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DEPARTMENT OF GOVERNMENTAL AFFAIRS

DEPARTEMENT VAN OWERHEIDSAKE

No. 136 1985

PROMULGATION OF ACT OF NATIONAL ASSEMBLY

No. 136 1985

AFKONDIGING VAN WET VAN NASIONALE VERGADERING

The following Act, which has been adopted by the National Assembly and signed by the Administrator-General in terms of the South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R.101 of 1985), is hereby published in terms of section 18 of that Proclamation: —

Die volgende Wet, wat ingevolge die Proklamasie op die Instelling van Wetgewende en Uitvoerende Gesag vir Suidwes-Afrika, 1985 (Proklamasie R.101 van 1985), deur die Nasionale Vergadering aangeneem en deur die Administrateur-generaal onderteken is, word hierby afgekondig ingevolge artikel 18 van daardie Proklamasie: —

No. 22 of 1985: Water Amendment Act, 1985

Nr. 22 van 1985: Waterwysigingswet, 1985

Act No. 22, 1985

WATER AMENDMENT ACT, 1985

EXPLANATORY NOTE:

— Words underlined with solid line indicate insertions proposed.

[] Words in bold typing in square brackets indicate omissions proposed.

ACT

To apply certain provisions of the Water Act, 1956, in the territory of South West Africa; to amend the said Water Act, 1956, so as to regulate the impounding and storage of more than 20 000 cubic meter of private water, the use of water in a public stream for certain purposes and the construction of water works in which more than 20 000 cubic meters of public water can be impounded or stored; to extend the meaning of "subterranean water"; to further regulate the use of subterranean water; to empower the State to convey and supply certain subterranean water to any person for use; and to amend and repeal certain regulations; and to provide for incidental matters.

(English text signed by the Administrator-General
on 25 November 1985)

BE IT ENACTED by the National Assembly, as follows:-

Application of sections 9B, 30A(a) and 170(3) of Act 54 of 1956 in South West Africa.

1. (1) Sections 9B, 30A(a) and 170(3) of the Water Act, 1956 (hereinafter referred to as the principal Act), shall apply in the territory of South West Africa. 5

(2) For the purposes of any provision of the principal Act the provisions of subsection (1) shall be deemed to be a proclamation made under section 180 of the principal Act.

Amendment of section 5 of Act 54 of 1956, as substituted by section 2 of Act 45 of 1972.

2. Section 5 of the principal Act is hereby amended -

(a) by the substitution in subsection (1) for the words 10 preceding the proviso of the following words:

"Subject to the provisions of subsection (2) and Chapter III, and rights lawfully acquired and existing at the commencement of this Act, the sole and exclusive use and enjoyment of private water belongs to 15

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VERDUIDELIKENDE NOTA:

- _____ Woorde met 'n volstreep daaronder dui aan in-voegings voorgestel.
- [] Woorde in vet druk tussen vierkantige hake dui aan skrappings voorgestel.

WET

Om sekere bepalings van die Waterwet, 1956, in die gebied Suidwes-Afrika van toepassing te maak; tot wysiging van genoemde Waterwet, 1956, ten einde die opdamming en opgaring van meer as 20 000 kubieke meter private water, die gebruik van water in 'n openbare stroom vir sekere doeleindes en die oprigting van waterwerke waarin meer as 20 000 kubieke meter openbare water opgedam of opgegaan kan word, te reël; die betekenis van "ondergrondse water" uit te brei; die gebruik van ondergrondse water verder te reël; aan die Staat die bevoegdheid te verleen om sekere ondergrondse water na en aan iemand te vervoer en vir gebruik te voorsien; en sekere regulasies te wysig en te herroep; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Administrateur-generaal onderteken op 25 November 1985)

DAAR WORD BEPAAL deur die Nasionale Vergadering, soos volg:-

1. (1) Artikels 9B, 30A(a) en 170(3) van die Waterwet, 1956 (hieronder die Hoofwet genoem), is in die gebied
5 Suidwes-Afrika van toepassing.

Toepassing van artikels 9B, 30A(a) en 170(3) van Wet 54 van 1956 in Suidwes-Afrika.

(2) By die toepassing van die een of ander bepaling van die Hoofwet word die bepalings van subartikel (1) geag 'n proklamasie te wees wat kragtens artikel 180 van die Hoofwet uitgevaardig is.

- 10 2. Artikel 5 van die Hoofwet word hierby gewysig -

Wysiging van artikel 5 van Wet 54 van 1956, soos vervang deur artikel 2 van Wet 45 van 1972.

- (a) deur in subartikel (1) die woorde wat die voorbehoudbepaling voorafgaan deur die volgende woorde te vervang:

- 15 "Behoudens die bepalings van subartikel (2) en Hoofstuk III, en wettig verkreeë regte wat by die inwerkingtreding van hierdie Wet bestaan, berus die enigste en uitsluitlike reg op die gebruik en genot van

the owner of the land on which such water is found.”;
and

- (b) by the substitution for subsection (2) of the following subsection:

“(2) A person who is, as contemplated in subsection (1), entitled to the use and enjoyment of private water found on any land of which he is the owner shall not, except under the authority of a permit from the **[Minister] Cabinet** and on such conditions as may be specified in that permit -

(a) sell, give or otherwise dispose of such water to any other person for use on any other land, or convey such water for his own use beyond the boundaries of the land on which such water is found;

(b) construct any water work other than a water work constructed in terms of a direction contained in an order under section 4 of the Soil Conservation Act, 1969 (Act 76 of 1969), to impound or store such water, or impound or store more than 20 000 cubic meter of such water.”.

Amendment of section 7 of Act 54 of 1956.

3. Section 7 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (a) of the following paragraph:

“(a) any person may, while he is lawfully at any place where he has access to a public stream, take and use water from such stream for the immediate purpose of watering or dipping stock or drinking, washing or cooking, or use in a vehicle at that place or for purposes of waterborne sanitation or the watering of crops on an area of land of not more than one hectare;”;

- (b) by the insertion after paragraph (a) of the following paragraph:

“(aA) the owner of any land shall not, except under the authority of a permit from the Cabinet and on such conditions as may be specified in that permit, take public water from a public stream for purposes of the watering of crops on an area of land exceeding one hectare;” and

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private water by die eienaar van die grond waarop daardie water aangetref word.”; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

5 “(2) Iemand wat soos in subartikel (1) beoog word, geregtig is op die gebruik en genot van private water wat aangetref word op grond waarvan hy die eienaar is mag nie, behalwe op gesag van ’n permit deur die
10 Kabinet en op voorwaardes in daardie permit uiteengesit -

(a) sodanige water aan iemand anders vir gebruik op ander grond verkoop, gee of andersins van die hand sit, of sodanige water vir sy eie gebruik oor die grense van
15 die grond waarop dit aangetref word, vervoer nie;

(b) ’n ander waterwerk as ’n waterwerk opgerig ingevolge ’n voorskrif vervat in ’n lasgewing kragtens artikel 4 van die Grondbewaringswet, 1969 (Wet 76 van 1969), oprig om sodanige water op te dam of op te gaar nie, of meer as 20 000 kubieke meter van sodanige water opdam of opgaar nie

25 **[behalwe op gesag van ’n permit deur die Minister en op voorwaardes in daardie permit uiteengesit].”**

3. Artikel 7 van die Hoofwet word hierby gewysig -

Wysiging van artikel 7 van Wet 54 van 1956.

(a) deur paragraaf (a) deur die volgende paragraaf te vervang:

30 “(a) kan enigiemand terwyl hy hom wettiglik op ’n plek bevind waar hy tot ’n openbare stroom toegang het, water uit daardie stroom neem vir onmiddellike gebruik aldaar om sy vee te laat suip of dip, of om te drink of te was of vir kookdoeleindes of om in ’n voertuig te gebruik of vir doeleindes van waterriolering of die besproeiing van gewasse op ’n oppervlakte van nie meer as een hektaar grond;”;

(b) deur na paragraaf (a) die volgende paragraaf in te voeg:

40 “(aA) mag die eienaar van enige grond, behalwe op gesag van ’n permit deur die Kabinet en op die voorwaardes in daardie permit uiteengesit, nie openbare water vir doeleindes van die besproeiing van gewasse op ’n oppervlakte van
45 meer as een hektaar grond uit ’n openbare stroom neem nie;” en

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- (c) by the addition of the following subsection, the existing section becoming subsection (1):

“(2) Any person who contravenes the provisions of subsection (1)(aA) shall be guilty of an offence.”

Amendment of section 9B of Act 54 of 1956, as inserted by section 2 of Act 36 of 1971 and amended by section 1 of Act 42 of 1975 and section 1 of Act 108 of 1977.

4. Section 9B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary contained in this Act or any other law, no person shall construct, alter or enlarge any water work on any land which on the date of commencement of the Water Amendment Act [1975] 1985, was registered in the deeds registry as a separate piece of land, if more than **[two hundred and fifty thousand] 20 000** cubic meter of public water are or, after completion of such construction, alteration or enlargement, will be capable of being impounded or stored **[or more than hundred and ten litre of water per second are or, after such completion, will be capable of being abstracted or diverted from a public stream]** in or by means of that water work, or that water work and any other water work or water works on that land, except under the authority of a permit issued by the **[Minister] Cabinet**, and on such conditions as may be specified in that permit.”

Substitution of section 27 of Act 54 of 1956.

5. The following section is hereby substituted for section 27 of the principal Act:

“Definition of subterranean water.

27. In this Chapter “subterranean water” means **[such]** -

(a) water which exist naturally **[existing]** underground **[or abstracted therefrom]**;

(b) water other than public water which is derived in any manner whatsoever from natural underground sources,

and which [as] is contained [within the areas] in any area declared to be a subterranean water control [areas] area under section 28.”

Amendment of section 30 of Act 54 of 1956, as amended by section 4 of Act 36 of 1971, section 4 of Act 45 of 1972 and section 6 of Act 42 of 1975.

6. (1) Section 30 of the principal Act is hereby amended -

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsection (2), an owner of land is entitled to abstract or obtain any subterranean water thereunder, or derived therefrom, for his own use for any purpose on such land.”; 45

- (b) by the substitution for subsection (2) of the following subsection:

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- (c) deur die volgende subartikel by te voeg, terwyl die bestaande artikel subartikel (1) word:

“(2) Iemand wat die bepalings van subartikel (1)(aA) oortree, is aan ’n misdryf skuldig.”

- 5 4. Artikel 9B van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

Wysiging van artikel 9B van Wet 54 van 1956, soos ingevoeg deur artikel 2 van Wet 36 van 1971 en gewysig deur artikel 1 van Wet 42 van 1975 en artikel 1 van Wet 108 van 1977.

- 10 “ (1) Ondanks andersluidende bepalings van hierdie Wet of ’n ander wet, mag niemand op grond wat op die datum van inwerkingtreding van Waterwysigingswet, [1975] 1985, as ’n afsonderlike stuk grond in die registrasiekantoor van aktes geregistreer is, ’n waterwerk oprig, verander of vergroot nie indien daar in of deur middel van daardie waterwerk, of daardie waterwerk en enige ander waterwerk of waterwerke op daardie grond, 15 meer as [twee honderd-en-vyftigduisend] 20 000 kubieke meter openbare water opgedam of opgegaan word of, na voltooiing van die oprigting, verandering of vergroting sal kan word [of meer as 110 liter water per sekonde uit ’n openbare stroom geneem of gekeer kan word, of na be- 20 doelde voltooiing geneem of gekeer sal kan word], behalwe op gesag van ’n permit deur die [Minister] Kabinet uitgereik, en op die voorwaardes in daardie permit uiteengesit.”

- 25 5. Artikel 27 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van artikel 27 van Wet 54 van 1956.

“Omskrywing van ondergrondse water.

27. In hierdie Hoofstuk beteken “ondergrondse water” -

- (a) water wat natuurlik ondergronds bestaan [of water ondergronds verkry];
- 30 (b) ander water as openbare water wat op enige wyse hoegenaamd uit natuurlike ondergrondse bronne afkomstig is,
- 35 en wat [binne die gebiede] in ’n gebied wat kragtens artikel 28 tot ’n ondergrondse [waterbeheergebiede] waterbeheergebied verklaar is, voorkom.”

6. (1) Artikel 30 van die Hoofwet word hierby gewysig -

Wysiging van artikel 30 van Wet 54 van 1956, soos gewysig deur artikel 4 van Wet 36 van 1971, artikel 4 van Wet 45 van 1972 en artikel 6 van Wet 42 van 1975.

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- 40 “ (1) ’n Eienaar van grond is, behoudens die bepalings van subartikel (2), geregtig om ondergrondse water daaronder, of daaruit afkomstig, vir sy eie gebruik vir enige doel op daardie grond uit te haal of te verkry.”;
- 45 (b) deur subartikel (2) deur die volgende subartikel te vervang:

“ (2) The **[Minister] Cabinet** may in relation to any subterranean water control area, or to any portion of such an area make such regulations as he may deem necessary for exercising control over the drilling of boreholes for the purpose of locating subterranean water for use for any purpose, the sinking of wells and the abstraction, use, protection against pollution and preservation of subterranean water contained in such area, or portion thereof, including regulations limiting the number of boreholes or wells which may be sunk in any such area or portion thereof or the quantity of subterranean water which may be abstracted by means of any borehole or well, whether sunk before or after the commencement of this Act, or which may otherwise be used, or prohibiting the sinking of such boreholes or wells or the use of subterranean water except with the consent of the **[Minister] Cabinet** or a person acting under **[his] its** authority and subject to such conditions as it or he may specify.”;

- (c) by the substitution for subsection (3) of the following subsection:

“ (3) An owner referred to in subsection (1) shall not, without a permit issued by the **[Minister] Cabinet** under subsection (5) sell, give or otherwise dispose of subterranean water abstracted or obtained by him from under his land or derived therefrom in accordance with subsection (1), to any person for use on any other land or convey such water **[after it has been abstracted or obtained]** beyond the boundaries of his land for his own use.”; and

- (d) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

“(a) on the application of an owner referred to in subsection (1), issue a permit to such owner entitling him to convey, for his own use, subterranean water abstracted or obtained by him from under his land or derived therefrom in terms of that subsection beyond the boundaries of the land on which it was abstracted or obtained or from which it has been derived, or to sell, give or otherwise dispose of such water to some other person for use on other land; or”.

(2) Regulations 28 to 32 of the regulations published by Government Notice R.1277 of 23 July 1971 and the regulations published by Government Notice R.1278 of 23 July 1971 shall be deemed to have been made under section 30(2) of the principal Act, as amended by subsection (1) of this section.

7. Section 30A of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

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“ (2) Die [**Minister**] **Kabinet** kan met betrekking tot 'n ondergrondse waterbeheergebied of tot enige gedeelte van so 'n gebied die regulasies uitvaardig wat hy nodig ag om beheer uit te oefen oor die maak van boorgate ten einde ondergrondse water vir gebruik vir enige doel te verkry, die grawe van putte en die uithaal, gebruik, beskerming teen besoedeling en bewaring van ondergrondse water wat in daardie gebied of gedeelte daarvan voorkom, met inbegrip van regulasies om die aantal boorgate of putte wat in so 'n gebied of gedeelte daarvan gemaak mag word of die hoeveelheid ondergrondse water wat deur middel van 'n boorgat of put, hetsy voor of na die inwerking-treding van hierdie Wet gemaak, geneem mag word of wat andersins gebruik mag word, te beperk, of om die maak van sodanige boorgate of putte of die gebruik van ondergrondse water te verbied behalwe met die toestemming van die [**Minister**] **Kabinet** of iemand wat op sy gesag handel, en onderworpe aan die voorwaardes wat hy mag bepaal.”;

(c) deur subartikel (3) deur die volgende subartikel te vervang:

“ (3) 'n In subartikel (1) bedoelde eienaar mag nie sonder 'n permit kragtens subartikel (5) deur die [**Minister**] **Kabinet** uitgereik, ondergrondse water wat hy ooreenkomstig subartikel (1) onder sy grond uitgehaal of verkry het, of wat daaruit afkomstig is, aan enigiemand vir gebruik op ander grond verkoop, gee of andersins van die hand sit of sodanige water [**nadat dit aldus uitgehaal of verkry is**] vir sy eie gebruik oor die grense van sy grond vervoer nie.”; en

(d) deur paragraaf (a) van subartikel (5) deur die volgende paragraaf te vervang:

“(a) op aansoek van 'n in subartikel (1) bedoelde eienaar 'n permit uitreik wat aan hom die reg verleen om ondergrondse water ingevolge daardie subartikel deur hom onder sy grond uitgehaal of verkry, of daaruit afkomstig, vir sy eie gebruik oor die grense van die grond waarop dit uitgehaal of verkry is of waaruit dit afkomstig is, te vervoer, of om sodanige water aan 'n ander persoon vir gebruik op ander grond te verkoop, te gee of andersins van die hand te sit; of”.

45 (2) Regulasies 28 tot 32 van die regulasies afgekondig by Goewermentskennisgewing R.1277 van 23 Junie 1971 en die regulasies afgekondig by Goewermentskennisgewing R.1278 van 23 Julie 1971 word geag kragtens artikel 30(2) van die Hoofwet, soos gewysig deur subartikel (1) van hier-
50 die artikel, uitgevaardig te gewees het.

7. Artikel 30A van die Hoofwet word hierby gewysig deur paragraaf (a) deur die volgende paragraaf te vervang:

Wysiging van artikel 30A van Wet 54 van 1956, soos ingevoeg deur artikel 5 van Wet 45 van 1972.

“(a) Notwithstanding the other provisions of this Chapter, the **[Minister] Cabinet** may, within as well as outside a subterranean water control area, convey and supply any subterranean water [abstracted from a borehole sunk by the Government or] which has been or is abstracted or obtained in any manner whatsoever, whether before or after the commencement of the Water Amendment Act, 1985, by the [Government] State [from any other underground source] to any person for use on any land for any purpose [authorized by the Minister] determined by mutual agreement by the Cabinet and such person, whether such water has been or is abstracted or obtained on land belonging to the Government of the territory of South West Africa or on other land: Provided that no water so abstracted or obtained shall be so conveyed or supplied by the **[Minister] Cabinet** if it has been found on land not belonging to the Government of the territory of South West Africa unless the **[Minister] Cabinet** has acquired a right to such water by agreement with the owner of the said land or by expropriation in accordance with the provisions of **[this Act]** the laws on expropriation in force in the territory of South West Africa.”

Amendment and repeal of certain regulations.

8. (1) Regulation 1 of the regulations published by Government Notice R.1277 of 23 July 1971 is hereby amended by the deletion of the definitions of “public stream” and “use for domestic purposes”.

(2) Regulations 15 to 27 and regulation 33 of the regulations referred to in subsection (1) are hereby repealed.

(3) Regulation 1 of the regulations published by Government Notice R.1278 of 23 July 1971 is hereby amended by the deletion of the definition of “subterranean water”.

Short title.

9. This Act shall be called the Water Amendment Act, 1985.

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“(a) Ondanks die ander bepalings van hierdie Hoofstuk kan die **[Minister] Kabinet**, binne sowel as buite ’n ondergrondse waterbeheergebied, ondergrondse water wat [onttrek word uit ’n boorgat deur die Regering gemaak, of wat deur die Regering] op enige wyse hoegenaamd, hetsy voor of na die inwerkingtreding van die Waterwysigingswet, 1985, deur die Staat onttrek of verkry is of word [uit ’n ander ondergrondse bron], na en aan iemand vervoer en voorsien vir gebruik op enige grond vir [’n enige doel [deur die Minister gemagtig] by onderlinge ooreenkoms deur die Kabinet en so iemand bepaal, hetsy bedoelde water onttrek of verkry is of word op grond wat aan die **[Regering] Goewerment van die gebied Suidwes-Afrika** behoort of op ander grond: Met dien verstande dat geen water **[wat]** aldus onttrek of verkry **[is]**, aldus deur die **[Minister] Kabinet** vervoer of voorsien mag word nie indien dit gevind is op grond wat nie aan die **[Regering] Goewerment van die gebied Suidwes-Afrika** behoort nie, tensy die **[Minister] Kabinet** ’n reg op sodanige water verkry het deur ooreenkoms met die eienaar van daardie grond of deur onteiening ooreenkomstig die bepalings van **[hierdie Wet] die wette op onteiening wat in die gebied Suidwes-Afrika geld.**”.

8. (1) Regulasie 1 van die regulasies afgekondig by Goewermentskennisgewing R.1277 van 23 Julie 1971 word hierby gewysig deur die omskrywings van “gebruik vir huishoudelike doeleindes” en “openbare stroom” te skrap.

Wysiging en herroeping van sekere regulasies.

(2) Regulasies 15 tot 27 en regulasie 33 van die regulasies in subartikel (1) bedoel, word hierby herroep.

(3) Regulasie 1 van die regulasies afgekondig by Goewermentskennisgewing R.1278 van 23 Julie 1971 word hierby gewysig deur die omskrywing van “ondergrondse water” te skrap.

9. Hierdie Wet heet die Waterwysigingswet, 1985.

Kort titel.