to Provide Compensation for the Infringement of Water Rights and Injury to the Environment

Water use rights in Botswana are among the most valuable of assets. The natural environment, including the country's wildlife, is also an asset of enormous value to all of the people of the country. At present the existing Water Act provides no compensatory remedy if the private right of use is injured by pollution or excessive abstraction or diversion of water; similarly, it provides no compensatory mechanism if the environment - a common asset possessed by all the people - is injured through the use or misuse of water or the discharge of pollutants.

### Recommendation

The new Water Board should be given the power, with the help of the Department of Water Affairs, to undertake investigations of claimed injury to private water use rights or injury to the environment resulting from the authorised or the unauthorised use of water or discharge of waste. It should also have the authority, where injury might result from the issuance of use or discharge permits to take a borehole census in order to establish baseline levels of water quality and quantity before a controversial use or discharge is commenced. Further, it should have the power to conduct hearings in these matters and award compensation for injury where compensation is due. In cases where injury cannot be quantified precisely - such as in cases of injury to wildlife - the Board should have resort to a liquidated damages remedy which will ensure that the people of the country will not be without some compensation and some deterrent to future conduct of a similar nature.

Finally, because of the Board's expert nature and the expert advice which it will receive in these matters from the Department of Water Affairs and other appropriate governmental agencies, the Board's determination in such matters of compensation should be given great weight in the event an appeal is taken to the courts. Accordingly, review of the Board's determination regarding compensation should be limited to the administrative record made before the Board and the Board's determination should be affirmed if it is supported by any substantial evidence in that record.

#### 10. Problem : The Spreading of Aquatic Weeds

Certain areas of Botswana, including particularly portions of the Chobe River are presently infested with aquatic weeds. The movement of boats into Botswana and the movement of boats from one river basin to another within the country threaten to spread these infestations to other areas; particularly, the sensitive Okavango Delta.

### Recommendation

The existing Aquatic Weeds (Control) Act (Cap. 34:04) provides the Government with ample authority to prohibit the movement of boats into Botswana and the movement of boats from one basin to another within the country. The Act specifically gives the Minister the authority to adopt regulations which designate the places where boats may be brought into the country (Aquatic Weeds Act, Sec. 7 (2) (a)). Such authority certainly includes the power to provide that there are no places at which boats may be brought into the country (with exception made, of course, for new boats intended for sale). Further the Act (Sec. 7 (2) (f)) gives the Minister the authority to adopt regulations which prohibit the movement of boats save in areas specified in registration certificates. Thus, the Minister has the authority to establish a registration system - by basin - which requires boats to be licensed for use in a particular basin and no other. Accordingly, no change in the existing law is recommended to deal with this problem. Instead, the Ministry is encouraged to prepare, for adoption by the Minister, the regulations described above.

#### IV. CONCLUSION

In accordance with the foregoing conclusions and recommendations, both technical and legal, the new Water Act and the amended Waterworks Act, set forth as annexures I and II to this Final Report, are recommended by the consultants for adoption by the Government.

V. ACKNOWLEDGEMENT

The consultants wish to acknowledge the considerable cooperation they received from numerous individuals within the Ministry of Mineral Resources and Water Affairs, the Department of Water Affairs, the Department of Geological Survey, the Ministry of Commerce and Industry and the Ministry of Agriculture. In particular, the consultants wish to thank Dr. Gaston Luhti, Dr. Gulam Qureshi, Mr. Nyadze Thipe and Mrs. Maureen Davis - our typist in Gaborone - all of whom were exceedingly generous with their help, their insights, their personal support and their ability to get things done. Without them, the consultants' tasks would have been, without question, more difficult to complete.





ANNEX I

PROPOSED WATER LAW



AN ACT TO PROMOTE THE RATIONAL PLANNING, ADMINISTRATION, USE AND PROTECTION OF WATER RESOURCES; TO PROVIDE FOR THE ACQUISITION OF RIGHTS TO THE USE OF WATER; TO ESTABLISH CONTROL OVER THE DISCHARGE OF POLLUTANTS AND TO MAKE PROVISIONS INCIDENTAL THERETO.

PART I

PRELIMINARY PROVISIONS

TITLE

1. This Act may be cited as the Water Act of 1983. By its enactment it supersedes the Water Act of 1968, which is hereby repealed.

DEFINITIONS

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

- (a) "Board" means the National Water Board described hereinafter in Part II of this Act.
- (b) "borehole" means a well sunk by means of a rig or machinery. Except where expressly stated to the contrary, "borehole" does not include any borehole constructed for the sole purpose of prospecting for minerals.
- (c) "commercial establishment" means any wholesale or retail business including hotels, restaurants and shops from which waste water or other pollutants are discharged on a regular basis.
- (d) "Department" means the Department of Water Affairs described hereinafter in Part II of this Act.

- (e) "Director" means the Director of the Department of Water Affairs.
- (f) "discharge" means the emitting of any pollutant, whether by drainage, spillage, leakage, infiltration, land disposal or other means and may occur without regard to whether the emission is intentional, negligent or without fault.
- (d) "discharge permit" means an authorisation issued by the Board for the discharge of waste water or other pollutants under specified terms and conditions.
- (h) "driller" means any person who, by means of a rig or machinery sinks a borehole.
- (i) "driller's licence" means an authorisation to drill boreholes, which may be granted by the Department upon application by a prospective driller.
- (j) "drillers register" means a list of duly licensed drillers, which is kept by the Department.
- (k) "effluent limitation" means any restriction established by the Board on quantities, rates and concentrations of chemical, physical, biological and other constituents of waste water or other pollutants which are or may be discharged directly or indirectly into surface or underground waters.
- (l) "existing right" means any right which, on or before the effective date of this Act, was lawfully acquired, is possessed by, and is being lawfully exercised by any person.

- (m) "industrial plant" means any mining, milling or manufacturing facility and includes any abattoir or animal reduction plant and any other facility which the Board may designate by regulation.
- (n) "inherent right" means any currently exercised right to the use of water acquired under Part II of the Water Act of 1968. Such rights required no Water Board authorisation for their exercise and were limited to the following :
- (i) the taking and use of public water for watering stock, drinking, washing and cooking, or use in a vehicle;
  - (ii) the sinking or deepening of any well or borehole by an owner and occupier of land and the abstraction of water for domestic use therefrom;
  - (iii) the construction of works, under certain conditions, by an owner and occupier of land for the conservation of water for domestic purposes;
  - (iv) the abstraction and use of water, the construction and enlargement of wells and boreholes to a specified capacity and the abstraction and use of certain underground water or for prospecting purposes by the holder of any right under the Mines and Minerals Act; and

- (iv) the abstraction and use of limited quantities of water for logging and sawmilling operations and the construction and enlargement of wells and boreholes and the abstraction of limited quantities of water therefrom by the holder of rights granted under the provisions of the Forest Act to take forest produce.
- (o) "institution" means any hospital, school, Government building and any other non-commercial, non-industrial facility which the Board may designate by regulation.
- (p) "landfill" means any land area used for the disposal of municipal or industrial waste.
- (q) "Minister" means the Minister of Mineral Resources and Water Affairs.
- (r) "Ministry" means the Ministry of Mineral Resources and Water Affairs.
- (s) "water use permit" means an authorisation issued by the Board for the use of water, whether surface or underground.
- (t) "person" means an individual, corporation, parastatal corporation, partnership, association, city, township, village, ministry, Department or political subdivision of the Government.
- (u) "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, waste water, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, agricultural and mining waste.

- (v) "pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any surface water or groundwater so as to render it less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish, aquatic life, or to plants.
- (w) "Secretary" means the Secretary of the National Water Board, described hereinafter in Part II.
- (x) "underground water" means water naturally stored or flowing beneath the surface of the ground and not apparent on the surface of the ground, and is sometimes referred to herein as "groundwater".
- (y) "well" does not include a borehole.
- (z) "works" includes canals, channels, reservoirs, embankments, weirs, dams, wells, boreholes, pumping installations, pipelines, sluice gates, filters, sedimentation tanks or other works constructed for or in connection with the impounding, storage, passage, drainage control or abstraction of water, the discharge of wastewater or the development of water power, the protection of rivers and streams against erosion or siltation or for flood control, or the protection of any works, or the use of water for any purpose, or the conservation of rain water.



PURPOSE

3. (a) The purposes of this Act shall be :
1. to maintain and improve the chemical, physical and biological integrity of the nation's waters and to promote their conservation, optimum development and use;
  2. to ensure the coordination of all activities which may influence the quality, quantity, distribution, use and management of water and wastewater; and
  3. to ensure the application of appropriate standards and techniques for the investigation, use, control, protection, management and administration of water resources.
- (b) In the course of effectuating these purposes and implementing the provisions of this Act, due regard shall be given to the need to impose :
1. adequate controls which will ensure supplies of suitable water for domestic use, for the watering of livestock, for agricultural use including irrigation and for urban and industrial use;
  2. adequate controls which will ensure the safe disposal of sewage effluent and the control and prevention of pollution and disease;
  3. adequate controls to prevent the haphazard and unregulated exploitation of underground waters;
  4. adequate controls for protection of the nation's fisheries, flora and fauna;

5. safeguards to control and prevent flooding, soil erosion and damage to catchment areas; and
6. procedures to ensure that the possible environmental consequences of particular development proposals are properly investigated and considered before such proposals are approved.

#### THE OWNERSHIP OF WATER AND THE APPLICATION OF THIS ACT

4. Notwithstanding anything to the contrary in any other written law, there is no right of property in the water of Botswana, whether surface or underground, and the control and use thereof shall be regulated as provided in this Act. The provisions of the Waterworks Act, the Water Utilities Corporation Act, the Aquatic Weed (Control Act), the Noxious Weeds Act and the Fish Protection act are considered supplemental to this Act and, in the case of any conflict, the provisions of this Act shall control.

#### PART II

#### INSTITUTIONS FOR WATER RESOURCE PLANNING AND IMPLEMENTATION

##### Development of Water Policy Plans

5. To ensure the rational administration and management of the nation's water resources and to fulfill the other purposes of this Act, it is essential that the Government develop long term policy plans for the optimum development, use, conservation and protection of the nation's surface and underground waters.

6. Under the direction of the Ministry, the Department of Water Affairs, the Department of Geological Survey and the Water Utilities Corporation shall prepare water policy plans for submission by the Ministry to the Minister of

Finance and Development Planning for evaluation and inclusion in the National Development Plan. It is the National Development Plan which shall establish the overall policy of the Government of Botswana in the field of water resources development, use, conservation and protection.

7. To assist the Ministry in preparing water policy plans, the Planning Officer may request assistance and information from any person whom, in the Planning Officer's view, may be able to provide such assistance and information.

#### THE NATIONAL WATER BOARD

8. The water policy of the Government of Botswana shall be implemented by the National Water Board which shall exercise its authority through the issuance, denial, revision and termination of permits to use water, permits to discharge waste water or other pollutants, and the creation of special protection areas.

9. The National Water Board shall report to the Minister and shall be chaired by the Permanent Secretary of Mineral Resources and Water Affairs. The Board's membership shall be established in accordance with regulations.

10. (a) The Board shall meet on a bi-monthly basis at a designated time and place and may adopt "by-laws" to facilitate the conduct of its meetings.

(b) The Board shall also appoint a Secretary who shall have administrative experience and who shall serve at the pleasure of the Board. The Secretary shall be responsible for managing the day to day business of the Board, including the scheduling of meetings, the issuance of notices and the preparation of agendas and shall perform any additional duties which the Board may assign. The Secretary shall also receive and record all applications for water use permits and discharge permits and shall

transmit such applications in a timely manner to the Department of Water Affairs for investigation and recommendation. Upon the issuance of any permit by the Board, the Secretary shall sign the same as the Board's authorised representative and shall record the issuance of the permit in registers which shall remain in his custody. For the purpose of facilitating his work, the Secretary may recommend by-laws to the Board for its consideration and adoption.

- (c) Legal representation shall be provided to the Board by the Attorney-General who shall designate one of his deputies as special legal counsel to the National Water Board. That deputy shall familiarise himself with this Act and all relevant statutes pertaining to the affairs of the Board, shall attend the meetings of the Board on a regular basis and shall be prepared to answer legal questions as they arise during the meetings of the Board.
- (d) To assist the conduct of the business of the Board, the Chairman of the Board shall have the power to employ or subpoena as a witness any person who may be qualified by training or experience to give evidence on any matter pending before the Board.
- (e) To further assist the conduct of the business of the Board, the Chairman is authorised to form one or more fact finding committees composed of fewer than all of the authorised members of the Board. For the convenience of witnesses or other reasons consistent with the purposes of this Act, such committees may conduct fact finding hearings in any city, township or village in the country, in connection with any matter pending before the Board. Upon the completion of such hearings, any such Committee shall report its findings to the Board as a whole which may act upon such findings in accordance with the provisions of this Act.
- (f) In the performance of its functions under this Act, the Board shall have regard to any relevant international agreement regulating the use of water to which Botswana is a party.

- (g) Neither the members of the Board, nor its Secretary shall be personally liable for any act or matter done or omitted to be done in good faith in the performance or supposed performance of their functions under this Act.

THE DEPARTMENT OF WATER AFFAIRS

11. The Director of Water Affairs shall manage the Department of Water Affairs within the Ministry. He shall be appointed by the Directorate of Personnel and shall report to the Permanent Secretary for Mineral Resources and Water Affairs.

12. Through the Director, the Department shall serve as the technical advisor of the Board and shall assist the implementation of this Act in the following ways :

- (a) by providing water resource related technical advice, assistance or research requested by the Ministry Planning Officer in connection with the formulation of ministerial water policy plans;
- (b) by critically analysing all applications for the use of water, whether surface or underground, received by the secretary of the Board and by making recommendations to the Board on whether such application should be granted, granted with conditions or denied;
- (c) by critically analysing all applications for the discharge of waste water or other pollutants received by the Secretary of the Board and making recommendations to the Board on whether such applications should be granted or denied and, if granted, what effluent limitations or other conditions should be imposed;
- (d) by critically analysing all applications for driller's licenses and determining whether such licences should be granted, granted with conditions or denied;
- (e) by recommending to the Board, the creation of special protection areas and the rules concerning water use and discharge within such areas;

- (f) by continuing to maintain an active water pollution section which analyses domestic water supply samples and has the capability of critically reviewing proposed plans for pollutant discharges and water re-use;
- (g) by maintaining a system of water bailiffs throughout the country who will monitor permit compliance, investigate boreholes, assist in the preparation of permit applications and report their findings promptly;
- (h) by performing any other duties, whether or not requested by the Minister, the Permanent Secretary or the Board, which may assist the implementation of the purposes of this Act.

### PART III

#### RIGHTS TO THE USE OF WATER

13. (a) From the effective date of this Act, there shall exist no right to the use of water, whether surface or underground, unless there is a permit issued by the Board for such use, which permit shall define the extent of the right.
- (b) Notwithstanding the provisions of sub-paragraph (a), the holder of any existing or inherent right acquired prior to the effective date of this Act shall not be obligated to apply to the board for a new water right. An existing or inherent right shall be established for this purpose only if the Secretary of the Board is notified of the existence of such right prior to the expiration of one year from the effective date of this Act and is satisfied that such right did exist and was being exercised at that time. To this end, the Secretary may, with the consent of the Board, request the Director to conduct an investigation to determine the validity of the claims in the notification. Further, notwithstanding the existence of such rights, the Board, in its discretion may utilise

the criteria established by this Act to examine any such right and, based upon that examination, may condition or prohibit the continued exercise of the right. In making such a determination, the right holder's reliance upon pre-existing law shall be given some weight; it shall not, however, be deemed a conclusive bar to Board action otherwise necessitated by the provisions of this Act.

14. (a) Any person proposing to use water, whether surface or underground; any person seeking to increase his existing use of water, whether surface or underground; any person seeking to acquire the use of a Government drilled borehole; or any person seeking to change the place of diversion or place of use of water, whether the water is surface or underground, shall apply to the Board for a water use permit prior to undertaking any drilling or construction of works incidental to such use, acquisition of borehole rights, change of place of diversion or change of place of use.
- (b) With reference to boreholes specifically, no drilling or enlargement of water yielding boreholes is permitted unless and until a water use permit for such proposed water yielding borehole or proposed enlargement has been issued by the Board. Such permit shall be in addition to any permit or other authorisation required by the Land Board.
- (c) Further with reference to boreholes, at any time during the sinking or deepening of any borehole and at any time after the completion thereof, any person who produces some duly authenticated document giving the authority of the Director of the Geological Survey for such purpose, shall be entitled at all reasonable times to :
- (i) have free access to such borehole;
  - (ii) inspect the borehole and the material excavated therefrom;
  - (iii) take specimens of such material and of water or samples extracted from the borehole; and
  - (iv) make a pump-test at the expense of the Government.

15. (a) The application for a water use permit shall be completed to the satisfaction of the Secretary on forms specially prepared by the Board for that purpose. Should the application be deemed insufficient by the Secretary or the Director, the Secretary may refuse to process the application until the applicant supplies additional information which allows the application to be analysed and processed in accordance with the provisions of this Act.
- (b) The Secretary, in consultation with the Director, may recommend for adoption by the Board proposed by-laws which describe in detail, the contents of the form to be used for a water use permit application.
16. (a) When a satisfactorily completed application for a water use permit is received by the Secretary, he shall transmit it forthwith to the Director for critical analysis by the Department.
- (b) Upon receipt of the Secretary's transmittal, the Director or his designated representative shall make a rapid assessment of the application and shall include in such rapid assessment consideration of at least the following :
- (i) the effect of the intended water use on other water users;
  - (ii) the effect of the intended water use on domestic water supplies;
  - (iii) whether the application is for a private borehole in an established waterworks area;
  - (iv) whether the application is for use of a Government owned borehole;
  - (v) consistency of the intended water use with the National Development Plan and Ministry level water policy plans;
  - (vi) the effect of the proposed water use on the environment;
  - (vii) pollution effects of the proposed water use;
  - (viii) relevant hydrogeologic conditions;



- (ix) whether the proposed water use involves any waste of water
  - (x) whether the proposed water use should also involve water re-use; and
  - (xi) whether the proposed borehole driller is licensed.
- (c) In order to undertake this rapid assessment, or to undertake a more thorough assessment if that is required, the Director has the authority to coordinate with any other Governmental Department in order to obtain the necessary manpower or expertise to complete his assessment.
17. (a) If the Director's rapid assessment discloses that the proposed water use is not likely to affect other water users or domestic supplies, is not an application for a private water yielding borehole in an established waterworks areas or an application to use a Government owned borehole; is consistent with the National Plan; and is otherwise likely to be uncontroversial, he shall recommend to the Secretary that the application be calendared for summary approval by the Board at its next meeting.
- (b) Upon receipt of the Director's recommendation for summary approval, the Secretary shall calendar the application along with all similarly recommended applications, on an administrative agenda containing items which may be voted upon as a group by the Board. Any person shall be given the opportunity at the Board's meeting to comment upon any item so calendared. Upon the recommendation of two or more Board members any item so calendared may be removed from the administrative agenda and sent to the Director for a more detailed critical analysis and recommendation. Otherwise, the application should be voted upon by a single vote on the complete administrative agenda. If the application is so approved, a water use permit signed by the Secretary on behalf of the Board shall be issued forthwith to the applicant. In the case of an approved application involving the drilling or enlargement

of a water yielding borehole, a quantity of water not exceeding a specified maximum shall be authorised for abstraction. However, if the hydrogeological data required in section 40 has not been transmitted to the Director of the Geological Survey within six months from the date of issuance of the permit, the permit shall lapse and a new application will be required.

18. (a) If the Director's rapid assessment of an application discloses that the intended water use may have a substantial effect upon other water users; may have a substantial effect upon domestic water supplies; is for a private water yielding borehole in an established waterworks area or seeks the use of a Government owned borehole; may be inconsistent with the National Development Plan or Ministry water policy plans; may have a substantial risk of pollution or involve a waste of water; may not have adequately considered the feasibility of water re-use; or is intended to be effectuated by an unlicensed driller, then the Director shall notify the Secretary that the application must be more thoroughly assessed by the Department. The applicant shall thereupon be so notified by the Secretary.
- (b) Where the Director's rapid assessment results in the determination described in sub-section (a) or where an application has been removed from the Board's administrative agenda and redirected for further study, the Director shall undertake a detailed critical analysis which evaluates the proposed application in light of the purposes of this Act and the factors enumerated above in Section 16 (b). During this detailed evaluation, the Director shall, to the extent possible, work with the applicant to formulate necessary changes in the application which may result in its approval.
- (c) Where the application is for a private water yielding borehole in a declared waterworks area, the Director shall specifically ascertain whether the waterworks authority for the area is able to

provide service to the applicant, when such service will be provided and whether the requested borehole will invite cross-connections or otherwise interfere with the waterworks authority's operations. The Director shall also investigate the issue of compensation to the applicant if the waterworks authority is likely to acquire the proposed borehole at a future date. But if the borehole is to be used for a period of more than 5 years, no compensation shall be paid. Where the application is to make use of an existing Government borehole, the Director shall ascertain the views of the client agency for whom the borehole was drilled. If that agency has no objection to the application, the Director shall contact other agencies who might potentially make use of the borehole. If those agencies have no objection to the application, the Director is authorized to lease the applicant a permit for use of the borehole, if the purposes of this act and the factors enumerated in section 16 (b) of this Act are otherwise satisfied. The Board may adopt by-laws establishing a schedule of rental fees for such a lease arrangement.

- (d) Following his detailed critical analysis, the Director shall prepare a report of his findings and recommendation. Copies of the report and recommendation shall be submitted to the Board, the applicant and other interested persons sufficiently in advance of the Board's hearing on the application that the Board members may appraise themselves of the contents of the report and the applicant and other interested persons, may prepare their response, if any. The Director's recommendation shall be supported by his report and together they shall find and recommend either :
- (i) that the application is consistent with the purposes of this Act and the factors enumerated in Section 16 (b) of the Act and should be granted without condition;
  - (ii) that for one or more reasons, the application is inconsistent with the purposes of this Act or one or more of the factors enumerated in Section 16 (b) of the Act, but can be made consistent by the requirement of certain

modifications or the imposition of certain conditions and should therefore be approved only if such modifications are made or conditions imposed or;

- (iii) that the application is inconsistent with the purposes of this Act or one or more of the factors enumerated in Section 16 (b) of the Act, cannot be modified or conditioned in a way to make it consistent and therefore should be disapproved. If the application involves the drilling or enlargement of a water yielding borehole, a recommendation of disapproval is required if the applicant declines to use a licensed driller.
- (e) The Director shall, if possible, present his report and recommendation at the next regularly convened meeting of the Board. Following the Director's presentation, the applicant shall have the opportunity to present expert evidence on his behalf. Following the applicant's presentation, interested persons shall be given the opportunity to present their views. Thereupon the hearing shall be closed and a vote shall be taken on whether to accept, reject or modify the recommendation of the Director.
- (f) Should the vote be to issue a water use permit, a permit shall be prepared in accordance with the vote of the Board, signed by the Secretary and transmitted forthwith to the applicant. Any such permit shall contain standard provisions granting the Director or his designee access to the user's premises to make any measurement of the water use which the Director determines to be appropriate. In the case of an approved application involving the drilling or enlargement of a water yielding borehole, a quantity of water not exceeding a specified maximum shall be authorised for abstraction. However, if the hydrogeological data required in Section 40 has not been transmitted to the Director of the Geological Survey within six months from the date of issuance of the permit, the permit shall lapse and a new application will be required. Should the Board vote to deny a water use permit, the Secretary shall so notify the applicant forthwith.

- (g) Where the Board has voted to grant a water use permit, nothing in such permit shall imply any guarantee that the quantity of water referred to therein is, or will be available.
19. (a) Either at the time of granting any water use permit or at any time thereafter while the permit remains valid, the Board may declare that the water right evidenced by the permit shall be appurtenant to the land described in the permit.
- (b) Where the right evidenced by a water use permit has been declared appurtenant to any land, the benefit of the right may be enforced by any person who is entitled to possession of the land.
- (c) Where in consequence of any transfer, lease, partition or devolution of the property any person becomes entitled to the possession or part of a share in the land to which a water right has been declared appurtenant, he may use such proportion of the water as may be assigned to him in transfer, lease, partition or Will or is by law apportioned to him or as may be agreed between him and the persons entitled to the possession of the remaining parts or shares of or in the land, or in the absence of any such agreement, as may be determined by the Board. He, his heirs and assigns are also bound by any and all conditions attached by the Board to the exercise of the water right, or if the conditions are divisible, to that portion of the water right to which he has become entitled.
- (d) Where any apportionment of water has been made under the provisions of sub-section (c) in respect of any partition of land, the several quantities of water so apportioned shall be deemed to be appurtenant to the several parts of such land and the benefit thereof shall be enjoyed and all rights thereof may be enforced in accordance with such apportionment by the persons who are entitled to the possession of such parts, and such rights shall prevail until the parts shall again become merged with each other.

- (e) Any person acquiring a right to use water by agreement in accordance with the provisions of sub-division (c) shall give notice thereof to the Secretary within 90 days of such acquisition, failing which the right shall become unenforceable.
20. (a) Where the Board has granted a water use permit subject to the construction of works within a specific period of time, the Secretary, in consultation with the Director, may grant a single extension of time not to exceed 18 months, for the construction of such works, notwithstanding that the period previously allowed may have expired. Any additional requests for extensions of time for construction, shall be accompanied by a new application for water use permit.
- (b) At the expiration of the period allowed for the construction of the works, the Director shall cause the works to be inspected by an officer designated by him and that person shall, if the works have been constructed satisfactorily, so certify in writing to the Secretary.
- (c) No certificate issued under this section shall be deemed to imply any guarantee by the Government that the works are properly designed or constructed nor shall such certificate support or justify any claim whatsoever against the State or any officer in connection with such works.

#### PART IV

##### DISCHARGE PERMITS

21. The waters of Botswana, both surface and underground, are among the most important of the country's assets and the protection of their purity for use by mankind as well as the country's flora and fauna is among the highest duties of all inhabitants. Accordingly, it is the policy of this Act that there shall be no pollution directly or indirectly, of the waters of Botswana, except in accordance with a discharge permit issued by the National Water Board.

22. (a) Any person proposing to construct, reconstruct or enlarge any commercial establishment, industrial plant, institution, landfill or water supply or sewerage works from which any pollutant will or may be discharged shall, before the commencement of such construction, reconstruction or enlargement, apply to the Board for a discharge permit; provided that no such application need be made nor permit obtained by any commercial establishment or institution (except hospitals) which will discharge solely to any existing municipal sewerage system that is in compliance with a discharge permit. Where a discharge permit is required, its issuance by the Board is a condition precedent to the issuance of a building permit.
- (b) The application for a discharge permit shall be completed to the satisfaction of the Director on forms specially prepared by the Board for that purpose. It is recommended that before such application is filed, the applicant meet with the Director or his designee to discuss the discharge and proposed application. Should the application be deemed insufficient, the Director may refuse to process the application until the applicant supplies the additional information requested. The application shall require information on at least the following :
- (i) the proposed siting of the planned construction, reconstruction or enlargement;
  - (ii) the proposed location of the planned discharge;
  - (iii) a water balance diagram which describes the different proposed streams of waste water before treatment, including a description of their rate of flow and quality;
  - (iv) the industrial process or processes which will generate the discharge;
  - (v) the production capacity of the proposed or enlarged commercial establishment, industrial plant, institution or works;

- (vi) the proposed effluent treatment, if any, which will be provided and the proposed effluent quality which will result;
- (vii) any proposal for the re-use of waste water which the applicant will incorporate or has incorporated in his construction plan;
- (viii) present uses of the receiving waters, whether surface or underground, into which the discharge will directly, or indirectly be made; and
- (ix) the pollution impact of the discharge.

23. Any person who owns or occupies any existing commercial establishment, industrial plant, institution, landfill or watersupply or sewerage works shall submit to the Board within three years from the effective date of this Act, an application for discharge permit; provided that no such application need be made nor any permit obtained by any commercial establishment or institution (except hospitals) which discharge solely to an existing municipal sewerage system that is in compliance with a discharge permit. Such application shall be completed to the satisfaction of the Director on forms specially prepared by the Board for that purpose. Should the application be deemed insufficient, the Director may refuse to process the application until the applicant supplies the information requested. The application shall require information on the subjects listed above in Section 22 (b).

24. (a) Upon receipt of the discharge application by the Board, the Director or his designated representative shall undertake a detailed analysis which evaluates the information provided in the application, in light of the purposes of this Act. In making this assessment, the Director has the authority to coordinate with any other Governmental department in order to obtain the necessary manpower or expertise to complete his evaluation.
- (b) Based upon his evaluation, the Director may make one or more of the following recommendations in order to conform the proposed or existing discharge to the National Development Plan or the purposes of this Act :



- (i) that the application be approved as submitted;
  - (ii) a change in the proposed siting of the construction from the water resources viewpoint;
  - (iii) a change in the proposed location of the discharge;
  - (iv) a modification of the industrial process which will generate the discharge;
  - (v) a reduction of the production capacity of the proposed or enlarged commercial establishment, industrial plant, institution or works;
  - (vi) effluent limitations which will limit or prohibit the quantity, concentration or rate of discharge of any constituent element of the proposed discharge;
  - (vii) safeguards which will eliminate or reduce the possibility of accidental discharges or minimize their impacts if they occur;
  - (viii) any additional conditions which will serve to compensate the public for environmental damage that may occur despite the existence of permit terms intended to minimize or eliminate water pollution.
- (c) Where his analysis discloses that a proposed or existing discharge is inconsistent with the National development Plan or the purposes of this Act and that no technically or economically feasible means exists to conform the proposed or existing discharge to the Plan or this Act, the Director shall evaluate the extent to which the effect of the discharge can nonetheless be mitigated and shall then determine whether in his opinion, the continuing cost to the public resulting from the discharge outweighs the benefit to society produced or that will be produced by the existing or proposed commercial establishment, industrial plant, institution or works.
- (i) If he concludes that the cost outweighs the benefit, the Director shall recommend denial of a discharge permit and, where there is an existing discharge, request the Board to order the closure of the existing establishment, plant, institution or works.

- (ii) If he concludes that the benefit outweighs the cost, the Director shall recommend the granting of a discharge permit with conditions which will :
- mitigate the effect of the discharge to the maximum extent possible,
  - require conformance of the discharge to the National Plan and this Act as soon as it is feasible to do so, and
  - require termination of the discharge whenever the Director concludes that the cost to the public from the discharge exceeds the benefit provided by the establishment, plant, institution or works.
25. (a) Upon the completion of his critical analysis of the discharge permit application, the Director shall prepare a report of his findings and his recommendation. Copies of the report and recommendation shall be submitted to the Board, the applicant and other interested persons sufficiently in advance of the Board's hearing on the application that the Board members may appraise themselves of the contents of the report and the applicant and other interested persons may prepare their response, if any. The Director's recommendation shall be supported by his report.
- (b) The Director shall present his report and recommendation at the next regularly convened meeting of the Board. Following the Director's presentation, the applicant shall have the right to reply and, like the Director, shall have the opportunity to present expert evidence on his behalf. Following the applicant's presentation, interested persons shall be given the opportunity to present their views. Thereupon, the hearing shall be closed and a vote shall be taken to accept, modify or reject the recommendation of the Director.

- (c) Should the vote be to issue a discharge permit, a permit shall be prepared in accordance with the vote of the Board, signed by the Secretary and transmitted forthwith to the applicant. Any such permit shall contain any special conditions adopted by the board as well as standard provisions requiring the discharger to monitor his discharge, to report any irregularities in the discharge to the Director and to give the Director or his designee a right of access to his facility in order to conduct any measurement of the industrial process or discharge which the Director determines to be appropriate. Should the Board vote to deny a discharge permit, the Secretary shall so notify the applicant forthwith.
26. (a) Where the Board has granted a discharge permit, it shall specify that necessary work for the commencement of the authorised discharge shall be completed, within a specific period of time. Upon request of the permittee, the Secretary, in consultation with the Director, may grant a single extension of time not to exceed six months; provided no effluent discharge is occurring. Where such discharge is occurring and the time limits established by the Board have been exceeded, the Director shall bring the matter to the attention of the Board at its next regularly scheduled meeting, with a recommendation that the Board refer the matter to the Attorney-General for prosecution in accordance with the procedures of Part X of this Act.
- (b) Where any necessary work required by the Board has been completed as scheduled, the Director shall have the work inspected by an officer designated by him and that person shall, if the work has been constructed satisfactorily, so certify in writing to the Secretary.
- (c) No certificate issued under this section shall be deemed to imply any guarantee by the Government that the work has been properly designed or constructed nor shall such certificate support or justify any claim whatsoever against the State or any officer in connection with such work or construction.

- (d) Any discharge permit issued by the Board under this Part shall be valid for a period of 5 years from the date of issuance and shall not be revised or terminated except in accordance with the provisions of Part V of this Act.

27. The Director or his designee shall be given access to inspect any commercial establishment, industrial plant, institution, landfill, watersupply or sewerage works in order to ensure compliance with the provisions of this Part.

#### PART V

#### REVISION AND TERMINATION OF WATER USE AND WASTE DISCHARGE PERMITS

28. The Director of Water Affairs shall have the responsibility of monitoring compliance with the terms and conditions of any water use or waste discharge permit issued by the Board. He shall also have responsibility for detecting unpermitted water usage and waste discharges. For these purposes, he may employ water bailiffs who shall investigate water usage and waste discharges throughout the country and report their findings.

29. (a) Where the Director determines that the holder of any water use or discharge permit has failed to comply with any provision or condition of the permit, or that an unpermitted water use or waste discharge is unlawfully occurring in violation of the provisions of this Act, he shall immediately report his findings to the permittee. If the permittee fails to take necessary action to bring his use or discharge into compliance within 60 days of such notice, the Director shall report his findings to the Secretary of the Board. Upon receipt of such a report, the Secretary shall notify the permit holder of the report and shall schedule the

matter for hearing by the Board. Where the water use or waste discharge in issue presents, in the opinion of the Director, an immediate threat to the waters of Botswana, the public health or the environment, the Director is authorized to take immediate steps to terminate the use or discharge and may, if necessary, utilize the services of the law enforcement authorities for this purpose. Any expenditures incurred by the Director in terminating the use or discharge shall be recoverable from the person responsible for the use or discharge so terminated. Neither the Director nor his designees shall be liable, civilly or criminally for actions taken by them in accordance with the provisions of this Section.

- (b) At the Board's hearing of the matter, the Director shall present his report and recommendation. The permit holder and any other affected persons shall be given the opportunity to reply.
- (c) After hearing the report and recommendations of the Director and the reply, if any, of the permit holder, the board may vote to do any one or more of the following :
  - (i) terminate the right of use or discharge;
  - (ii) make any change in the permit recommended by the Director which will ensure compliance with permit conditions;
  - (iii) require compensation of any injured third party including the State, as a condition of further water use or discharge;
  - (iv) refer the matter to the Attorney General for criminal or civil prosecution in accordance with the terms of this Act;
  - (v) take any other action which it deems just and proper in the matter.
- (d) The Secretary shall notify the permit holder forthwith of any action taken by the Board and shall sign and transmit to the permittee any modification of permit which the Board adopts.

30. (a) Whether or not the terms of a previously issued water use or discharge permit have been violated, the Director may, in exceptional circumstances, determine that compliance with the National Development Plan or the purposes of this Act require that a previously issued permit be modified, suspended or terminated. Such circumstances may include, but are not limited to :
- (1) the existence of a drought;
  - (ii) a public health or other emergency;
  - (iii) a finding that in any specified area the quantity of water available is insufficient to satisfy all outstanding rights;
  - (iv) changed circumstances which render the continued exercise of rights under a use or discharge permit unreasonable, in whole or in part.
- (b) Upon making such a determination, the Director shall immediately report his findings to the Secretary of the Board. Upon receipt of such a report, the Secretary shall notify the permit holder of the Director's findings and shall schedule the matter for hearing by the Board.
- (c) At the Board's hearing of the matter, the Director shall present his report and recommendations. The permit holder and any other affected persons shall be given the opportunity to reply.
- (d) After hearing the Director and the reply, if any, of the permit holder, the Board may vote to do the following :
- (i) in the case of a drought, the Board may suspend or diminish the amount of water usable under the permit for such period as it may deem necessary and, upon notice by the Secretary, the right of use under the permit shall cease for the period of the suspension or shall be exercisable only as so diminished;

- (ii) in the case of a public health or other emergency, the Board may vary the conditions of a use or discharge permit for such period as it may deem necessary and, upon notice by the Secretary the right of use or discharge shall cease or be exercised only as permitted in accordance with the Board's revisions;
  - (iii) where the Board finds that in any specified area the quantity of water is insufficient to satisfy all outstanding rights it may, after reviewing the use, diversion, control and appropriation of public water in the area, revise the terms and conditions, including the quantity of water useable under any permit in the area; provided that the Board shall have regard to the principle that where beneficial use of the whole right has been maintained, no right shall be cancelled or reduced except proportionally with all other rights in the same area;
  - (iv) where the Board finds the existence of changed circumstances which render the continued exercise of rights under a use or discharge permit unreasonable in whole or in part, it shall modify or terminate the permit as it deems appropriate.
31. (a) Where the Director is satisfied that water useable under an existing use permit is required for public purposes, he shall report his determination to the Secretary of the Board. Upon receipt of such a determination, the Secretary shall notify the permit holder of the Director's determination and schedule the matter for hearing by the Board.
- (b) At the Board's hearing of the matter, the Director shall explain the reasons for his determination. The permit holder shall be given the opportunity to reply.

- (c) Where the Board agrees that water useable under the permit is required for public purposes, it may reduce or terminate the right exercisable under the permit to the extent that water is required for the aforesaid public purpose, and thereupon the permit shall lapse or be exercisable only as so reduced.
- (d) The holder of any permit right terminated or reduced under the provisions of this section shall be entitled to receive compensation from the Government for all loss resulting from the termination or reduction of the right. The amount of compensation payable shall, in the absence of agreement, be determined by the High Court upon the application of the permittee or the Director.

32. Where any right to the use of an unspecified quantity of public water exists, the Board may at any time specify the quantity of water for which such right may be valid and direct the Secretary to record the same in the register of water rights and so inform the holder of the right; provided that the Board shall, before so specifying, give the holder of the right the opportunity making representations thereon, and shall take into consideration any such representations.

33. The Board may from time to time, on the application or with the consent of the holder of a water right, determine or diminish the right or vary any of the conditions thereof.

- 34. (a) If at any time the Director has reason to believe that the holder of a water use permit has not, during the preceeding three years, made full beneficial use of the right evidenced by the permit, he may by notice in writing addressed to such holder call upon him to show cause why such right should not be terminated or diminished or modified in such respects as may be specified in the notice.
- (b) If within three months of the service of such notice no reply has been received by the Secretary, the Board may declare the right terminated or diminished or modified as the case may be.



- (c) The holder of a water right upon whom a notice has been served under sub-section (a) may, within three months of such service, submit to the Board a statement in writing of reasons why the right should not be terminated or diminished or modified, as the case may be, and may request to be heard in the matter.
- (d) The Board shall consider any statement submitted to it under the foregoing sub-section and shall, if so requested, give the holder an opportunity of being heard in person or by his legal representative and may thereafter by notice in writing addressed to the holder :
  - (i) declare the right terminated;
  - (ii) declare the right diminished or modified in such respects as may be specified in the declaration; or
  - (iii) declare the right to be subsisting unchanged.

## PART VI

### SPECIAL PROTECTION AREAS

35. Upon the request of any person, including the Director, the Board is authorised to declare the existence of a special protection area.

36. Without intending to limit the circumstances in which a special protection area may be declared, it is envisioned that such a declaration may typically be requested in the following circumstances :

- (a) where an existing borehole or catchment area utilised for domestic water supply is threatened with contamination from :
  - (i) the watering of livestock;
  - (ii) infiltration of impurities from human or animal waste disposal;

- (iii) the spreading of herbicides or pesticides; or
  - (iv) the storage or disposal of oil and other chemicals.
- (b) where the water supply from an existing borehole or catchment area is threatened with diminution resulting from :
- (i) abstraction of water from nearby boreholes or well fields which draw from the same aquifer; or
  - (ii) the construction of upstream dams or basins in the same catchment area, which dams or basins tend to restrict the flow of surface water to downstream waterworks.
37. (a) Whenever any person believes that the declaration of a special protection area is appropriate, he shall submit an application therefor on a form devised by the Secretary for that purpose.
- (b) Except where the application is made by the Director, the Secretary shall immediately transmit the application to the Director for investigation. In making such investigation the Director is authorised to coordinate with any other Governmental Department in order to obtain the necessary manpower or expertise to complete his investigation.
- (c) Upon the completion of his investigation, or where he submits his own request, the Director shall forward his recommendation on a special protection area to the Secretary of the Board who shall, upon receipt thereof, schedule the matter for hearing by the Board. The Secretary shall make a reasonable effort to provide not less than 30 days notice of the scheduling of the matter to any person who may be affected by the recommendation, including the applicant, any waterworks authority operating within the requested protection area and any water user or waste discharger who may be involved.

38. (a) Upon the hearing of the matter by the Board, the Director shall present a report which summarises the results of his investigation and his recommendation concerning the proposed special protection area. The applicant, if other than the Director, and any interested person, shall be given the opportunity to reply. Thereupon the hearing shall be closed and a vote shall be taken on whether to declare a special protection area.
- (b) If a special protection area is declared around any borehole used for domestic water supply, the Board shall :
- (1) identify whether the special protection area is required to prevent contamination or diminution of supply, or both;
  - (ii) the boundaries of the protection area around the borehole;
  - (iii) if prevention of contamination is the object of the protection area, the identity of the activities or chemical substances which are prohibited within the protection area.
  - (iv) if prevention of diminution of domestic water supply is the object of the protection area, the identity of the persons who shall restrict or terminate their abstraction of water; the extent to which abstraction of water shall be curtailed and the boreholes from which the abstraction of water shall be curtailed.
- (c) If a special protection area is declared to encompass any catchment area, or a portion thereof, the Board shall :
- (1) identify whether the special protection area is required to prevent contamination or diminution of supply or both;
  - (ii) the boundaries of the protection area;
  - (iii) if preventing contamination is the object of the special area, the activities or chemical substances which are prohibited within the protection area;

- (iv) if prevention of diminution of domestic water supply is the object of the protection area, the identity of the persons who shall cease their interference with the water supply and the precise nature of their actions shall be identified.
- (d) The declaration of a special protection area shall be effective upon its adoption and the Secretary shall transmit copies of the order of adoption of the special protection area to the applicant and all other interested and affected persons. The Director shall have the responsibility of monitoring the special protection area in order to observe whether there exists compliance with the terms of the Board's declaration.

## PART VII

### THE LICENSING OF DRILLERS

39. To assist the protection and rational management of Botswana's underground waters it is hereby provided that no borehole shall be drilled or enlarged except by a person who possesses a driller's licence issued by the Director.
40. (a) Driller's licences shall be issued by the Director on the basis of competency standards developed in consultation with the Director of the Geological Survey. Licences may be applied for on forms developed by the Director for that purpose.
- (b) Any driller's licence issued by the Director shall be issued subject to the following conditions :
- (i) every licensed driller who proposes to sink or is hired to sink a borehole or who proposes to deepen any existing

borehole or who proposes to sink from headings a borehole shall keep on a form provided by the Director of the Geological Survey a record of the progress of the work which shall include measurements of the strata passed through and of the levels at which water is struck and subsequently rests.

- (ii) Every licensed driller shall further keep in containers to be supplied by the Director of the Geological Survey, adequately labelled, samples of the superficial deposits and strata passed through taken at every change of formation or in uniform formations at 3 m.
- (iii) Every licensed driller shall inform the Director of the Geological Survey of the result of any pump test made by him or under his direction.
- (iv) Every licensed driller shall, within 10 days of the completion or abandonment of his drilling, send a complete copy of the record, together with adequately labelled samples required to be kept under condition (ii) above, to the Director of the Geological Survey.
- (v) Every licensed driller who sinks, deepens or is hired to sink or deepen a borehole situate within any territory described in the Tribal Territories Act, shall send to the District Council having jurisdiction of the area a duplicate copy of every document sent to the Director of the Geological Survey.
- (vi) Any additional condition recommended by the Director or the Director of the Geological survey and adopted by the Board.

41. No drilling rig or other mechanical device used for the drilling or enlargement of boreholes shall be permitted to be transported into Botswana unless the person in possession of the drilling rig or other mechanical device produces a valid driller's licence issued by the Director to that person.

42. Any person who drills or enlarges a borehole or who transports a drilling rig or other mechanical drilling apparatus into Botswana without a valid driller's licence shall be guilty of an offence and shall be liable to a fine of 1000 Pula (one thousand Pula). Upon a second offence, the person's drilling rig or mechanical drilling apparatus shall be seized and forfeited.

43. Any person who fails to comply with any of the conditions of his driller's licence or who falsifies any of the information required by those conditions shall be guilty of an offence and liable to a fine of 1000 Pula (one thousand Pula). Upon a second offence the person's driller's licence shall be revoked and the person barred from applying for a new licence for a period of 3 years.

44. The Boreholes Act of 1956 (Cap. 34:02) is hereby repealed.

#### PART VIII

##### COMPENSATION FOR INFRINGEMENT OF WATER RIGHTS AND INJURY TO THE ENVIRONMENT

45. Upon the request of any person who has suffered injury to his right to use water, the Board is authorised to order the payment of compensation to the injured party by the person causing the injury.

46. Without intending to limit the circumstances under which such a request for order of compensation may be made, it is envisioned that such request may typically be made in the following circumstances :

- (a) where a person's water supply, whether private or public, has become polluted;
- (b) where the pumping from boreholes in the vicinity has lowered the level of the underground water supply necessitating abandonment or deepening of a person's borehole;
- (c) where the construction of dams or catchbasins has diminished the supply of water in a catchment area.

47. Where the Board anticipates that infringement of existing water rights could result from the issuance of any water use or waste discharge permit, it may require as a condition of the permit, that prior to commencement of the use or discharge pursuant to the permit, a borehole census be taken by the permit applicant or the Director for the purpose of establishing a baseline measure of the level and quality of underground water in the area.

48. (a) When the Secretary receives a request for an order for compensation, he shall refer the request to the Director for investigation. In the course of conducting his investigation and for the purpose of establishing liability under the provisions of this Part, it shall not be necessary for the applicant or the Director to prove that infringement was negligently or intentionally caused. The sole criteria for the purpose of determining liability shall be whether there has been injury to the applicant and whether that injury was directly or indirectly caused by the actions of another person.
- (b) Upon completing his investigation, the Director shall summarise his findings in a report to the Board and shall accompany his report with his recommendations.
- (c) Upon receipt of the Director's report and recommendation, the Secretary shall schedule the matter for hearing by the Board and shall send notice to the applicant for the order and to any other person involved in the request.

- (d) At the Board's hearing, the Director shall summarise his findings and present his recommendation. The applicant and any other involved person shall have the right to reply. Thereupon the hearing shall be closed and the Board shall vote upon the Director's recommendation.
- (e) The Board's vote shall be considered final for purposes of appeal, when it is rendered, and unless appeal by petition for a writ of mandamus is filed with the High Court within 30 days notice of the Board's vote, the Board's decision shall be considered final for all purposes.
- (f) In the event a petition for writ of mandamus is timely filed with the High Court, the Court's review shall be limited to a review of the record of proceedings before the Board and, in conducting that review, the High Court shall affirm the Board's order if there is any substantial evidence in the entire record of proceedings to support the Board's action.
- (g) In any such proceeding before the High Court, the Board shall be represented by the Attorney-General.

49. Upon the request of the Director, the Board is authorised to order the payment of compensation to the Government of Botswana for injury to the public health or environment which has been caused by any unauthorised use of water or any unauthorised discharge.

50. (a) When the Secretary receives a request from the Director for an order for compensation of environmental damage or damage to the public health, he shall calendar the matter for hearing by the Board and shall send notice to any person named as a respondent by the Director as the cause of the injury.



- (b) At the hearing, the Director shall summarise his findings and present his recommendation for compensation. The respondent shall be given the opportunity to reply. Thereupon, the hearing shall be closed and the Board shall vote upon the Director's recommendation. In considering the Director's recommendation, the Board need not determine whether the Director has established that the purported injury to the environment was negligently or intentionally caused. The sole criteria for determining liability under this part shall be whether the respondent was the direct or indirect cause of that injury. If the Board so finds, it shall order the respondent to compensate the Government for the injury caused.
- (c) In determining the amount to be awarded to the Government, the Board shall order compensation for the damage caused to the public health or environment, including the flora and fauna of Botswana, where that damage can be quantified in Pula. Where the amount of damage cannot be quantified, there shall be a presumption of liquidated damages in the amount of 10,000 Pula (ten thousand Pula) for each day of unauthorised use or discharge, which amount shall be awarded unless the respondent is able to rebut the presumption by demonstrating that the damage incurred amounts to less than the presumed amount.
- (d) The Board's vote on the Director's recommendation shall be considered final for purposes of appeal when it is rendered, and unless appealed by a petition for writ of mandamus filed within 30 days of the notification in writing of the Board's vote, the Board's decision shall be considered final for all purposes.
- (e) In the event a petition for a writ of mandamus is filed with the High Court, the Court's review shall be limited to a review of the record of proceedings before the Board and, in conducting that review, the High Court shall affirm the Board's order if there is any substantial evidence in the entire record of proceedings to support the Board's action.

- (f) In any such proceedings before the High Court, the board shall be represented by the Attorney-General.

## PART IX

### PENALTIES

51. Notwithstanding any other provision in this Act regarding the payment of compensation, any person who makes an unauthorised use of water or an unauthorised discharge or who violates any term or condition contained in any water use or discharge permit is guilty of a criminal offence. Upon a finding of a violation by the Board any such person shall be fined by the Board in an amount not exceeding 500 Pula (five hundred Pula) if it is the person's first violation. If it is other than a first offence, the person shall be fined by the Board in an amount not exceeding 1000 Pula (one thousand Pula) and the matter shall be referred to the Attorney-General for criminal prosecution. Upon conviction, such person shall be sentenced to a term of imprisonment not exceeding 3 (three) months for a second offence and not exceeding 1 year (one year) if the offence is other than a second offence.

## PART X

### MISCELLANEOUS POWERS AND PROVISIONS

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

- (b) Upon the receipt of any such application the Secretary shall serve notice of the application on the owner and occupier of the land over which a servitude is sought and on any other persons known to be interested in the land.
- (c) Any interested person may notify the Secretary that he objects to the creation of the servitude under this section or that he desires to be heard on the subject of compensation.
- (d) The Board shall consider any objections made to the Secretary and shall give an opportunity of being heard to all persons who so request. It may thereafter create such servitude as it may consider appropriate or refuse to create a servitude and may make an ancillary order in connection therewith including provision for the payment of compensation; provided that any interested party may appeal to the High Court any order by the Board under this subsection awarding or denying compensation.
- (e) Where the water right in respect of which a servitude is created has been made appurtenant to the land of the holder of the water right, then a servitude created by the Board may be made appurtenant to such land as a praedial servitude but not otherwise.
- (f) If the person enjoying the benefit of a servitude fails to pay such compensation as directed or to construct any bridges and other works which the Board may require him to construct within such time as is therefor allowed, or fails to maintain or repair such bridges or other works after being required to do so by the Board, the Board may by notice in writing to that person and to the Registrar of Deeds terminate the servitude.
- (g) Any compensation due under this section which remains unpaid may be sued for as a civil debt.

- (h) any servitude created by agreement between the holder of a water use permit and any other person may be made appurtenant to the land of the holder of the water use permit as a preadial servitude where the water right in respect of which the agreement is made is appurtenant to such land; provided that no such agreement shall operate to create a servitude appurtenant to the land unless and until a copy of the agreement shall have been forwarded to the Secretary by the holder of the water use permit.
  - (i) Any servitude created in terms of this section shall be registered in the Deeds Registry within six months of its creation in such manner as may be prescribed, and unless it is so registered shall terminate on the expiry of six months from the date of creation.
53. (a) The Director and all persons authorised by him may, at all reasonable times, enter upon any land and may inspect any works constructed or under construction thereon and may take measures to ascertain the quantity of water abstracted or capable of being abstracted by means of such works or otherwise.
- (b) If in the opinion of the Director any works are so constructed, maintained or used or are being so constructed, as to constitute a danger to life, health or property, he may require any person for the time being enjoying the benefit of those works to carry out such repairs or to effect such additions or modifications to such works or to carry out such demolitions or to change the use of the works in such manner as he may consider necessary and may by notice in writing suspend any water use permit until he is satisfied that such requirement has been fulfilled and thereupon the right of use shall cease for the period of the suspension.
- (c) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of sub-section (a).

54. (a) The Board, upon petition of the Director, may by notice in writing require any person :
- (i) who has constructed or extended or caused to be constructed or extended any works contrary to the provisions of this Act or to any other provisions not inconsistent with the provisions of this Act, under which such person was required or authorised to construct or extend the same or cause them to be constructed or extended; or
  - (ii) whose water right or existing right in respect of which any works are in existence has been terminated under the provisions of this Act or has otherwise come to an end, to modify, demolish or remove such works within such period, not being less than thirty days, as may be specified in the notice.
- (b) If any person fails to comply with a notice served on him under sub-section (a), it shall be lawful for the Director to cause such works to be modified, demolished or removed and to recover the cost of the modification, demolition or removal from the person in default by civil suit.
- (c) Failure to comply with a notice given under sub-section (a) shall be an offence and the offender shall be liable to the penalties prescribed in Section 51.
55. (a) The Director and all persons authorised by him may at all reasonable times enter upon any land for the purpose of making such investigations and surveys as the Director may consider necessary in the interest of the conservation and best use of water in Botswana, and may establish and maintain on any such land, without other authority than this Act, hydrological stations and other works for the purpose of obtaining and recording information and statistics as to the hydrological conditions of Botswana.

- (b) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of sub-section (a) but compensation shall be payable for all damage done and for any land occupied for the construction of works. In the absence of agreement such compensation shall be determined by the High Court on the application of the owner or occupier or of the Director.
56. (a) The Board shall notify the Secretary of every grant or renewal of a water use or discharge permit made by it and of the variation, termination, diminution, modification or suspension of a water use or discharge permit and of any servitude created or terminated by it, and the Secretary shall enter the same in the register of water rights.
- (b) Any person shall, on application to the Secretary, be entitled to receive certified or uncertified extracts from the registers of water use, discharge permits or driller's licences.
- (c) Extracts from the registers of water use, discharge permits or driller's licenses certified to be under the hand of the Secretary shall be admissible in evidence in all legal proceedings, civil or criminal, without proof that they are under the hand of the Board or Director and be prima facie evidence of the facts recorded therein.
57. The Director may with the approval of the Board delegate his functions under this Act, either in whole or in part, and either in respect of the whole of Botswana, or any portion thereof, to such officer or officers in the public service as he may designate by writing under his hand.
58. This Act shall bind the State.

PART XIAPPEALS

59. (a) Except as otherwise provided in this Act, any person who is aggrieved by the refusal of the Secretary to record any existing or inherent water right, or by the refusal of the Board to issue water use permit, discharge permit or by any terms or conditions made a part of any water use permit, or discharge permit, may appeal to the Minister.
- (b) Further, any person who is aggrieved by the variation, suspension or termination of any water use or discharge permit, or by any action taken in connection with any application for a driller's licence or by any unauthorised water use, waste discharge or drilling may appeal to the Minister.
- (c) Finally, any person who is aggrieved by the declaration of any special protection area or by any requirement that any work should be required, added to, altered, demolished or renewed or that any works be changed, may appeal to the Minister.
- (d) In reviewing any matter appealed, the Minister shall limit his or her review to the administrative record developed before the Board and shall base his or her decision thereon.
- (e) Any person aggrieved by a decision of the Minister may appeal that decision to the High Court. In deciding such appeal, the High Court shall limit its review to the administrative record developed before the Board and the Minister and shall affirm the decision of the Minister if it is supported by any substantial evidence in the administrative record.

ANNEX II

PROPOSED AMENDED WATERWORKS LAW





AN ACT TO PROVIDE FOR THE CONSTITUTION OF WATER AUTHORITIES IN TOWNSHIPS (AND VILLAGES) TO CONFER CERTAIN DUTIES AND POWERS UPON SUCH WATER AUTHORITIES, TO PROVIDE FOR THE ACQUISITION OF EXISTING WATERWORKS AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO.

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PART 1

Preliminary

1. This Act may be cited as the Waterworks Act.
2. 1) In this Act, unless the context otherwise requires:
 

"date of acquisition"	means the appointed date for the acquisition of an undertaking in terms of Section 6(1);
"land"	does not include buildings or land underneath buildings;
"meter"	means an apparatus for measuring water and any meter box, metal box cover and indicator marking the position and size of such meter;
"occupier"	means any person in occupation of the premises or any part of the premises in connection with which the word is used;
"owner"	means the person for the time being receiving the rent of the premises in connection with which the word is used whether on his own account or as agent or trustee for any other person or the person who would receive the rent if the premises were let to a tenant;
"premises"	includes land, buildings and structures;

- "pollution" means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any surface or underground water, so as to render it less fit for any beneficial purpose for which it is, or may reasonably be used, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants.;
- "service" means all pipes, cisterns, cocks, fittings and other appliances (excepting any meter as herein defined) through which water flows or is intended to flow from the waterworks or which are or may be used for the purpose of supplying any premises from the waterworks;
- "undertaking" means any business for the supply of water to the public;
- ("waste" means a use of water which is excessive or unreasonable in the circumstances; or which, in the opinion of the Waterworks Authority, is beyond the uses contemplated to be served when the Waterworks area was established;)
- "waterworks area" means an area declared as a waterworks area and defined under section 3.

"Water Authority" means in relation to any waterworks area, the authority appointed under section 4 in respect of that waterworks area;

"waterworks" means reservoirs, dams, weirs, tanks, cisterns, tunnels, adits, wells, boreholes, filters, settling tanks, purifying plant, conduits, aqueducts, mains, pipes, foundations, stand-pipes, hydrants, taps, pumps, engines and all other structures and appliances for obtaining, storing, purifying, conveying, distributing, measuring or regulating waters.

- 2) All or any of the powers and duties conferred or imposed on a Water Authority under this Act may, subject to the Water Authority's control, be exercised and performed by the officers, servants and agents thereof, and all references in this Act to a Water Authority shall be construed accordingly.
3. The Minister by notice in the Gazette may declare any area in which an undertaking exists or in which he considers that a public water supply should be established to be a waterworks area for the purposes of this Act and shall define the boundaries of such area.
4. The Minister shall by notice in the Gazette appoint a Water Authority for every waterworks area.

PART II

Duties and Powers of Water Authority  
(to secure a water supply)

5. A Water Authority shall for the purpose of securing an adequate supply of water to the inhabitants of the waterworks area acquire rights to take water, and construct, make, purchase, expropriate or take over, and manage, beyond as well as within the limits of the waterworks area, all such waterworks as may in the opinion of the Water Authority be necessary and expedient for the purpose of taking, impounding, appropriating, storing, conveying or supplying such water, and shall construct, make, purchase, expropriate or take over, and manage, such premises and servitudes as it may deem requisite for the purpose of such waterworks:

Provided that no property of any description, or interest therein or right thereover, shall be expropriated or taken over in terms of this section by a Water Authority without the agreement of every person entitled to such property, interest or right unless it is expropriated or taken over in the interests of public health or in order to secure the development or utilisation of any property for the purpose first mentioned above, and that where any property is expropriated or taken over without such agreement adequate compensation shall be promptly paid by the Water Authority and any dispute as to the interest or right of any person in or over the said property, the legality of the expropriation or taking over, or the amount of any compensation to which any person may be entitled by reason thereof shall be determined in accordance *mutatis mutandis*, with the provisions of the Acquisition of Property Act, and for the purpose of such determination and for the purpose of obtaining prompt payment of compensation any person having an interest in or right over the property shall have all the right of access to the High Court provided in the said Act.

- 6.
- 1) If on the declaration of a waterworks area an undertaking already exists in such area, the Water Authority shall have the right, in the interests of public health, town and country, planning or land settlement or in order to secure the development of utilisation of any property for the better supply of water to the community, of acquiring the undertaking by serving personally or by registered post on the owner of the undertaking, within six weeks of such declaration a notice setting out the appointed date for the acquisition of the undertaking.
  - 2) The Minister shall, before the date of acquisition, make a vesting order having as from the date of acquisition such operations as is provided in sub-section (3).
  - 3) The vesting order shall operate as follows:
    - a) so as to transfer and vest in the Water Authority without any conveyance, assignment or transfer whatsoever, free from all charges, encumbrances, rights or obligations of any nature,
      - 1) all the immovable property and corporeal movable property owned and used by the owner of the undertaking for the purposes of the undertaking at the date of the vesting order;
      - ii) all the immovable property and corporeal movable property paid for by the owner of the undertaking and used or employed by him for the purposes of the undertaking at the date of the vesting order; and
      - iii) such servitudes over land owned by the owner of the undertaking as the

Minister may deem requisite for the purposes of the undertaking and specify in the vesting order;

- b) so as to transfer and vest in the Water Authority all book debts and other moneys owing to the owner of the undertaking on account of that undertaking at the date of the vesting order and the right to sue for, recover and give receipts for such debts and money; and
  - c) so as to transfer to the Water Authority the rights and liabilities of the owner of the undertaking under any contract in respect of a work which is in the course of construction, extension or repair at the date of the vesting order
7. 1) Where a notice in terms of section 6 (1) has been served on the owner of an undertaking such owner shall, until the date of acquisition, carry on the undertaking in the ordinary course of business and maintain it in as efficient condition as it was in before the giving of the notice, and shall not without the previous consent in writing of the Water Authority given either generally or specially (which he shall apply for if it is necessary for the purpose aforesaid):
- a) sell, dispose of or let or hire out for more than three months any immovable property or corporeal movable property owned and used or, having been paid for by such owner, used or employed by him for the purpose of the undertaking; or
  - b) undertake any new works estimated to cost more than (P1000 (one thousand Pula) ) in all.

- 2) Where the Water Authority suffers any damage by reason of any contravention by the owner of the undertaking of sub-section (1), the amount of such damage shall be deducted from the compensation payable in respect of the undertaking in terms of section 10.
- 8.
- 1) Where a notice in terms of section 6 (1) has been served on the owner of an undertaking such owner shall:
    - a) produce to an officer or agent of the Water Authority authorised by the Minister and permit such officer or agent to make extracts from and take copies of such books of account, records and other documents, and shall supply to such officer or agent such information as the officer or agent may reasonably require for the purpose of enabling the Water Authority to take over easily and without interruption the undertaking; and
    - b) preserve all books of account, records and other documents relating to the undertaking until they are handed over to the Water Authority in terms of paragraph (a) or, if they are retained by the owner of the undertaking, until twelve months have elapsed after the date of acquisition.
  - 2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and liable to a fine of (not to exceed P10 000 (ten thousand Pula) and to imprisonment for one year.
- 9.
- 1) Notwithstanding section 7, where after the service of a notice in terms of section 6(1), the owner of the undertaking lessens or discontinues the supply of water to any premises otherwise than by reasons of vis major or in the ordinary course of business



or carries on the undertaking in such manner as is, in the opinion of the Minister, contrary to section 7(1), the Minister may authorise any officer or agent of the Water Authority to enter upon the premises of the undertaking and forthwith to do all such things as such officer or agent may consider necessary for the maintenance and continuation of the supply of water from the undertaking.

- 2) Such officer or agent shall work the undertaking for and on account of the owner of the undertaking and at his risk and expense. rendering the balance of the net revenue derived from the undertaking to the said owner.
- 3) No such entry shall prejudice or affect the security of any debenture holder or mortgagee or his right of enforcing such security.
- 4) The Minister shall not revoke any such authority before the date of acquisition, unless he is satisfied that the causes for which the authority was given have been removed.
- 5) Any owner or officer, servant or agent of such owner who refuses or fails to comply to the best of his ability with any lawful requirement of any officer or agent of the Water Authority in the exercise of his powers and the execution of his duties under this section shall be guilty of an offence and liable to a fine of (P1000 (one thousand Pula) and to imprisonment for six months.
- 6) Any person who:
  - a) threatens, resists or hinders or obstructs, or uses foul, abusive or insulting language towards or at, any officer or agent of the Water Authority in the exercise of his powers and the execution of his duties under this section; or

b) falsely holds himself out to be an officer or agent of the Water Authority,

shall be guilty of an offence and liable to a fine of (P1000 (one thousand Pula) ) and to imprisonment for six months.

10. 1) Adequate compensation shall be promptly payable by the Water Authority to any person having an interest in or right over an undertaking acquired in terms of section 6, and any dispute as to such an interest or right, the legality of the acquisition, or the amount of compensation to which such person may be entitled by reason of the acquisition shall be determined in accordance, *mutatis mutandis*, with the provisions of the Acquisition of Property Act and for the purpose of such determination and for the purpose of obtaining prompt payment of compensation any such person shall have all the rights of access to the High Court provided in the said Act:

Provided that the basis on which the amount of compensation payable to the owner of the undertaking shall be determined shall be that stated in the succeeding provisions of this section and not that stated in section 16 of the said Act.

- 2) In determining the compensation to be paid under subsection (1) the Board of Assessment shall have regard to the following:
- a) the fair market value at the date of acquisition by the Water Authority of any immovable property, machinery, plant, apparatus, materials and works transferred to the Water Authority by operation of Section 6(3)(a), due regard being had to the nature and condition of such immovable property, machinery, plant, apparatus, materials and works and to the state of repair thereof and to the circumstances that they are in such

- a position as to be ready for immediate working and to the suitability of the same for the purposes of the undertaking;
- b) the value as assessed by the Board of Assessment of any book debts and other moneys and of any rights and liabilities transferred to the Water Authority by operation of section 6(3)(b) and (c); and
  - c) the excess over the amounts assessed under paragraphs (a) and (b) of the sum that in the opinion of the Board of Assessment represents the reasonable capital value of the net maintainable income that would in the opinion of the Board of Assessment accrue to the undertaking were it not purchased after deduction from such net maintainable income of the estimated net income from any assets not acquired and interest derived from the investment of depreciation, renewal, reserve and other surplus revenue funds.
- 3) For the purposes of sub-section (2) the net maintainable income of the acquired undertaking shall mean the annual income that in the opinion of the Board of Assessment would accrue to the owner of the undertaking after payment of all charges thereon (including any tax other than income tax to which the undertaking may have been liable) and in computing the net maintainable income of the acquired undertaking the Board of Assessment shall take into account:
- a) the past profits of the undertaking to the extent that they are shown in the audited accounts of such undertaking in respect of the last five complete financial years preceding acquisition or such shorter period as may have elapsed since the undertaking commenced business and to the

extent that they are in the opinion of the Board of Assessment not excessive having regard to the following:

- i) the suitability of the amount of the charges for maintenance in relation to the physical condition of the assets;
  - ii) the sufficiency of the provisions made for depreciation of assets;
  - iii) the adequacy of the provision made whether by way of sinking fund or otherwise in order to preserve the capital invested in the undertaking where the ability of the undertaking to carry on business is restricted by the terms of any agreement or concession, whether by way of a condition that all or any of the assets shall be surrendered, by a restriction upon the duration of the agreement or concession, or by any other means;
  - iv) the appropriateness of the sums charged in respect of fees or other emoluments or remuneration of directors or partners;
  - v) the adequacy of any other charges, and
  - vi) the reasonableness of the rates of charge made by the owner of the undertaking for the supply of water to consumers provided that a maximum charge laid down by statutory authority shall not be regarded as any criterion;
- b) The fact that if the undertaking had not been acquired it would have been subject to statutory

provisions relating to the fixing of prices and the limitation of profits; and

- c) the terms of any agreement or concession affecting the acquired undertaking.
- 4) For the purposes of sub-section (3) the reasonable capital value of the net maintainable income shall be the capital sum which would in the opinion of the Board of Assessment yield an annual sum equivalent to the net maintainable income if invested in a business concern or otherwise in Botswana at such rate of interest (not being less than six per centum nor more than fourteen per centum per annum) as in the opinion of the Board of Assessment is reasonable.
11. 1) Compensation payable in respect of an undertaking acquired by the Water Authority under section 6 shall be discharged as soon as the amount has been agreed or otherwise finally determined under section 10, together with interest thereon at the rate of four per centum per annum as from the date of acquisition to the date of final payment:
- Provided that where any sum is paid or offered for payment by the Water Authority on account of such compensation such interest shall be payable on the amount of such compensation from the date of acquisition to the date of such payment or offer and thereafter on any balance to the date of final payment.
- 2) Where any undertaking acquired as aforesaid is subject to any mortgage or any other legal charge whatsoever, the compensation or such part thereof as may be sufficient to discharge the mortgage or other charge, shall be paid to the mortgagee or person in whose favour the charge operates, in satisfaction in whole or in part of the sum secured by the mortgagee or which is subject to the charge.

12. 1) A Water Authority may, with the consent of the District Commissioner, lay down any waterwork in any public place, and may maintain, take up, renew, inspect, attend to, examine and test any waterwork laid down in a public place.
- 2) For the avoidance of doubt it is declared that the ownership of a waterwork laid down in any public place in accordance with this section in no case vests or shall vest in the owner of such public place by prescription, inherence or in any other manner save with the written agreement of the Water Authority.
13. 1) A Water Authority may, after giving reasonable notice in writing to the owner or occupier, carry any service through, across or under any land whatsoever and may, at any time, upon giving such reasonable notice as circumstances permit, or in case of serious emergency without giving notice, enter upon any land for the purpose of repairing, maintaining, renewing, removing, altering, inspecting, attending to or testing any such service thereon, without paying any compensation but making good or at its option paying for damage done or occasioned through such operations;
- Provided that a Water Authority shall not enter upon any land in the exercise of any powers conferred by this section except in the interests of public health or in order to secure the development or utilisation of any property for the better supply of water to the community.
- 2) For the avoidance of doubt it is declared that the ownership of a service carried through, across or under any land in accordance with this section in no case vests or shall vest in the owner of such land by prescription, inherence or in any other manner save with the written agreement of the Water Authority.

3) Any such service as is referred to in sub-section (2) shall be immune from landlord's hypothec and from execution levied or attachment laid on property of the owner or occupier of the land in question.

14. 1) A Water Authority may for any of the purposes in this section mentioned at any time between sunrise and sunset, or in the case of urgency at any other time, enter upon any premises into, upon or under which any service or meter connected with the waterworks is or is being fixed:

a) to inspect any such service laid or fixed or being laid or fixed and to ascertain whether there is or is likely to be any waste, leakage, obstruction, damage or pollution or misuse of water in connection therewith and to ascertain whether such service complies with the terms of this Act relating thereto;

b) to fix, inspect, read, check, clean or remove or replace any meter or similar appliance of the Water Authority used or to be used in connection with the supply; and

c) to disconnect the supply of water from any premises or to diminish, withhold or divert the supply of water through or by means of any service wholly or in part.

2) A Water Authority for the purposes of ascertaining whether any offence has been committed in connection with any water which it is entitled to take may enter upon any premises and take samples of any material or effluent which in its opinion may cause pollution of such water.

15. Without prejudice to the recovery or retention of any charges, meter rent, or other sums of money due or to become due under

the provisions of this Act, a Water Authority may in its discretion diminish, turn off or divert the supply of water at any premises or place whenever:

- a) any money due to any such Water Authority in respect of the supply of water to such premises or place has remained unpaid for a period of fourteen days after service, which may be effected by post, on the person supplied of an account showing such moneys to be due; or
- b) the person supplied at such premises or place (threatens to waste, is wasting or has wasted water or has otherwise) failed to comply with any of the requirements of this Act; or
- c) such diminution, turning off or diversion is necessary to enable repairs, maintenance or extensions of the water system to be carried out; or
- d) there is a shortage of water.

16. A Water Authority may from time to time:

- a) by written notice in the Gazette prohibit generally throughout the waterworks area the use of water for any purpose or purposes specified in the notice; or
- b) by written notice to any consumer or consumers prohibit the use of water by such consumer or consumers for any purpose or purposes specified in the notice.



PART III

Supply of Water by Water Authority

- (17. The Water Authority shall supply water within the waterworks area. Where, in the opinion of the water authority, it is economically and technically feasible to do so, and where it is consistent with the National Development Plan, water shall be supplied to any premises within the area on application being made by the owner or occupier thereof.)
18. The charges for water supplied by a Water Authority may, at the option of the Water Authority:
- a) be assessed on the quality of water supplied to the consumer as registered by a meter installed on the consumer's premises by the Water Authority;
  - b) be assessed on the quantity of water supplied to the consumer as computed in some manner approved by the Minister; or
  - c) be otherwise arrived at by agreement with the consumer upon such terms and conditions as the Minister may approve.
19. The Water Authority, with the approval of the Minister may prescribe:
- a) the charges to be paid per unit of quantity for water supplied by metered or computed quantity;
  - b) any minimum charges to be paid for water so supplied;
  - c) the rent to be paid for meters installed by the Water Authority; and
  - d) the time within which such charges and rents shall be paid, and the terms and conditions of payment, including the payment of deposits,
- by consumers generally or by any class of consumers.

20. Notwithstanding anything in this Act contained, the Minister may authorise a Water Authority to supply water outside its waterworks area. The Minister may prescribe the charge for water so supplied and the conditions on which a supply shall be authorised;

Provided that any charge so prescribed shall not be less than the charge for a similar supply within the waterworks area.

PART IVOffences and Supplementary

21. Any person who tampers with or wilfully or negligently injures any waterworks, or any service through or with which water from the waterworks is supplied, or any meter installed by a Water Authority under this Act, or unlawfully draws off, diverts or takes water from the same, or pollutes or causes risk of pollution to any such water, or allows any foul liquid, gas or other noxious matter to enter into the waterworks or any pipe or fitting connected therewith, shall be guilty of an offence and liable to a fine of (P2000 (two thousand Pula) and to imprisonment for six months.
22. 1) Any person who wilfully or negligently misuses or wastes or causes or allows to be misused or wasted any water from the waterworks shall be guilty of an offence and liable to a fine of (P250 (two hundred and fifty Pula) .
- 2) The occupier of any premises where any water from the waterworks is wilfully or negligently misused or wasted shall be guilty of an offence and liable to a fine of (P250 (two hundred and fifty Pula) ).
23. Any person who, without the consent of the Water Authority, alters or causes or permits to be altered any service through which water is supplied to any premises shall be guilty of an offence and liable to a fine of (P1000 (one thousand Pula) and to imprisonment for six months.
24. Any person who alters or causes or permits to be altered any service with intent to avoid the accurate measurement or register of water by means of any meter or to obtain a greater supply of water than he is entitled to, and to avoid payment therefor or with such intent tampers with any meter shall be guilty of an offence and liable to a fine of (P500 (five hundred Pula)) or, in default of payment thereof, to imprisonment for three months and any service so altered or meter

injured may be replaced or repaired by the Water Authority at the expense of any person convicted under this section and the cost so incurred by the Water Authority may be recovered upon the order of the court as if it were a fine imposed by the court.

25. Any person who uses any water supplied to him by the Water Authority for purposes other than those for which the water is supplied or for purposes in contravention of any prohibition under section 16 which may, at the time, be in force shall be guilty of an offence and liable to a fine of (P250 (two hundred and fifty Pula)); such fine shall not prejudice the right of the Water Authority to recover by civil suit the charge for the water improperly used.
26. 1) Any person who constructs or erects any building or structure over any main or pipe laid by a Water Authority without the written permission of such Authority and subject to such conditions as such Authority may require for the protection of such main or pipe shall be guilty of an offence and liable to a fine of (P1000 (one thousand Pula) and to imprisonment for six months.
- 2) Where any building or structure has been erected over any main or pipe contrary to sub-section (1) the Water Authority shall have power to carry out such works as may be necessary to protect the main or pipe and may remove if necessary such building or structure or any part thereof and the person responsible for erecting the building or structure shall be liable to pay the Authority the cost of any such protection or removal.
27. No owner or occupier of any premises within a waterworks area and no owner or occupier of any premises supplied with water under this Act, shall supply water to any other person or permit any other person to take water except:

- a) for use or consumption on those premises; or
- b) for the purpose of extinguishing a fire; or
- c) with the approval of the Water Authority,

a person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of (P250 (two hundred and fifty Pula)) or in default of payment thereof to imprisonment for one month, and to imprisonment for one month.

28. Whoever puts or allows to be put or to remain or to accumulate on any premises occupied or owned by him or controlled by him or his servant or agent who does not remove or cause to be removed or take such steps as may be necessary to prevent, upon notice in writing from the Water Authority, any foul, noisome or injurious matter or any earth, deposit or excavated material in such manner or place that it may be washed, fall or be carried into the waterworks shall be guilty of an offence and liable to a fine of (P1000 (one thousand Pula)) and for every day during which such matter, earth, deposit or material is allowed to remain after notice in writing from the Water Authority requiring the same to be removed, to a further fine of (P100 (one hundred Pula)) for each day during which the offence continues.

29. Any person who:

- a) washes or bathes in any part of the waterworks or in any vessel used by the Water Authority for supplying water to the public;
- b) washes, throws or causes or permits to enter into any part of the waterworks or in any vessel used by the Water Authority for supplying water to the public, any animal, clothing, material or thing; or
- c) wrongfully opens or closes any lock, cock, valve, sluice or manhole belonging to the waterworks,

shall be guilty of an offence and liable to a fine of (P250 two hundred and fifty Pula) or, in default of payment thereof to imprisonment for one month, and to imprisonment for one month.

- 30.
- 1) The Minister at such intervals as he may consider appropriate shall appoint one or more Government officials as Inspectors to investigate the affairs of a Water Authority and to report thereon to him in such manner as he directs.
  - 2) Every Water Authority and the officers, servants and agents of every Water Authority whose affairs are investigated by virtue of sub-section (1) shall, if so required by an Inspector so appointed, furnish the Inspector with all information in its possession, and produce to him and give him access to the books, documents, records, accounts and other sources of information of the Water Authority.
  - 3) An Inspector appointed under sub-section (1) together with such assistants and advisers as he may deem necessary, shall for the purpose of any investigation in terms of this section, have access to or over any premises at any reasonable time by the shortest and most practicable route reasonable in the circumstances.
  - 4) Any officer, servant or agent of a Water Authority who refuses or fails to comply to the best of his ability with any lawful requirement of an Inspector in the exercise of his powers and the execution of his duties under this section shall be guilty of an offence and liable to a fine of P200 and to imprisonment for six months.
  - 5) Any person who:
    - a) threatens, resists or hinders or obstructs, or uses foul, abusive or insulting language towards or at, an Inspector in the exercise of his powers and the execution of his duties under this section; or

b) falsely holds himself out to be an Inspector, shall be guilty of an offence and liable to a fine of P200 and to imprisonment for six months.

31. 1) The Minister may, by notice in the Gazette, make regulations for the more effective carrying out of the provisions of this Act and in particular and without prejudice to the generality of this power may make regulations relating to all or any of the matters following and may apply all or any such regulations to all waterworks areas or to any waterworks area in particular, viz

- a) the suspension of any water supply;
- b) the prevention of waste of water;
- c) the inspection and testing of meters, pipes, fittings and other appliances whereby or in connection with which water is supplied to any premises; and
- d) the forms of all notices required to be given and sent under this Act and the issuing and service thereof.

2) The regulations may provide that any person who contravenes any provision thereof or who fails to comply with any order, requirement or condition lawfully issued to or imposed on him by virtue of any regulation and with which it is his duty to comply shall be guilty of an offence. The regulations shall specify what penalty may be imposed for each offence thereby created and may also provide different penalties in the case of successive or continuous offences but no such penalty shall exceed a fine of P200 and imprisonment for six months.





