

BOTSWANA DRAFT WATER BILL, 2005

ARRANGEMENT OF SECTIONS

PART 1 – Preliminary

- 1 Short title
- 2 Interpretation
- 3 Purpose of Act

PART II - Rights in Water

- 4 Vesting of water
- 5 Water for domestic use
- 6 Prohibition of other rights to water than by this Act
- 7 Abolition of common law riparian rights
- 8 Water rights and construction permits

PART III – General powers and functions of Minister

- 9 General powers and functions of Minister
- 10 Delegation of powers and functions

PART IV – Water administration

- 11 Water Resource Council
- 12 Functions of Council
- 13 Funds and staff of Council
- 14 Water management areas and governing bodies
- 15 Powers and functions of water management area bodies
- 16 Village water development committees

PART V- Information, monitoring and assessment

- 17 Collection of water resources data
- 18 Power to require records
- 19 False or misleading information
- 20 Power to enter land and investigate water resources

PART VI – National water resources strategy

- 21 Preparation of national water resources strategy
- 22 Contents of strategy
- 23 Guidelines for preparation of strategy

24 Effect of approval of strategy

PART VII – Application for water rights and for construction of hydraulic works

25 Application for water rights and permit for works
26 Conditions of issue of water right or construction permit
27 Compensation
28 Power to exempt hydraulic works
29 Rights may be made appurtenant to land
30 Right to underground water on property of another
31 Inspection of hydraulic works
32 Existing water rights and hydraulic works
33 Grant of water right not guarantee of supply

PART VIII – Revision, variation and cancellation

34 Suspension and variation of water rights
35 Limitation of right to take or use water
36 Cancellation of water rights
37 Cancellation or variation for failure to use water
38 Cancellation or variation for public purposes
39 Variation or surrender of water rights

PART IX - Waste discharge permits

40 Permit to discharge waste
41 Declaration of prohibited wastes
42 Application for permit
43 Reference of proposed permits to other public authorities
44 Recognition of existing rights to discharge waste

PART X – Protection of water resources

45 Pollution control
46 Penalties for pollution
47 Emergency incidents
48 Declaration of aquifer protection zones

PART XI – Regulation of use of water and water charges

49 Regulation of use of water
50 Water charges

PART XII - Servitudes

51 Servitudes

- 52 Compensation payable for grant of servitudes
- 53 Cancellation of servitudes

PART XIII – *Safety of dams*

- 54 Safety of dams

PART XIV – *Shared water course systems*

- 55 International waters and agreements

PART XV - *General*

- 56 Register of rights and permits
- 57 Compensation for damage
- 58 Guidelines for Council
- 59 Standard conditions
- 60 Powers of entry
- 61 Obligations in relation to entry upon land
- 62 Minister's power to give directions

PART XVI - *Appeals*

- 63 Appeals

PART XVII – *Offences and miscellaneous provisions*

- 64 Offences
 - 65 Award of damages
 - 66 Exemption from liability
 - 67 Act to bind State
 - 68 Regulations
 - 69 Repeals and savings
- SCHEDULE: Water Resources Council

BILL
-entitled-

An Act to provide for the better investigation, use, control, protection, conservation, development, management and administration of water resources; to establish the Water Resources Council and to provide for its functions and powers; to repeal the Water Act, Chapter 34:01 and the Boreholes Act, Chapter 34:02; and to provide for matters incidental to and connected with the foregoing.

PART 1 – Preliminary

1 Short title and date of commencement

- (1) This Act may be cited as the Water Act, 2005.
- (2) This Act shall come into operation on a date to be fixed by the Minister by Order.

2 Interpretation

In this Act, unless the context otherwise requires-

"aquifer" means a geological structure or formation or an artificial land-fill permeated or capable of being permeated permanently or intermittently with water;

"authorised officer" means a person authorised to exercise any power or perform any function in terms of this Act.

"borehole" means any borehole, well, excavation or other opening in the ground or any natural or artificially constructed or improved underground cavity which can be used for the purpose of-

- (a) intercepting, collecting, obtaining or storing any groundwater or removing water from an aquifer; or
- (b) collecting data and information on underground water or water in an aquifer; or
- (b) disposing of any water or waste below the surface of the ground;

but does not include:

- (i) a well constructed solely by hand; or
- (ii) any class of borehole exempted in whole or in part from the provisions of section 28 of the Act;

“catchment” means the area from which rainfall will drain into a watercourse or

watercourses through surface flow to a common point or common points;

“conservation” means the efficient use and saving of water through such measures as the use of water saving devices, water efficient processes, water demand management and rain water harvesting;

construct" includes alter, improve, maintain and repair;

"Council" means the Water Resources Council established by section 11;

"domestic use" means-

- (a) the use of water by persons ordinarily resident on the land where the water and the use occur or by persons having lawful access to any water, directly from any such water resource for the purpose of-
 - (i) reasonable household use;
 - (ii) watering such livestock units, not excessive in relation to the capacity of the water resource and the needs of other users, as may be prescribed from time to time in respect of a specified water resource;
 - (iii) irrigation of a subsistence garden;
- (b) the use of any water by any person in emergency situations for basic human needs or fire fighting; and
- (c) subject to any appropriate local authority by-laws, use of any water by any person for recreational purposes;

"environment" means all aspects of the surroundings of man including the physical, biological, economic, cultural and social aspects;

"groundwater" means all water occurring or obtained from below the surface of the ground including water occurring in or obtained from any borehole or aquifer but excluding water contained in hydraulic works, not being a borehole, for the distribution, reticulation, transportation, storage or treatment of water or waste;

"hydraulic works" means any borehole, structure, earthwork or equipment wherever situate, constructed, installed or used for or in connection with water investigation, use, control, management or administration and includes any hydraulic works, excavations or boreholes by means of which-

- (a) any water or waste may be collected, used, extracted, diverted, stored, conducted, regulated, controlled, supplied, discharged, treated or measured;
- (b) land may be drained;

- (c) flooding or erosion of land or siltation of water may be mitigated or prevented;

"land" includes premises;

"livestock unit" means a mature animal with a live-weight of 500 kilogrammes and for the purposes of this definition-

- (a) one head of cattle shall be deemed to be 0.7;
- (b) one horse shall be deemed to be 0.6;
- (c) one donkey shall be deemed to be 0.4;
- (d) one goat shall be deemed to be 0.15; and
- (e) one sheep shall be deemed to be 0.15;

of a livestock unit;

“minimum aquatic ecological needs” means such quantity and quality of water as may be determined in terms of this Act or any other law, to be necessary in any circumstances for the sustainable protection and preservation of the integrity of ecosystems;

"Minister" means the Minister of Minerals, Energy and Water Resources or any other Minister to whom the administration of this Act may be assigned;

"person" includes corporate, unincorporated and public bodies;

"pollute" means to alter, directly or indirectly, the physical, thermal, chemical, biological or radioactive properties of any water so as to render such water 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 of persons, or of animals, birds, fish or aquatic life, or other organisms or to plants and "pollution" shall be construed accordingly;

"premises" include any building or structure whether of a temporary or permanent nature and any vehicle, caravan or vessel;

"prescribe" means prescribe by regulation;

“protection”, in relation to a water resource, means-

- (a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable manner;

- (b) prevention of the degradation of the water resource; and
- (c) the rehabilitation of the water resource;

"public authority" includes any Minister, government department or statutory body;

"repealed Act" means the Water Act Chapter 34:01 repealed under section 69;

"servitude" means a right to enter on land owned or occupied by another person for any or all of the following purposes -

- (a) to construct hydraulic works on or in that land, or
- (b) to store water on or in that land, or
- (c) to carry water, drainage or waste under, through or over that land;

"subsistence garden" means a garden, not exceeding such area in extent as may be prescribed, appurtenant to, or used in connection with, a dwelling or group of dwellings for the subsistence of the residents thereof, the produce of which is predominantly consumed by such residents;

“surface water” includes all water found on or below the bed of a river, and a wetland and includes water in any hydraulic works;

"use" in relation to water, includes-

- (a) to withdraw, pump, extract, take or store water;
- (b) impede or divert the flow of water in a watercourse;
- (c) altering the bed, banks, course or characteristics of a watercourse;
- (d) removing, discharging or disposing of underground water in the course of any activity;
- (e) discharging into a water resource, waste or water which has been heated in any industrial or power generation process;

"waste" includes sewage and any other matter or thing whether wholly or partly in solid, liquid or gaseous state, which if added to any water resource, may cause pollution of the water resource;

"waste discharge permit" means a permit granted under section 42;

“watercourse” means-

- (a) a river or spring, whether or not it flows regularly or intermittently;
- (b) a wetland, lake or dam into which or from which water flows;

(c) any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse;
and includes the bed and banks of any such watercourse;

“water management area” means an area established as a water management unit in terms of section 22 (1)(c) within which a water management body will administer the protection, use, development, conservation, management and control of water resources;

“water management body” means a body established in terms of section 14 for the management of a water management area;

"water resource" includes a watercourse, surface water and groundwater;

"water right" means an authorisation to take or use water granted by the Council under Part VII;

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or is periodically covered with shallow water and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

3 Purpose of Act

The purpose of this Act is to-

- (a) promote the rational management and use of the national water resources through-
 - (i) the progressive introduction and application of appropriate standards and techniques for the investigation, use, control, protection, conservation, management and administration of water resources;
 - (ii) the co-ordination of all public and private activities which may affect the quality, quantity, distribution, use or management of water resources;
 - (iii) the co-ordinated allocation of responsibilities for the investigation, use, control, protection, management or administration of water resources;
- (b) promote the provision of a clean, safe and sufficient supply of water for domestic purposes to all persons;
- (c) allow for the orderly development and use of water resources for purposes other than domestic purposes, such as the watering of stock, irrigation and agriculture, industrial, commercial and mining uses, the generation of hydroelectric or geothermal energy, navigation, fishing, preservation of flora and fauna and

recreation;

- (d) control pollution and to promote the safe storage, treatment, discharge and disposal of waste which may pollute water.

PART II- *Rights in water*

4 Vesting of water

- (1) The water resources of Botswana vest in the Republic.
- (2) The prime responsibility for the investigation, development, control, allocation, protection, management, conservation and administration of the water resources of Botswana for domestic, stock, irrigation, agricultural, industrial, commercial, mining, hydroelectric, geothermal, navigation, fishing, preservation of flora and fauna and other beneficial purposes in a sustainable and equitable manner for the benefit of all persons shall lie with the Republic and exercised on its behalf by the Minister and the Council in accordance with this Act

5 Water for domestic use

- (1) Subject to section 35 and to the quantity, quality of and demand for water in the water resource concerned, where a person has lawful access to a naturally occurring water resource, he shall be entitled to such water for domestic use.
- (2) The right-
 - (a) to use water for any other purpose whatsoever; or
 - (b) to construct, operate or maintain any hydraulic works;shall subsist only in terms of a water right or permit granted in terms of this Act.
- (3) Any person who contravenes this section commits an offence and is liable to a fine not exceeding or to imprisonment for a period not exceeding or to both.
- (4) In any proceedings for a contravention of this section, proof of the existence on any land of any pipe, channel, tank or other means by which water is capable of being used is *prima facie* evidence that water was used in contravention of this section at the time the pipe, channel, tank or other means is proved to have existed.

6 Prohibition of other rights to water than by this Act

- (1) Notwithstanding the provisions of any other enactment to the contrary, no other right to-
 - (a) use any water;
 - (b) construct or operate any hydraulic works;
-

- (c) cause or allow any waste to come into contact with, or to be discharged directly or indirectly into any water resource;

shall subsist or be recognised except in terms of this Act.

- (2) Any person who contravenes this section commits an offence and is liable to a fine not exceeding or to imprisonment for a period not exceeding or to both.

7 Abolition of common law riparian rights

No owner or occupier of any land shall, by reason thereof, have any right that is enforceable against the Government or any other person-

- (a) to take or use water; or
 - (b) to obstruct or divert the flow of water; or
 - (c) to affect the quality of any water, or
 - (d) to receive any particular flow of water, or
 - (e) to receive a flow of water of any particular quality;
 - (f) to construct, operate or maintain any hydraulic works;
- other than a right conferred by or acquired in terms of this Act.

8 Limitation on right to take or use water

Water rights and permits for the construction of hydraulic works may be obtained in accordance with Part VII.

PART III – *General powers and functions of Minister*

9 General powers and functions of Minister

- (1) For the purposes of this Act, the powers and functions of the Minister shall be-
 - (a) to develop policies to guide the efficient and integrated planning of the optimum development, utilisation, conservation and protection of the country's water resources in the national interest;
 - (b) to ensure the availability, equitable and efficient allocation of water resources to all citizens and the rest of the environment and for rural, urban, industrial, mining, agricultural needs and other needs as necessary in accordance with the country's national priorities from time to time.
- (2) In the exercise of his powers and discharge of his functions, it shall be the duty of the Minister to-

- (a) provide overall policy guidelines on the development, utilisation and protection of water resources, ensuring that all components of the water cycle are recognised as interdependent;
- (b) ensure that water resources are managed, utilised, conserved and protected in a manner consistent with the national environmental strategy provided for under any enactment;
- (c) secure the proper management and protection of groundwater resources ensuring the conduct of any necessary hydro-geological surveys and investigations;
- (d) encourage participation by consumers and public authorities in the planning, development, protection, efficient utilisation and conservation of water having special regard to its scarcity and value, to promote the use of water-saving technologies and to ensure the proper pricing of water;
- (e) secure the provision of affordable water to consumers in under-privileged communities;
- (f) secure the necessary funding for, and as necessary in the national interest, undertake, the development of water resources;
- (f) give effect to any international agreement to which Botswana is a party, on shared water course systems in a spirit of mutual co-operation;
- (g) maintain data through research and compilation of information obtained in terms of this Act on hydrological and hydro-geological matters, including-
 - (i) the quality, quantity and sources of the country's water resources;
 - (ii) the utilisation of the water resources;
 - (iii) the resources needed for the efficient management of water resource;
- (h) regulate the supply of water by any person to consumers with respect to the quality of service and cost to consumers without however, impairing the efficiency and viability of the water supply operation;
- (i) generally to fix criteria for the allocation and issue of water rights and standards for the development, utilisation, protection and conservation of water resources.

10 Delegation of powers and functions

- (1) The Minister may delegate to the Council, any public authority or any officer in his or other Ministry any of his functions and powers under this Act other than his power to delegate, make any regulations or prescribe any matter in terms of this Act.
- (2) A delegation under subsection (1) shall not prevent the exercise of a power so delegated and may be revoked in writing in the discretion of the Minister.
- (3) A power or function delegated in terms of this section shall be exercised or performed in accordance with the terms of the delegation.
- (4) A person to whom any power or function has been delegated shall, by virtue of this

section, have the authority to exercise his discretion in respect of the delegated matter.

(5) Any person exercising powers and functions delegated to him under this section may receive written or oral submissions from any person on any matter which has been delegated to him.

PART IV – *Water administration*

11 Water Resources Council

- (1) The Water Resources Council is hereby established.
- (2) The Council consists of fifteen members appointed by the Minister of whom -
 - (a) one must be the Permanent Secretary of the Ministry responsible for water resources;
 - (b) one must be appointed on the nomination of the Minister responsible for agriculture;
 - (c) one must be appointed on the nomination of the Minister responsible for local government;
 - (d) one must be appointed on the nomination of the Minister responsible for development planning;
 - (e) one must be appointed on the nomination of the Minister responsible for trade and industry;
 - (f) one must be appointed on the nomination of the Minister responsible for geological survey;
 - (g) one must be appointed on the nomination of the Minister responsible for sanitation and waste management;
 - (h) one must be appointed on the nomination of the Minister responsible for environmental affairs;
 - (i) one must be appointed on the nomination of the Minister responsible for local government to represent district councils;
 - (j) five must be members of the public, appointed by the Minister to represent each representing village water development committees, civic organisations involved in water and environmental matters, water supply organisations, water consumers in urban centres and water consumers in major villages;
 - (k) one member appointed by the Minister having regard to his experience and knowledge in water affairs.
- (3) Where, under subsection (2), a Minister is required to nominate a person for appointment to the Council, the Minister must, after consultation with the Chairman of the Council, nominate the most senior officer in the department for which he is

responsible who possesses skills and experience in the management of water resources and relevant to the functions of the Council.

- (4) The member appointed under paragraph (2)(a) shall be chairman of the Council.
- (5) The Minister must appoint one of the members of the Council nominated by it to be Deputy Chairman of the Council.
- (6) The Director shall be the Secretary of the Council.
- (7) The provisions of the Schedule apply to the Council and its members.
- (8) The Minister may, by order published in the *Gazette*, repeal, amend or add to any provision of the Schedule.

12 Functions of Council

- (1) The functions of the Council are-
 - (a) to undertake the functions conferred on it in terms of this Act;
 - (b) to advise the Minister on the exercise by the Minister of his powers and functions in terms of this Act;
 - (c) to co-ordinate the execution of a comprehensive programme of hydrological and hydro geological investigations;
 - (d) to co-ordinate and direct the preparation of the national water resources strategy or any revision thereof before its approval by the Minister;
 - (e) at the request of the Minister or otherwise, to advise any other Minister who may request advice on issues of policy relevant to the investigation, use, control, protection, management and administration of water resources;
 - (f) to advise the Minister on any regulations he is required to make in terms of this Act and on any amendments to the law relating to water or to the administration of that law;
 - (g) to advise the Minister on the resolution of disputes between agencies involved in water management which may be referred to it;
 - (h) to exercise any powers and discharge any functions delegated to it by the Minister in terms of this Act;
 - (i) to undertake such other functions as may be conferred upon or referred to it from time to time.
- (2) In performing its functions, the Council must have regard to-
 - (a) the general purpose of this Act and any other enactment in force relevant to the management of water resources;
 - (b) any relevant international agreement regulating the use of water, to which Botswana is a party;
 - (c) the operative national water resources strategy;
 - (d) any regulations or guidelines for the exercise of any of the functions of the Council

- as prescribed by the Minister from time to time;
- (e) any other policy on the management, protection or conservation of water resources as directed by the Minister or any public authority in writing from time to time.
- (3) The Council may delegate to any public authority or officers thereof any of its functions and powers under this Act other than its power to delegate and subsections (2) to (5) of section 10 shall apply with appropriate modifications to a delegation in terms of this subsection.

13 Funds and staff of Council

- (1) The funds of the Council shall consist of such moneys as may be appropriated for the purpose by Parliament.
- (2) Subject to the laws governing the public service, there shall be appointed or seconded to the Council such officers as may be considered necessary for the discharge of the functions of the Council.

14 Water management areas and governing bodies

- (1) For the purpose of ensuring that local communities are an integral part of the management of water resources, the Minister, in consultation with the Council and the local government authority concerned, may establish water management areas and their boundaries.
- (2) In establishing water management areas, the Minister shall take into account-
 - (a) watercourse catchment boundaries;
 - (b) the distribution of well fields or aquifer systems;
 - (c) social and economic development patterns;
 - (d) local authority boundaries;
 - (e) efficiency considerations;
 - (f) any other considerations as the Minister sees fit.
- (2) In establishing a water management area, the Council shall-
 - (a) provide the description thereof, its proposed name and state the manner in which the management body will be funded;
 - (b) state the feasibility of the proposed water management area body in respect of technical, financial and administrative matters;
 - (c) describe the significant water resources in the water management area, and information on the existing demand, use, protection, development and conservation;
 - (d) cause the appointment of the water management area body to be notified by the Minister by notice in the *Gazette*.

(3) The members of the governing body of a water management area body shall be appointed by the Minister on the recommendations of the Council made after consultation with the interested persons.

(4) The appointments must balance the interests of water users, potential water users, sectoral interests, local government and environmental interest groups.

(5) Additional members may be appointed by the Minister to ensure that conservation, protection and pollution control aspects are appropriately represented.

(6) The Minister may make regulations prescribing the terms and conditions of appointment and service of members of the water management body, its meetings and procedures for the dispatch of its business and such other matters as the Minister considers necessary and convenient to be prescribed.

(7) The Minister may, by notice in the *Gazette*, change the name of a water management area body, alter its area of jurisdiction or abolish the body.

15 Powers and functions of water management area body

(1) A water management area body shall be a body corporate, capable of suing and being sued in its own name and, subject to this Act, of performing functions as a body corporate may by law.

(2) The functions of the water management area body shall be to-

(a) investigate and advise interested persons on the availability, protection, use, development, conservation, management and control of water resources in its water management area;

(b) contribute to the development of the national water resources strategy;

(c) in conjunction with the Council, develop the area's water resources strategy and co-ordinate its implementation;

(d) co-ordinate the activities of water users within its management area;

(e) promote community participation in the protection, use, development, conservation, management and control of the water resources in its area.

16 Village water development committees

(1) The Minister, in consultation with the Council and the district council concerned, may establish village water management committees for any village based on the village development committees operating in district council areas as may be appropriate having regard to the nature of the water resources available in the area of the village concerned.

(2) It shall be the responsibility of the committee to-

(a) advise residents on the protection, use, development, conservation, management and control of water resources in the village area;

- (b) ensure that water is used in compliance with any regulations applicable to the water resource concerned, particularly regulations with regard to the watering of stock and subsistence gardens and any notice made by the Minister in terms of section 35 and to report any contraventions thereof to the appropriate authority;
- (c) promote community participation in the protection, use, development, conservation, management and control of the water resources in its area;
- (b) contribute to the development of the national water resources strategy.

PART V – Information, assessment and monitoring

17 Collection of water resources data

- (1) The Minister shall maintain a national information database including hydrological and hydro-geological information and information on water resource quality, ground water, water rights, hydraulic works, waste discharge permits and servitudes.
- (2) The Minister may, by regulations, provide for-
 - (a) the collection, collation and analysis of data concerning the occurrence, flow, characteristics, quality and use of any water resource or waste;
 - (b) the systematic gauging and recording of rainfall and of the volume, flow and quality of any water resource or waste;
 - (c) the construction and operation of gauging, recording and monitoring stations and investigation and monitoring boreholes and the removal thereof;
 - (d) the sampling and analysis of any water or waste;
 - (e) the investigation, use, control, protection, management or administration of any water resource or waste;for the purpose of creating an appropriate database necessary to assess, among other matters-
 - (i) the quantity of water in various water resources;
 - (ii) the quality of water resources;
 - (iii) the use of water resources;
 - (iv) the rehabilitation of water resources;
 - (v) compliance with resource quality objectives;
 - (vi) the integrity of ecosystems; and
 - (vii) activity which may affect water resources.
- (3) Regulations made by the Minister in terms of subsection (2) may provide for guidelines, procedures, standards and methods of information monitoring, collection and format of the information and the nature, type and timing of the information.
- (3) The Minister may do anything necessary or expedient for or in connection with the exercise of the powers conferred by this section.

18 Power to require records

(1) The Minister may, by notice published in the *Gazette* or served on any person, require any person, class of persons and, after consultation with the relevant public authority, any public authority to-

- (a) keep and maintain such records;
- (b) install, operate and maintain such equipment;
- (c) take such samples, and submit them to such analysis;
- (d) provide such information to such person;

for the purposes of section 17, as may be set out in the notice.

(2) Anything required to be done by a notice given in terms of this section shall be done at the expense of the person to whom the notice applies, unless the Minister otherwise determines.

19 False or misleading information

In furnishing any information required in terms of this Act, any person who furnishes false or misleading information, or causes or allows to be made, any statement or representation that is to his knowledge false or misleading in a material particular commits an offence.

20 Power to enter land and investigate water resources

(1) Subject to section 61, an authorised officer may enter any land and may construct, install and equip gauging, recording and monitoring stations or investigation or monitoring bores and ancillary hydraulic works on any land and make any surveys or take any measurements or samples for the purpose of this Part and may alter or remove the same.

(2) Anything attached to the land in terms of this section shall not form part of the land for the purpose of giving the owner or occupier of the land a proprietary interest in it.

PART VI - *National water resources strategy*

21 Preparation of national water resources strategy

(1) The Minister shall, by notice in the *Gazette*, publish a national water resources strategy and shall state where it may be inspected.

(2) Water resources shall be protected, used, developed, conserved, managed, controlled and administered in accordance with the national water resources strategy.

(3) The Council shall, on the basis of data generated in terms of this Act, co-ordinate and direct the development of the strategy and make recommendations thereon to the Minister.

(4) The strategy may be reviewed and up-dated at such intervals as the Council may recommend to the Minister but in any case, such intervals shall not exceed five years.

(5) The Minister shall consider any recommendations for the strategy made to him by the Council before he approves and publishes it.

(6) Before establishing the strategy or any component thereof-

(a) the Minister shall publish a notice in the *Gazette* or by such other means as the Minister considers appropriate to bring the contents of the notice to the attention of all members of the public and interested persons-

(i) setting out a summary of the proposed strategy or the component concerned and the place where it can be inspected;

(ii) inviting written representations and specifying the date, being not less than 90 days from the date of the notice, before which and the address to which the representations shall be submitted; and

(b) the Council shall consider all representations received on or before the specified date.

22 Contents of strategy

The national water resources strategy shall-

(a) set out the strategies and objectives, plans, guidelines, procedures and the institutional arrangements relating to the protection, use, development, conservation, management and control of water resources within the framework of existing government policy in order to achieve-

(i) the objects of the Act;

(ii) any water resource standards prescribed in terms of this Act or any other law;

(b) provide for at least the quantity and quality of water required for-

(i) basic human needs;

(ii) minimum aquatic ecological needs;

(iii) international obligations;

(iv) use of strategic importance;

as may be prescribed in terms of this Act or any other law;

(c) state the total quantity of water available within each water management area and its surpluses and deficits;

(d) contain estimates of present and future national water requirements and how it is proposed to meet them;

- (e) provide for inter-catchment water transfers between water surplus and water deficit areas;
- (f) set out principles for water conservation and demand management generally and by reference to specific areas;
- (g) state the objectives to be achieved in respect of water resource quality for specified areas and uses;
- (h) contain objectives for the establishment of institutions to undertake water resource management;
- (i) determine the inter-relationship between institutions involved in water resource management;
- (j) provide for an integrated management of water resources in any area.

23 Guidelines for preparation of strategy

The Minister may prescribe guidelines for the preparation of the national water resources strategy, including guidelines for consultations with interested parties including water management areas and village water development committees.

24 Effect of approval of strategy

- (1) The Minister shall give notice in the *Gazette* of his approval of the national water resources strategy and the date on which the strategy will come into operation.
- (2) After approval of the national water resources strategy-
 - (a) every person, the Government or any public authority shall give effect to the strategy; and
 - (b) subject to subsection (3), no public funds may be expended upon the planning or construction of any hydraulic works by the Government or any public authority and no agreement for the provision of planning or construction funds for any hydraulic works from any source whatsoever may be entered into unless a proposal for such hydraulic works is included in the national water resources strategy.
- (3) Subsection (2)(b) shall not apply to any hydraulic works for which the planning and construction costs are together estimated not to exceed such amount as may be fixed by the Minister by notice in the *Gazette* and which, in the opinion of the Council, are consistent with the existing strategy.
- (4) Any hydraulic works planned or constructed in terms of subsection (3) shall be incorporated in the national water resources strategy when it is next revised.

PART VII – Application for water rights and construction of hydraulic works

25 Application for water right and permit for works

- (1) No person may-
 - (a) use any water, other than for domestic use, except under a water right granted by the Council on application in terms of this Act;
 - (b) construct any hydraulic works except in terms of a permit granted by the Council on application in terms of this Act.
- (2) An application for a water right or the construction of hydraulic works shall be made to the Council in such form, containing such information and accompanied by such fee as may be prescribed.
- (3) The Council may, in writing, require the applicant to provide such other additional information, including an assessment, in accordance with the requirements of the Environmental Impact Assessment Act, 2005, by a competent person of the likely impact of the proposed use on the water resource, as the Council may consider necessary.
- (4) The Council shall, at the expense of the applicant, give public notice of any application in terms of subsection (1) in the prescribed manner, inviting any person who has any interest in the matter to make written representations to the Council in the manner and within the time prescribed.
- (5) Subject to this Act, the Council shall consider the application and all representations made in respect thereof and, after consulting any persons or public authorities which it considers necessary, may grant or to dismiss the application.
- (6) In considering any application, the Council shall take into account such matters as may be relevant in the circumstances, including-
 - (a) the relevant aspects of the national water resources strategy;
 - (b) the present and likely demands for allocation of water from the water resource;
 - (c) the likely effect of the water use in question on the water resource and on other users;
 - (d) the investments already made by the applicant in respect of the water use in question;
 - (f) the domestic use and minimum aquatic ecological needs from the water resource;
 - (g) the strategic importance of the water use in question; and
 - (h) the probable duration of the undertaking for which the water is required.

26 Conditions of issue of water right or construction permit

- (1) Subject to section 59, an application may be granted subject to such conditions as the Council may fix.
- (2) Without limiting the generality of subsection (1), the conditions of any water right or permit for the construction of hydraulic works may include, as appropriate-

- (a) the payment of such fees or charges for water use as may be prescribed;
- (b) the water use or uses for which right or permit is issued;
- (c) the manner in which any land where water is used under the water right is to be drained;
- (d) the payment of any compensation by a person or public authority to whom a water right or permit has been issued to any other person or public authority, as the circumstances require;
- (e) the duration of the water right, which shall be a period of not less than two years from the date of issue and not exceeding
- (f) the periods of review of the right or permit;
- (g) the quantity or quality of water that may be used;
- (h) the quantity and quality of the return flow and the treatment to which it must be subjected;
- (i) the preparation of and adherence to a water resources management strategy approved by the Council and the implementation of management practices, conservation measures, pollution control and use of monitoring equipment, as the Council may direct from time to time;
- (j) the monitoring and analysis of and reporting on water use through measurement by way of specified measuring and recording devices;
- (k) providing or making available water to any other person specified in the water right;
- (l) in the case of hydraulic works, the inspection upon completion of the works approval thereof prior to operation and use;
- (m) in the case of water for storage, the quantity of water or percentage of flow which may be taken and stored, the rate of abstraction, the method of construction of or abstraction from a borehole, the description of the limit of the land on which the water may be used and place from where water may be taken; and
- (n) the times when water may or may not be used.

27 Compensation

Any compensation payable for any financial loss suffered in consequence of any grant of a water right which adversely affects any existing lawful water use shall be in accordance with section 8 (1)(b) of the Constitution but shall disregard any reduction in the existing lawful water use arising as a result of:

- (a) providing for domestic use and minimum aquatic ecological needs;
- (b) the rectification of an over-allocation of water use from the resource in question;
- (c) rectification of an inequitable or disproportionate water use.

28 Power to exempt hydraulic works

Subject to such guidelines as the Minister may establish from time to time, the Council may, on such conditions as it considers fit, exempt-

- (a) any public authority; or
 - (b) any class of persons or hydraulic works,
- from applying for a permit.

29 Rights may be made appurtenant to land

(1) On an application to the Council in the prescribed manner, the Council may declare that a water right or permit granted in terms of this Part is appurtenant to land described in that right.

(2) The declaration in terms of subsection (1) may be made at the time a water right or permit is granted or at any time thereafter.

(3) A water right or hydraulic works which have been declared to be appurtenant to land may be enjoyed and enforced by any person who is entitled to possession of the land for the time being.

(4) Where more than one person becomes entitled by any means to the possession of part of, or a share in, land to which a water right or hydraulic works have been declared appurtenant, the Council shall, on the application of the persons concerned, in the prescribed manner, determine how and the conditions upon which the water right or hydraulic works are to be shared, if at all.

30 Right to underground water on property of another

A water right may be granted to use ground water on land not owned by the applicant if the owner of the land consents thereto or there is good reason to grant the application.

31 Inspection of hydraulic works

Where a permit for the construction of hydraulic works is granted subject to a condition that the hydraulic works must be inspected and approved by an authorised officer, no inspection, approval or certification shall-

- (a) be deemed to imply that the hydraulic works are properly designed or constructed;
- (b) support or justify any claim whatsoever against the State, the Council or their officers in connection with such hydraulic works.

32 Existing water rights and hydraulic works

(1) Any person who was entitled to the use water in terms of a water right granted under or recognised by the repealed Act shall be deemed to continue to do so in terms of this Act, subject to the exercise by the Minister of any of the powers conferred on him by sections 35, 38, 59 and 62 in relation to such use.

(2) Subject to subsection (3), any hydraulic works constructed in terms of a right granted under or recognised by the repealed Act shall be deemed to have been constructed in terms of this Act.

(3) The Minister may-

- (a) require any such hydraulic works to be registered;
- (b) require that any water obtained from, through, or as a result of such hydraulic works be used only in terms of a water right granted under or recognised by this Act;
- (c) exercise the powers conferred by sections 60 and 62 in relation to such hydraulic works.

33 Grant of water right not a guarantee of supply

The grant of a water right shall in no way be construed as a guarantee of the availability of water.

PART VIII - Revision, variation and cancellation of water rights

34 Suspension and variation of water rights

(1) If, in the opinion of the Council, the water available from any water source or in any area is, or is likely to become, of insufficient quantity or quality for the needs of all people using water from that source or in that area, the Council may, by notice in writing to the holders of water rights from that source or in that area, suspend or vary all or any of those water rights either temporarily or permanently.

(2) In varying or suspending water rights under this section, the Council may alter or attach conditions to any water right, including a condition requiring compensation to be made by one holder of a water right to another as the circumstances may require.

(3) Subject to the requirements of paragraph 8(1)(b) of the Constitution of Botswana, any compensation required to be made under subsection (2) shall be of such type and assessed in such manner as may be prescribed.

35 Limitation of right to take or use water

(1) The Minister may, either generally by notice published in the *Gazette* or in a

newspaper circulating in the area to which the notice relates or in particular cases by notice in writing served on the owner or occupier of any land to which the notice relates or in such other manner as considers appropriate-

- (a) define the places from which, the manner in which, and the times at which water may be used or may not be used;
 - (b) in times of actual or anticipated shortage of water, fix the amount of water which, and purposes for which, water can be used by any person or regulate, restrict or prohibit the doing of any act under a water right or permit granted under this Act;
 - (c) temporarily or permanently prohibit the use of water from any source for any purpose, or temporarily or permanently prohibit the doing of any act pursuant to a water right or permit when, in the opinion of the Minister, the use of water would be dangerous to health.
- (2) Any person who contravenes this section commits an offence.

36 Cancellation of water rights

If, in the opinion of the Council, the holder of a water right has -

- (a) failed to comply with any express or implied condition to which the water right is subject;
- (b) taken or used more water than he is entitled to take in any period;
- (c) taken or used water for a purpose other than that for which he is entitled;
- (d) failed to comply with any provision of this Act;

the Council may cancel the water right in the prescribed manner.

37 Cancellation or variation for failure to use water

If, in the opinion of the Council, the holder of a water right has not made full beneficial use of that right in the preceding two years, the Council may vary or cancel the water right in the prescribed manner.

38 Cancellation or variation for public purposes

(1) If the Council is of the opinion that, in order to make water available for a public purpose, it is necessary to cancel or vary a water right, the Council may subject to any right to compensation in terms of section 57, cancel or vary that water right in the prescribed manner.

(2) The Minister may, by notice published in the *Gazette*, declare any purpose to be a public purpose for the purposes of this section.

39 Variation or surrender of water rights

On the application, or with the consent, of the holder of a water right, the Council may vary or cancel the right or amend any of the conditions attached thereto.

PART IX - Waste discharge permits

40 Permit to discharge waste

(1) No person may discharge waste directly or indirectly into any water resource except in accordance with the provisions of this Act.

(2) Any person who contravenes this section commits an offence and is liable to the penalties set out in section 46.

41 Declaration of prohibited wastes

(1) The Minister may, in any area declare-

(a) wastes which may not be discharged;

(b) trades, classes of premises or particular premises in respect of which waste may not be discharged;

directly or indirectly into any water resource except in accordance with a waste discharge permit issued in terms of this Part.

(2) No person who-

(a) is responsible for the production, storage, discharge or deposit of any waste;

(b) is engaged in any trade;

(c) owns or occupies any premises,

declared under subsection (1) shall cause or permit any waste to be discharged directly or indirectly into any water resource except in accordance with a waste discharge permit issued in terms of this Part.

(3) A person who contravenes subsection (2) commits an offence and is liable to the penalties set out in section 46.

42 Application for permit

(1) An application for a waste discharge permit shall be made to the Council in such form, containing such information and accompanied by such fee as may be prescribed.

(2) The Council may, in writing, require the applicant to provide such other additional information, including an assessment, in accordance with the requirements of the Environmental Impact Assessment Act, 2005, by a competent person of the likely impact

of the proposed use on the water resource, as the Council may consider necessary.

(3) The Council shall, at the expense of the applicant, give public notice of any application in terms of subsection (1) in the prescribed manner, inviting any person who has any interest in the matter to make written representations to the Council in the manner and within the time prescribed.

(4) Subject to this section, the Council shall consider the application and all representations made in respect thereof and, after consulting any persons or public authorities which it considers necessary, may grant or to dismiss the application.

(5) In considering any application, the Council shall take into account such matters as may be relevant in the circumstances, including-

- (a) the relevant aspects of the national water resources strategy;
- (b) the likely effect of the waste discharge in question on the water resource and on other users;
- (c) the investments already made by the applicant in respect of the waste discharge;
- (d) the health and environmental impacts of the discharge;
- (e) the capacity of the applicant to meet the prescribed standard of treatment of waste required for that water resource before discharge.

(6) Subject to section 59, the Council may grant an application for a waste discharge permit subject to such conditions as it may fix.

(7) Without limiting the generality of subsection (6), the conditions of any waste discharge permit may-

- (a) specify, restrict or prohibit certain types, volumes or concentrations of waste which may be produced, stored, discharged or deposited;
- (b) specify the manner in which waste is to be stored, treated, discharged, deposited or otherwise dealt with;
- (c) require the holder of the permit, at his cost, to install pollution control or waste treatment equipment of a type specified by the Council and to operate that equipment in a manner prescribed by the Council;
- (d) require the holder to take measures specified by the Council for the purpose of minimizing the possibility of pollution occurring as a result of any activity conducted or proposed to be conducted on land owned or occupied by the holder;
- (e) require the holder, at his cost, to provide monitoring equipment specified by the Council;
- (f) require the holder, at his cost, to carry out a monitoring programme specified by the Council to provide the Council with information and data relating to the characteristics, volume and effects of waste being produced, stored, treated, discharged, deposited or otherwise disposed of;
- (g) require the holder to do or cause to be done any other act or thing specified by the Council which the Council considers necessary for the purpose of protecting the

environment and general health or preventing, controlling or abating pollution.

(8) The Council may, in the prescribed manner and at the request of a holder of a waste discharge permit, amend the terms of that permit.

(9) The Council may delegate any of its functions under subsection (7) to, or as may be appropriate, exercise any such functions in consultation with, any appropriate public authority.

(10) The Council may, at any time, amend the terms of, suspend the operation of, or cancel a waste discharge permit if, in the opinion of the Council, it is necessary for the protection the environment or the prevention of the pollution of any water resource.

43 Reference of proposed permits to other public authorities

(1) Before the grant or amendment of the terms of a waste discharge permit, the Council shall refer the proposal, together with a copy or summary of the application and appropriate plans, specifications and other information relevant to the matter to-

- (a) the department responsible for environment affairs;
- (b) the Director of Health Services of the Ministry of Health; and
- (c) any other public authority which may, in terms of any other Act, have an interest, directly or indirectly, in the proposed permit or amendment of any permit;

and shall take such further steps as may be required in terms of any such other Act concerning the proposed permit or amendment.

(2) The Director of Health Services and other Government department of public authority to which proposal is referred under subsection (1) shall inform the Council in writing within 30 days after the day on which the proposal was referred it-

- (a) whether or not there are any objections to the proposal;
- (b) the additional conditions, if any, upon which the application should be granted or amended.

(3) The Council shall take into account any reports and comments received under subsection (2) in granting or refusing to grant the proposed permit or amendment.

(4) A written report of the Senior Medical Officer of Health objecting to the grant of a waste discharge permit or an amendment thereof on the grounds that public health is likely to be endangered by the proposed permit or amendment shall entitle the Council to reject the application.

44 Recognition of existing rights to discharge waste

Any person who discharges waste directly or indirectly into any water resource in terms of a right or permit granted or recognised by or in terms of the repealed Act or any other law shall continue to do so only in terms of a permit granted in terms of this Act.

PART X – Protection of water resources

45 Pollution control

(1) Any owner, occupier or person in control of any land on which any operation is or was conducted or on which any other situation exists which causes, has caused or is likely to cause the pollution of a water resource shall take all reasonable measures to prevent any such pollution from occurring.

(2) The measures referred to in subsection (1) may include measures to–

- (a) cease, modify or control the operation causing the pollution or eliminate the source of pollution;
- (b) comply with any prescribed standard for the prevention of the type of pollution concerned;
- (c) contain or prevent the movement of pollutants;
- (d) remedy the effects of the pollution of the water source, including any disturbance to the bed and banks of the watercourse.

(3) The Council may direct any person who fails to take the measures required under subsection (1) to commence and complete taking specific measures before given dates and to ensure the diligent continued implementation of any of the measures.

(4) Where a person fails to comply or inadequately complies with a directive given under subsection (3), the Council may enter upon the land concerned and take the measures it considers necessary to remedy the situation.

(5) Subject to subsection (6), the Council may recover all costs incurred as a result of it acting under subsection (4) jointly and severally from–

- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution; and
- (b) the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner's successor-in-title; and
- (c) the occupier or person in control of or has a right to use the land at the time the operation was conducted or the situation came about; or
- (d) the occupier or person in control of or has a right to use the land who negligently failed to prevent the conduct of the operation or the situation from coming about.

(6) The Council may in respect of the recovery of costs under subsection (5), claim from any other person who, in the opinion of the Council, benefited from the operation, to the extent of such benefit.

(7) The costs claimed under subsection (5) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.

(8) If more than one person is liable in terms of subsection (5), the Council shall, at the request of any of the persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment shall not relieve any of them of their joint and several liability for the full amount of the costs.

46 Penalties for pollution

- (1) Any person who contravenes section 45 commits an offence and shall be liable-
- (a) in the case of a natural person-
- (i) on a first conviction, to a fine of not less than P..... and not more than or to imprisonment for a period not exceeding or to both;
 - (ii) in the case of a continuing offence, a fine of P..... for every day that the offence continues;
- (b) in the case of any corporate and unincorporated body-
- (i) on a first conviction, to a fine of not less than P..... and not more than and to imprisonment for a period not exceeding or to both;
 - (ii) in the case of a continuing offence, a fine of P..... for every day that the offence continues.
- (2) A conviction in terms of this section shall not, notwithstanding the penalty for the continuing offence, be a bar to further prosecutions for the offence.
- (3) In any proceedings for a contravention of section 45, proof of the existence on any land of any drain, pond, dump or other means by which any waste is capable of being conveyed, retained or deposited in such a manner as to come in contact, directly or indirectly, with any water is *prima facie* evidence that waste came into contact with such water in contravention of this section at the time that such drain, pond, dump or other means is proved to have existed.
- (4) In any proceedings for the contravention of section 45 (3), an application may be made on behalf of the Council for an order requiring that person to comply with the direction within such time as the court may order or to pay into court a sum being not less than eighty *per centum* of the cost estimated by the Council of remedying all damage caused or likely to be caused by the alleged contravention of that section and of reinstating the environment so far as possible to the condition in which it would have been but for the alleged contravention.

47 Emergency incidents

- (1) In this section “incident” includes any incident or accident in which a substance-

- (a) pollutes or has the potential to pollute a water resource; or
- (b) has, or is likely to have, a detrimental effect on a water resource.
- (2) In this section, “responsible person” includes any person who-
 - (a) is responsible for the incident;
 - (b) owns the substance involved in the incident; or
 - (c) was in control of the substance involved in the incident at the time of the incident.
- (3) The responsible person, any other person involved in the incident or any other person with knowledge of the incident shall, as soon as reasonably practicable after obtaining knowledge of an incident, report to-
 - (a) the Council;
 - (b) the Police; or
 - (c) the Minister.
- (4) A responsible person must-
 - (a) take all reasonable measures to contain and minimise the effects of the incident;
 - (b) undertake appropriate clean-up operations;
 - (c) remedy the effects of the incident; and
 - (d) take such measures as the Council may either verbally or in writing direct within the time specified by the Council.
- (5) The Council may in its discretion having regard to any re-assessment of the effect of the incident, revoke the directive given in terms of subsection (4)(d).
- (6) If-
 - (a) the responsible person fails to comply or inadequately complies with a directive given in terms of subsection (4)(d); or
 - (b) it is not be possible to give the directive to the responsible person timeously;the Council may take the measures it considers necessary to-
 - (i) contain and minimise the effects of the incident;
 - (ii) undertake clean-up operations; and
 - (iii) remedy the effects of the incident.
- (7) The Council may recover all reasonable costs incurred by it from every responsible person jointly and severally.
- (8) The costs claimed under subsection (7) may include, without being limited to, labour, administration and overhead costs.
- (9) If more than one person is liable in terms of subsection (7), the Council must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment shall not relieve any of them of their joint and several liability for the full amount of the costs.
- (10) A person who contravenes this section commits an offence and is liable to the penalties set out in section 46.

48 Declaration of aquifer protection zones

- (1) Without derogating from Part X, the Minister, in consultation with, and on the advice of the Council and a water management body, may by notice in the *Gazette*, declare any specified area to be an aquifer protection zone in which all activity, except such activity as the Minister considers is not likely to have any adverse effects on the integrity of an aquifer, shall be prohibited.
- (2) A declaration made in terms of subsection (1) may-
 - (a) prescribe the boundaries of the zone, whether by reference to survey coordinates, to prominent features or otherwise;
 - (b) specify the activities that are not prohibited in respect of an aquifer and or the manner in which a specified activity may be undertaken;
 - (c) order the cessation of any activity in a protection zone and the period within which the activity shall be ceased.
- (3) No person shall, in an aquifer protection zone:
 - (a) construct or cause to be constructed any borehole for the extraction of water or disposal of waste except in accordance with this Act;
 - (b) graze or pen or cause to be grazed or penned therein any livestock;
 - (c) deposit or cause to be deposited or to flow therein, directly or indirectly, any excreta, waste water or other waste;
 - (d) bury any person or animal;
 - (e) build or erect any structure, including dwellings; or
 - (f) do anything whatsoever which is likely, directly or indirectly, to cause the pollution or depletion of water or damage any hydraulic works therein.
- (4) A declaration made in terms of this section may be revoked by the Minister in consultation with and on the advice of the Council and the water management body concerned.
- (5) No order involving the relocation of any activity shall be made without requiring compensation of such type and assessed in such manner as may be prescribed.
- (6) A person who contravenes this section commits an offence and is liable to the penalties set out in section 46.
- (7) This section shall not apply to any activity otherwise authorised in terms of this Act.

PART XI - Regulation of use of water and water charges

49 Regulation of use of water

- (1) Subject to subsection (4), the Minister may make regulations -
 - (a) limiting or restricting the purpose, manner or extent of water use;

- (b) requiring that the use of water from a water resource be monitored, measured and recorded;
 - (c) prescribing the outcome or effect which must be achieved by the installation and operation of any hydraulic works;
 - (d) regulating the design, construction, installation, operation and maintenance of any hydraulic works, where it is necessary or desirable to monitor any water use or to protect a water resource;
 - (e) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any hydraulic works, in order to protect the public and to safeguard human life and property;
 - (f) regulating or prohibiting any activity in order to protect a water resource or any aquatic habitat;
 - (g) prescribing waste standards which specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource;
 - (h) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource;
 - (i) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis;
 - (j) prescribing procedural requirements for applications for water rights, permits for construction of hydraulic works and waste discharge permits and their variation, suspension or cancellation;
 - (k) prescribing methods for making volumetric determinations of water for purposes of water use allocation and the imposition of charges; and
 - (m) prescribing-
 - (i) procedures for obtaining; and
 - (ii) the required contents of assessments of the likely impact which any proposed water right or permit issued in terms of this Act may have on the quality of the water resource in question.
- (2) Regulations made under subsection (1) may -
- (a) differentiate between different water resources and different classes of water resources;
 - (b) differentiate between different geographical areas; and
 - (c) create offences and prescribe penalties.
- (3) Regulations made under subsection (1)(g), (h) and (i) may contain -
- (a) general provisions applicable to all waste; and
 - (b) specific provisions applicable to waste with specific characteristics.

(4) When making regulations, the Minister must take into account all relevant considerations, including the need to -

- (a) promote the economic and sustainable use of water;
- (b) conserve and protect water resources or aquatic habitats;
- (c) prevent wasteful use of water;
- (d) facilitate the management of use of water and hydraulic works;
- (e) facilitate the monitoring of use of water and water resources; and
- (f) facilitate the imposition and recovery of charges.

50 Water charges

(1) For the purpose of funding the direct and related costs for the provision of water, the Minister or any other person authorised in terms of any other enactment, in consultation with the Council, fix the prices and fees which may be charged for water management and related purposes.

PART XII - *Servitudes*

51 Servitudes

(1) An applicant for, or the holder of, a water right or waste discharge permit who-

- (a) wishes to claim a servitude or to obtain an amendment of any such servitude in respect of the land of another; and
 - (b) has been unable to obtain the servitude by agreement with the owner of the land;
- may apply to the Council for the creation of a servitude over that other land.

(2) A servitude claimed in terms of subsection (1) may be a personal servitude in favour of the claimant or a praedial servitude in favour of the claimant in respect of a water right which has been made appurtenant to land.

(3) The Council shall, in the prescribed manner, give written notice of the application to-

- (a) the owner and occupier of the land; and
- (b) any other person known to have an interest in that other land;

giving such details as to the nature and implications of the servitude sought as may be prescribed.

(4) Any person with an interest in the outcome of an application made in terms of this section may give notice of his objection to the application to the Council in the manner and within the time prescribed.

(5) The Council shall consider the application and every objection thereto and after giving in the objectors an opportunity to be heard in the matter, may create such servitude as it thinks appropriate or refuse the application.

- (6) A servitude created in terms of this section-
- (a) shall be in the prescribed form;
 - (b) may make provision for ancillary matters, including-
 - (i) the construction of any works necessary to carry water or waste across the land or store water on the land;
 - (ii) the construction of fences, bridges, crossings, camps, housing or other works on the land;
 - (iii) the installation of machinery or equipment necessary for the construction of any hydraulic works;
 - (iv) the occupation, for the duration of the servitude, of as much land subject to the servitude as is reasonably required for the accommodation of people, workshops and storage purposes to the extent necessary for the control, operation and maintenance of the relevant hydraulic works;
 - (v) the amount of compensation, if any, to be paid by the applicant to the owner or occupier of, or any other person with an interest in, the land.
- (7) The applicant, the owner or occupier of, or any person with an interest in, the land may appeal to the High Court against any decision of the Council with respect to the grant of a servitude or compensation payable if the decision was made without the consent of the appellant.
- (8) If a servitude is created in respect of a water right which has been made appurtenant to land, the Council may make that servitude appurtenant to the same land as a praedial servitude.
- (9) If a person enjoying the benefit of a servitude -
- (a) fails to pay such compensation as has been directed to be paid under this section;
 - (b) fails to construct or to maintain any works associated with the servitude which he has been directed to construct under this section;
 - (c) fails to maintain the servitude area or any access roads;
- the Council may cancel the servitude and notify the person and the Registrar of Deeds accordingly.
- (10) If a person enjoying the benefit of a servitude fails to maintain any works which he has been directed to construct under this section, the owner or occupier of the land on which those works are situated may maintain or repair the works and recover the reasonable costs of so doing as a civil debt from that person.
- (11) Any compensation due under this section which remains unpaid may be sued for as a civil debt.
- (12) No servitude created by agreement may be made appurtenant to land unless-
- (a) the water right has been made appurtenant to the same land;
 - (b) the holder of the water right has provided a copy of the agreement to the Council.

(13) A servitude created under this section shall be cancelled six months after the date of its creation if the applicant does not obtain the registration and noting of the servitude against the title deed by the Registrar of Deeds.

52 Compensation payable for grant of servitude

(1) In determining the compensation payable in respect of the grant of a servitude, the High Court shall, subject to the Constitution, take into account all relevant factors including-

- (a) the nature of the servitude, including the nature and function of the hydraulic works relating to the servitude;
- (b) whether any existing hydraulic works will be used to give effect to the servitude;
- (c) the probable duration of the servitude;
- (d) the extent of the deprivation of use of the land likely to be suffered as a result of the servitude;
- (e) the rental value of the land affected by the servitude;
- (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the servitude;
- (g) the extent to which the land can reasonably be rehabilitated on termination of the servitude;
- (h) any advantage that the landowner, or other person with an interest in the land subject to the servitude, is likely to derive as a result of the servitude; and
- (i) the public interest served by any hydraulic works relating to the servitude.

(2) The High Court may determine the time and manner of payment of the compensation.

53 Cancellation of servitude

An owner of land subject to a servitude may -

- (a) if the relevant water right or permit associated with the servitude is terminated;
- (b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or
- (c) for any other lawful reason;

apply to the High Court for the cancellation of that servitude.

PART XIII - *Safety of dams*

54 Safety of dams

- (1) No dam shall be constructed except by or under the supervision of a person registered for that purpose, and in accordance with regulations or guidelines for dam construction standards and specifications made by the Minister in terms of this Act.
- (2) For the purposes of ensuring the safety of dams, the Minister, in consultation with the Council may make regulations-
 - (a) for the design, construction, installation, operation and maintenance of any dam;
 - (b) prescribing the procedure for application to the Council for approval of the drawings, specifications, design assumptions, calculations, documents and test results in respect of any proposed dam;
 - (c) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any dam, in order to protect the water resource, the public and to safeguard human life and property.
- (3) Before approval of the construction of a dam, the Council shall require the applicant to prepare an environmental impact assessment relating to the proposed dam in compliance with the requirements of the Environmental Impact Assessment Act, 2005.
- (4) The owner of a dam shall give any person authorised by the Council access to the dam to carry out a dam safety evaluation to establish whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam are acceptable dam engineering practices to enable the Council to ascertain whether-
 - (a) the owner has complied with the prescribed regulations applicable to that dam;
 - (b) the dam is safe or unsafe;
 - (c) an order should be given for specific repairs or alterations.
- (5) Any person who contravenes any regulations made in terms of this section or order given in terms of this section shall commit an offence and be liable to a fine not exceeding P..... or to imprisonment for a period not exceeding or to both.

PART XIV – *Shared water course systems*

55 International waters and agreements

- (1) For the purpose of promoting equitable and effective regional co-operation in the management of the shared water course systems of the region, the Minister shall advise Government on its rights and obligations under any bi-lateral or multilateral arrangements with regard to shared water course systems to which it is a party and to ensure appropriate representation and participation by Botswana at any international meetings held for that purpose.

(2) In the discharge of his function in terms of subsection (1), the Minister shall take into account international custom and practice and any bi-lateral or multilateral arrangements in force from time to time.

(3) The Minister shall ensure that appropriate measures as necessary shall be pursued to secure Botswana's rights to the development of its equitable share of water from shared water course systems.

(4) The Minister shall keep under review any bi-lateral and multilateral regional agreements for the purpose of promoting Botswana's interests in the mutual co-operation of States on shared waters on an equitable basis and in line with any developing international legal norms.

PART XV - General

56 Register of water rights and permits

(1) The Council shall maintain a register of all water rights, permits of the construction of hydraulic works and waste discharge permits granted or recognised under this Act and of -

- (a) any variation, modification, suspension or cancellation thereof;
- (b) any water right which is made appurtenant to land;
- (c) any servitude created over land.

(2) The Council shall provide certified or uncertified extracts from the register maintained under subsection (1) to any person who applies in the prescribed manner.

(3) An extract from the register, certified to be under the hand of the Director, shall be-

- (a) admissible evidence in all civil or criminal proceedings without proof that it is under the hand of the appropriate officer of the Council;
- (b) *prima facie* evidence of the facts recorded therein.

57 Compensation for damage

(1) If, in the exercise of powers conferred on the Minister, the Council or any officer authorised to do so in terms of this Act-

- (a) damage is caused to land; or
- (b) land is compulsorily acquired;

the owner of such land or any person with an interest in the land shall be entitled to compensation from the Minister for such damage or compulsory acquisition.

(2) For the purposes of this Act, damage to land includes any loss suffered as a result of-

- (a) loss of water;

- (b) deprivation of the possession of any part of land;
 - (c) damage to the surface of any land and to any improvements, crops or trees thereon;
 - (d) damage to stock; and
 - (e) consequential damage.
- (3) An award of compensation under this section may take the form of-
- (a) monetary compensation;
 - (b) the provision of an alternative supply of water;
 - (c) an exchange of the damaged land for other land belonging to the State or acquired by the Minister for purposes of compensation;
 - (d) any other type of award of compensation which the Minister considers appropriate in all the circumstances.
- (4) In determining the monetary compensation -
- (a) for damage to land payable under this section;
 - (b) in respect of the compulsory acquisition of any interest in land for, the purposes of this Act pursuant to any law from time to time in force relating to the compulsory acquisition of land;

no compensation shall be payable to any person in respect of the taking or use of water on, adjacent to or beneath that land, unless such taking or use results in depriving the owner or occupier of any right to use water.

(5) Subject to the requirements of paragraph 8(1)(b) of the Constitution of Botswana and the provisions of this section, compensation payable under this section shall be assessed in such manner as is prescribed.

58 Guidelines

The Minister may, from time to time, prescribe guidelines for the exercise by the Council, a water management body or a village water development committee of its powers under this Act and the Council, water management body or village water development committee shall act in accordance with such guidelines.

59 Standard conditions

- (1) The Minister may, from time to time, prescribe standard conditions to apply to any water right or permit or any class of water right or permit granted under this Act.
- (2) Standard conditions prescribed under this section apply to all water rights or permits granted or recognised after the standard conditions are prescribed.

60 Powers of entry

(1) Subject to section 61, the Minister may enter and remain on any land for the purpose of performing his functions or exercising his powers in terms of this Act and may take such measures and construct or operate such works on that land as he considers necessary for the investigation, use, control, protection, management or administration of water resources.

(2) Subject to section 61, a person authorised in terms of this Act may enter land for the purpose of-

(a) inspecting any works or any use of water; or

(b) taking any samples or making any tests;

to find out whether-

(i) water is being wasted, misused or polluted;

(ii) the terms of any water right or permit granted or recognised under this Act are being complied with;

(iii) an offence is being committed or the Act is otherwise being complied with.

61 Obligations in relation to entry upon land

(1) The Minister or any person authorised in terms of this Act may, upon written notice to the owner or occupier of any land which notice must state the purpose of the proposed entry, or at any reasonable time without prior notice but upon warrant, enter upon land for any purpose authorised by or in terms of this Act.

(2) A person entering upon any land in terms of this Act shall, upon the request of any person on the property, identify himself appropriately by presenting a certificate issued to him for that purpose.

(3) If a warrant is likely to be issued but the delay in obtaining it is likely to defeat the object of the entry, entry may be made without a warrant.

(4) Notwithstanding any provision of this section, no entry of any dwelling may be made without the consent of the occupier or without a warrant authorising entry.

(5) In exercising powers of entry in terms of this Act, the Minister, or a person authorise in terms of this Act shall-

(a) co-operate as much as possible with the owner and occupier of the land;

(b) cause as little harm and inconvenience as possible;

(c) stay on the land only for as long as is reasonably necessary;

(d) remove from the land on completing any works all plant machinery, equipment, goods or buildings brought onto the land, other than anything that the owner or occupier of the land agrees may be left there;

(e) leave the land as nearly as possible in the condition in which it was prior to entry being made.

(6) The Minister shall be liable for any nuisance or other injury done in exercising powers of entry to the land of any person other than the person whose land is entered.

62 Minister's power to give directions

(1) The Minister may-

(a) by notice in writing served on any person; or

(b) where authorised in terms of any regulations, without prior notice;

require that person, within the period specified in the notice, to do or not to do any thing or to take such measures or construct or remove such works as may, in his opinion, be necessary or desirable for the investigation, use, control, protection, management or administration of water resources, as are specified in the notice.

(2) Where a person fails to comply with a notice served in terms of subsection (1), the Minister may enter upon any land and take such measures or construct or remove such works as are necessary to ensure complete compliance with the notice and may recover the reasonable costs of so doing from that person.

PART XVI – Appeals

63 Appeals

(1) Except as provided in section 51(7), any person who is aggrieved by a decision of the Council made under this Act may appeal to the Minister in the prescribed manner.

(2) No person may appeal to the Minister against a decision of the Council to grant a water right or a servitude who did not object to the grant under the provisions of section 25(4) or 51(4).

(3) Any person aggrieved by any decision or determination of the Minister generally in terms of this Act or on an appeal from the Council in terms of subsection (2) may appeal to the High Court for a review of the decision or determination of the Minister.

(4) An appeal in terms of subsection (3) shall be made in the form and manner and within the period prescribed in the rules of the High Court.

PART XVII – Offences and miscellaneous provisions

64 Offences

(1) Any person who -

(a) subject to the provisions of any other enactment, wastes water or uses water otherwise than as permitted under this Act;

(b) fails to provide access to any information when required to do so under this Act;

- (c) fails to comply with any condition attached to any water right, permit for the construction of hydraulic works or waste discharge permit;
- (d) fails to comply with any directive issued to him in terms of this Act;
- (e) unlawfully tampers or interferes with any hydraulic work, or any seal or measuring device attached to any hydraulic works;
- (f) fails or refuses to give data or information;
- (g) refuses to perform a duty or obstructs any other person in the exercise of any power or performance of any of that person's duties in terms of this Act;
- (h) commits any act or omission which detrimentally affects or is likely to affect a water resource;
- (i) constructs any hydraulic works without the necessary permit or fails to comply with any regulations for the construction of dams;
- (j) fails to comply with any restriction on the use of water;

commits an offence and shall be liable, on the first conviction, to a fine not exceeding P.....or imprisonment for a period not exceeding five years, or to both and, in the case of a second or subsequent conviction, to a fine not exceeding P..... or imprisonment for a period not exceeding ten years or to both.

(2) Any person who contravenes any other provision of this Act for which an offence or a fine are not elsewhere provided for in this Act shall be guilty of an offence and liable, on the first conviction, to a fine not exceeding P.....or imprisonment for a period not exceeding five years, or to both and, in the case of a second or subsequent conviction, to a fine not exceeding P..... or imprisonment for a period not exceeding ten years or to both.

65 Award of damages

- (1) Where any person is convicted of an offence under this Act and-
 - (a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or
 - (b) damage has been caused to a water resource;

the Court may, in the same proceedings-

- (i) at the written request of the person who suffered the harm or loss; or
- (ii) at the written request of the Minister in respect of the damage caused to a water resource; and
- (iii) in the presence of the convicted person;

enquire without pleadings into and determine the extent of the harm, loss or damage caused.

- (2) After making a determination in terms of subsection (1), the Court may-

- (a) award damages for the loss or harm suffered by the person referred to in subsection (1) against the accused;
- (b) order the accused to pay for the cost of any remedial measures implemented or to be implemented.

66 Exemption from liability

No liability shall attach to the State, Council, any water management body or village water development committee or their officers and employees for any loss or damage sustained by any person as a result of the bona fide exercise or performance of any function which by or in terms of this Act is conferred or imposed upon the State or Council.

67 Act to bind State

This Act binds the State.

68 Regulations

- (1) The Minister may make regulations for any matter which under this Act is to be prescribed or for the better carrying out of the provisions of this Act, and without limiting the generality of the foregoing, such regulations may provide for-
 - (a) anything which is required to or may be prescribed under this Act;
 - (b) registers and records to be kept under this Act and the manner in which they are to be kept;
 - (c) the forms to be used and fees to be paid in respect of any matter required or permitted to be done under this Act;
 - (d) the advertisement and the giving of notice of applications made under this Act;
 - (e) the making of objections and the time within which objections must be made;
 - (f) the conduct of appeals to the Minister;
 - (g) the standards of quality of water for specified uses and the classification of water by reference to its quantity, quality or possible use;
 - (h) the treatment, standards of quality of waste and the manner of its discharge into any water resource, the prevention of waste, misuse or pollution of water;
 - (i) the manner in which entry upon any land for any of the purposes of this Act.
- (2) Any person who contravenes any regulations made in terms of this section shall commit an offence and shall be liable to a fine not exceeding P..... or to a period of imprisonment not exceeding or to both and additionally, in the case of a continuing offence, such person shall be liable to a fine not exceeding P..... for every day that the offence continues.

69 Repeals and savings

- (1) The Water Act, Chapter 34:01 and the Boreholes Act, Chapter 34:02 are repealed.
- (2) Notwithstanding subsection (1), any regulations made under a repealed Act shall continue in force as if made in terms of this Act to the extent that they are not inconsistent with this Act.

SCHEDULE

(section 11 (7))

WATER RESOURCES COUNCIL

Part 1 - Formal provisions

1 Formal powers

The Council shall be a body corporate capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

Part 2 – Membership of Council

2 Term of office

Subject to clause 6, a member appointed by the Minister under section 11(2)(h) shall hold office for 3 years and shall be eligible for re-appointment.

3 Allowances

Members of the Council who are not employees of a public authority may be paid such allowances as may be determined by the Minister from time to time.

4 Resignation

A member may resign by giving notice in writing to the Minister.

5 Vacation of office

The office of a member shall become vacant if the member-

- (a) resigns; or
- (b) is removed from office in accordance with clause 6; or
- (c) becomes insolvent; or
- (d) is convicted of any offence involving dishonesty or other indictable offence; or
- (e) ceases to be qualified to be a member; or
- (f) is absent from 3 consecutive ordinary meetings of the Council without the permission thereof.

6 Removal of member

The Minister may remove from office any member who, in the opinion of the Minister, is no longer capable of performing the functions of a member.

7 Filling of vacancies

A vacancy in the office of a member must be filled within 3 months of it occurring.

8 Unqualified person must not act as member

- (1) A person who is aware that he-
 - (a) is incapable of acting, or no longer qualified to act, as a member; or
 - (b) has ceased to be qualified to be a member;must not act as a member.
- (2) Any person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding P or to imprisonment for a period not exceeding or to both.

9 Conflict of interest

- (1) A member who has a direct or indirect pecuniary interest in any contract or proposed contract with the Council as the case may be, or in any other matter in which the Council is concerned, and is present at a meeting of the Council or any committee thereof at which the contract, proposed contract or any other matter is to be considered or discussed, or is aware that the contract, proposed contract or other matter is to be considered or discussed, shall-
 - (a) if he is present at the meeting at which the consideration or discussion is to take place, disclose the nature of the interest immediately before the consideration or discussion; or
 - (b) if he does not intend to be present at the meeting at which the consideration or discussion is to take place, disclose the nature of the interest to the chairman of the

Council before the meeting is held.

- (2) Any member who fails to comply with subclause (1) shall commit an offence and liable to a fine not exceeding P..... or to imprisonment for a period not exceeding..... or to both, unless he proves that he did not know -
 - (a) that he had a pecuniary interest in the contract, proposed contract or other matter, or
 - (b) that a contract, proposed contract or other matter in which he had a pecuniary interest was a subject of consideration or discussion at the meeting.
- (3) A member will be deemed to have a direct or indirect pecuniary interest in any matter in which his associate has a pecuniary interest or other direct or indirect material interest.
- (4) For the purposes of this section, “associate” means-
 - (a) a person who is related to the member by blood or marriage;
 - (b) a partner, employee or employer of the member; or
 - (c) any body of persons, whether corporate or unincorporated, of which the member is a director, or in which the member holds any office or position other than that of auditor or in which the member holds a controlling interest.

Part 3 - Meetings of the Council

10 General

Subject to the provisions of this Schedule, the Council may regulate its own proceedings.

11 Meetings

The Council must meet at least four times a year and at such other times as the Chairman may determine.

12 Chairman and deputy chairman

- (1) A deputy chairman shall hold office until the Minister appoints another person to be deputy chairman.
- (2) A chairman or deputy chairman shall cease to hold that office if he ceases to be a member.
- (3) A deputy chairman may resign that office by giving notice in writing to the Minister.
- (4) If at any meeting the chairman is not present at at any meeting, the deputy chairman or, in the absence of the deputy chairman, a member appointed by the members present, shall preside at the meeting.

13 Special meetings

- (1) The chairman may, at any time, if requested to do so in writing by two members, call a special meeting.
- (2) A special meeting shall be held on seven days' written notice served on each member, by post or in person and shall specify the time and place of the meeting and the reason for it.
- (3) A special meeting shall deal only with business stated in the notice.

14 Quorum

- (1) Five members shall form a quorum.
- (2) Any meeting at which a quorum is present shall be valid notwithstanding that there is a vacancy in the membership of the Council.
- (3) If a quorum is not present within 15 minutes after the time appointed for a meeting, the members present or a majority of them may adjourn the meeting to the same day seven days later at the same time and venue, or if that day is a Saturday, Sunday or public holiday, to the next succeeding day, and if at such adjourned meeting a quorum is not present within fifteen minutes from the time of that meeting, the members present at the adjourned meeting shall constitute a quorum.

15 Voting

- (1) A question arising at a meeting must be determined by a majority of the votes of the members present and voting.
- (2) If the votes are equal, the person presiding has a casting vote.

16 Minutes

- (1) The chairman shall cause the minutes of all the proceedings of the Council to be kept.
- (2) The minutes shall be confirmed by the Council at that meeting or at its next meeting and be signed by the person presiding.
- (3) A certified copy of the confirmed minutes of each meeting of the Council shall be sent to the Minister.

17 Minister may convene meetings

The Minister may convene and may preside at meetings of the Council at any time and may convene any other public hearing or discussion for the purpose of obtaining public response to the policies and activities of the Council.

18 Committees

- (1) The Council may appoint such committees as it sees fit and may appoint any member of the Council or any other person as a member of a committee.
- (2) The procedure and functions of any committee shall be determined by the Council.

Part 4 – Reports

19 Reports

- (1) The Council shall send a report to the Minister on all of its activities, functions and undertakings during each calendar year, within three months of the end of that year.
- (2) The Minister shall table every report in the National Assembly within 30 days of receiving it.