

BUITENGEWONE
OFFISIËLE KOERANT
VAN SUIDWES-AFRIKA.
OFFICIAL GAZETTE
EXTRAORDINARY
OF SOUTH WEST AFRICA.



UITGAWE OP GESAG.

PUBLISHED BY AUTHORITY.

1/- Vrydag, 13 Julie 1956.

WINDHOEK

Friday, 13th July, 1956.

No. 2015.

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No. 1956.]

54.

ACT

To consolidate and amend the laws in force in the Union relating to the control, conservation and use of water for domestic, agricultural, urban and industrial purposes.

(English text signed by the Governor-General.)

(Assented to 12th June, 1956.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. In this Act, unless the context otherwise indicates— Definitions.
- (i) "area" includes any number of areas, whether or not contiguous; (vii)
 - (ii) "department" means the Irrigation Department established by section *three* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), which shall as from the commencement of this Act be known as the Department of Water Affairs; (iv)
 - (iii) "director" means the Director of Water Affairs; (v)
 - (iv) "existing right" means—
 - (a) any right protected by paragraph (a) or (b) of section *twenty-five*;
 - (b) any right to water acquired by any person by deed of servitude, agreement or order of a competent court; and
 - (c) any other lawfully acquired right to water in or upon a public stream; (iii)
 - (v) "Government water work" means a water work constructed or maintained or proposed to be constructed or maintained by, or under the control of the Government, and includes water impounded and stored in such work, but does not include a water work constructed by the Minister under section *fifty-seven*; (xxi)
 - (vi) "irrigation board" means a board established by section *seventy-nine*; (ii)
 - (vii) "irrigation district" means any area declared under section *seventy-four* to be an irrigation district, and includes any such area as reconstituted under sub-section (1) of section *seventy-six* by excluding any portion thereof or including any additional area therein, and any portion of an existing irrigation district constituted as a separate irrigation district under the said sub-section, either alone or together with any other area, including any such area forming part of an existing irrigation district; (i)
 - (viii) "local authority" means—
 - (a) any body contemplated by paragraph (vi) of section *eighty-five* of the South Africa Act, 1909;
 - (b) any regional water supply corporation constituted under section *seven* of the Water Supply Ordinance, 1945 (Ordinance No. 21 of 1945), of Natal, or any other institution which has powers similar to such a corporation in respect of the supply of water to other local authorities, the Government (including the South African Railways and Harbours Administration and any provincial administration), or other persons within its area of jurisdiction;
 - (c) any water board constituted in terms of section *one hundred and eight*; (xviii)
 - (ix) "Minister" means the Minister of Water Affairs; (xi)
 - (x) "natural channel" means any channel, other than an artificial channel or the channel of a public stream, used to convey water from one part of an area declared to be a Government water control area in terms of sub-section (1) of section *fifty-nine*, to any other part of that area or from one part of an irrigation district to any other part of that irrigation district; (xii)
 - (xi) "normal flow", in relation to a public stream, and subject to the provisions of sub-section (2) of section *fifty-three*, means the quantity of public water actually

- and visibly flowing in that public stream which, under a system of direct irrigation from that stream, whether by furrows or otherwise, but without the aid of storage, can be beneficially used for the irrigation of land riparian to such stream; (xiii)
- (xii) "owner", in relation to land, means the person registered in a deeds registry as the owner or holder thereof, and includes the State, the trustee in an insolvent estate, a liquidator or trustee elected or appointed under the Farmers' Assistance Act, 1935 (Act No. 48 of 1935), the liquidator of a company which is an owner, the legal representative of any owner who has died or is a minor or of unsound mind or otherwise under disability and the agent in the Union of an owner who is absent from the Union or whose whereabouts are unknown, and, in relation to land which has been allotted or leased to any person under the laws relating to land settlement, subject to a right to purchase such land, or to Crown land which has been acquired by purchase but in respect of which title has not yet been given to the purchaser, the person to whom that land has been so allotted, leased or sold; (vi)
- (xiii) "private water" means all water which rises or falls naturally on any land or naturally drains or is lead on to one or more pieces of land which are the subject of separate original grants, but is not capable of common use for irrigation purposes; (xix)
- (xiv) "public stream" means a natural stream of water which flows in a known and defined channel, whether or not such channel is dry during any period of the year and whether or not its conformation has been changed by artificial means, if the water therein is capable of common use for irrigation on two or more pieces of land riparian thereto which are the subject of separate original grants or on one such piece of land and also on Crown land which is riparian to such stream: Provided that a stream which fulfils the foregoing conditions in part only of its course shall be deemed to be a public stream as regards that part only; (xvi)
- (xv) "public water" means any water flowing or found in or derived from the bed of a public stream, whether visible or not; (xvii)
- (xvi) "regulation" means a regulation made and in force under this Act, and includes any regulation made under any of the laws mentioned in section *one hundred and eighty-one* and in force at the commencement of this Act, so long as it remains in force, but shall not include any regulation made under paragraph (g) of sub-section (1) of section *forty-five* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912); (xx)
- (xvii) "riparian land", in relation to a public stream, means—
- (a) land held under an original grant or deed of transfer of such a grant or under a certificate of title, whether surveyed in one lot or more than one lot, whereon or along any portion of any boundary whereof a public stream exists, and any sub-division of such land; and
 - (b) Crown land in respect of which no original grant has been made, but the situation of which in relation to a public stream would have rendered it riparian thereto by virtue of the provisions of paragraph (a), if such a grant had been made; (xv)
- (xviii) "riparian owner" means the owner of riparian land; (xiv)
- (xix) "surplus water", in relation to a public stream, means public water flowing or found in that stream, other than the normal flow, if any; (xxii)
- (xx) "use for agricultural purposes", in relation to water, means use for the irrigation of land, and includes use by a riparian owner or any other person who has acquired a right to the use of water for the irrigation of land, for domestic purposes or for the purpose of water-borne sanitation or for the watering of stock or gardens; (viii)
- (xxi) "use for industrial purposes", in relation to water, means use for manufacturing, mechanical or mining purposes or for the generation of power, or use by the South African Railways and Harbours Administration

for railway purposes, and includes use for domestic purposes or for the purpose of water-borne sanitation or for the watering of stock or of streets and gardens in so far as may be incidental to use for industrial purposes; (ix)

- (xxii) "use for urban purposes", in relation to water, means use in any area under the jurisdiction of a local authority for purposes for which water is ordinarily used by a local authority or by the inhabitants of such an area, including use for domestic purposes or for the purpose of water-borne sanitation or for the watering of gardens, watering or cleaning of streets or for industrial purposes; (x)
- (xxiii) "water board" means a board constituted in terms of sub-section (2) of section *one hundred and eight*; (xxiv)
- (xxiv) "water court" means a water court established under section *thirty-four*; (xxiii)
- (xxv) "water work" means—
- (a) a canal, channel, well, reservoir, protecting wall, embankment, weir, dam, borehole, pumping installation, pipeline, sluice gate, filter, sedimentation tank, road, telephone line or other work constructed, erected or used for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, including the generation, transmission and supply of electricity, or the filtration or purification of water, or the protection of public streams against erosion or siltation, or flood control, or the protection of any water work or irrigated land, or the use of water for any purpose, or the conservation of rain water;
 - (b) land occupied for or in connection with the impounding, storage, passage, drainage, control, abstraction, filtration, purification, development of power (including generation of electricity), or any other use of water, and includes any area occupied or required or held for the purpose of being irrigated or for flood control purposes;
 - (c) gauge posts, measuring weirs and any other appliances erected or used by the department or an irrigation board or a water board (xxv).

CHAPTER I.

CENTRAL CONTROL.

2. The Minister shall have power—

General powers of the Minister.

- (a) to acquire, construct, extend, alter, maintain, repair, control and dispose of water works or such other works as he may consider necessary in the exercise of his powers or the performance of his functions under this Act;
- (b) to sink boreholes and wells, obtain supplies of water from underground sources, conserve water so obtained and supply or deliver it to any person for use for any purpose without payment or upon payment of charges;
- (c) to sink boreholes or wells for any person on the application of such person;
- (d) to make regulations from time to time as to the matters referred to in paragraphs (b) and (c), including regulations fixing scales of charges;
- (e) to establish or maintain hydrologic and hydrographic stations and works and to record the observations obtained thereby, and generally to obtain and record information and statistics as to hydrographic conditions in the Union;

for railway purposes, and includes use for domestic purposes or for the purpose of water-borne sanitation or for the watering of stock or of streets and gardens in so far as may be incidental to use for industrial purposes; (ix)

(xxii) "use for urban purposes", in relation to water, means use in any area under the jurisdiction of a local authority for purposes for which water is ordinarily used by a local authority or by the inhabitants of such an area, including use for domestic purposes or for the purpose of water-borne sanitation or for the watering of gardens, watering or cleaning of streets or for industrial purposes; (x)

(xxiii) "water board" means a board constituted in terms of sub-section (2) of section *one hundred and eight*; (xxiv)

(xxiv) "water court" means a water court established under section *thirty-four*; (xxiii)

(xxv) "water work" means—

(a) a canal, channel, well, reservoir, protecting wall, embankment, weir, dam, borehole, pumping installation, pipeline, sluice gate, filter, sedimentation tank, road, telephone line or other work constructed, erected or used for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, including the generation, transmission and supply of electricity, or the filtration or purification of water, or the protection of public streams against erosion or siltation, or flood control, or the protection of any water work or irrigated land, or the use of water for any purpose, or the conservation of rain water;

(b) land occupied for or in connection with the impounding, storage, passage, drainage, control, abstraction, filtration, purification, development of power (including generation of electricity), or any other use of water, and includes any area occupied or required or held for the purpose of being irrigated or for flood control purposes;

(c) gauge posts, measuring weirs and any other appliances erected or used by the department or an irrigation board or a water board (xxv).

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- (c) to sink boreholes or wells for any person on the application of such person;
- (d) to make regulations from time to time as to the matters referred to in paragraphs (b) and (c), including regulations fixing scales of charges;
- (e) to establish or maintain hydrologic and hydrographic stations and works and to record the observations obtained thereby, and generally to obtain and record information and statistics as to hydrographic conditions in the Union;

- (f) to obtain and record information as to the extent of land in the Union under irrigation, the quantity of water used or required for the irrigation of such land, and the extent, nature or value of the crops raised thereby;
- (g) to obtain and record information as to the extent of land in the Union which could be brought under irrigation;
- (h) to develop hydro-electric power, to obtain and record information as to the location, number and extent of hydro-electric or water-power schemes in the Union, and generally to obtain and record information and statistics as to hydro-electric possibilities in the Union;
- (i) to advise *bona fide* farmers, irrigation boards, local authorities and other persons as to the construction, alteration, maintenance, control or repair of water works, to furnish engineering assistance to such farmers, boards, local authorities or other persons in connection with such water works, and to assist in and advise on matters affecting the use of water in accordance with regulations and scales of charges to be made by him from time to time;
- (j) to inspect any water work and in writing to require any local authority, irrigation board or other person responsible for the work to do such acts or execute such repairs or alterations as he may consider necessary for the protection of life or the public safety or the protection of property, which in his opinion is or may be endangered by the existence of such work and, in default of compliance with such requirements within a reasonable time specified in the order, himself to do such acts or execute such repairs or alterations and to recover the cost thereof from the local authority, board or person concerned by action in any competent court;
- (k) to examine and enquire into plans, specifications, estimates of cost and reports which may be submitted to him in connection with any proposed utilization of water for any purpose, and to furnish advice in connection with any such plans, specifications, estimates or reports which are in conformity with regulations made by him;
- (l) to examine and enquire into plans, specifications, estimates of cost and reports in connection with any proposed water work in respect of which application has been made for a Government loan or subsidy for the purpose of ascertaining whether or not it is expedient that such a loan or subsidy be granted;
- (m) to take such other steps as he may consider necessary for the development, control and utilization of water and for giving effect to the provisions of this Act.
3. (1) (a) The Minister shall, subject to the laws governing the public service, from time to time appoint an officer to be styled the Director of Water Affairs who shall exercise the powers and perform the functions conferred or imposed upon the director by this Act. Appointment of director and certain temporary employees.
- (b) The person who held office as Director of Irrigation immediately prior to the commencement of this Act, shall be deemed to have been appointed as Director of Water Affairs under this sub-section.
- (2) The Minister or, if authorized thereto by him, the director or any other officer of the department may from time to time appoint such temporary engineers, surveyors, clerks or other employees as may be necessary to enable the functions of the department to be exercised: Provided that—
- (a) appointments made in terms of this sub-section shall be limited to duties performed at the site where the department is engaged in actual constructional or investigational work or which bear a direct relationship to specific projects or schemes under construction or under investigation;
- (b) the scales of the salaries, allowances, leave privileges and other conditions of employment applicable in relation to any employees so appointed shall be as laid down by the Minister from time to time after consultation with the Public Service Commission.

- (f) to obtain and record information as to the extent of land in the Union under irrigation, the quantity of water used or required for the irrigation of such land, and the extent, nature or value of the crops raised thereby;
- (g) to obtain and record information as to the extent of land in the Union which could be brought under irrigation;
- (h) to develop hydro-electric power, to obtain and record information as to the location, number and extent of hydro-electric or water-power schemes in the Union, and generally to obtain and record information and statistics as to hydro-electric possibilities in the Union;
- (i) to advise *bona fide* farmers, irrigation boards, local authorities and other persons as to the construction, alteration, maintenance, control or repair of water works, to furnish engineering assistance to such farmers, boards, local authorities or other persons in connection with such water works, and to assist in and advise on matters affecting the use of water in accordance with regulations and scales of charges to be made by him from time to time;
- (j) to inspect any water work and in writing to require any local authority, irrigation board or other person responsible for the work to do such acts or execute such repairs or alterations as he may consider necessary for the protection of life or the public safety or the protection of property, which in his opinion is or may be endangered by the existence of such work and, in default of compliance with such requirements within a reasonable time specified in the order, himself to do such acts or execute such repairs or alterations and to recover the cost thereof from the local authority, board or person concerned by action in any competent court;
- (k) to examine and enquire into plans, specifications, estimates of cost and reports which may be submitted to him in connection with any proposed utilization of water for any purpose, and to furnish advice in connection with any such plans, specifications, estimates or reports which are in conformity with regulations made by him;
- (l) to examine and enquire into plans, specifications, estimates of cost and reports in connection with any proposed water work in respect of which application has been made for a Government loan or subsidy for the purpose of ascertaining whether or not it is expedient that such a loan or subsidy be granted;
- (m) to take such other steps as he may consider necessary for the development, control and utilization of water and for giving effect to the provisions of this Act.

3. (1) (a) The Minister shall, subject to the laws governing the public service, from time to time appoint an officer to be styled the Director of Water Affairs who shall exercise the powers and perform the functions conferred or imposed upon the director by this Act. Appointment of director and certain temporary employees.
- (b) The person who held office as Director of Irrigation immediately prior to the commencement of this Act, shall be deemed to have been appointed as Director of Water Affairs under this sub-section.

(2) The Minister or, if authorized thereto by him, the director or any other officer of the department may from time to time appoint such temporary engineers, surveyors, clerks or other employees as may be necessary to enable the functions of the department to be exercised: Provided that—

- (a) appointments made in terms of this sub-section shall be limited to duties performed at the site where the department is engaged in actual constructional or investigational work or which bear a direct relationship to specific projects or schemes under construction or under investigation;
- (b) the scales of the salaries, allowances, leave privileges and other conditions of employment applicable in relation to any employees so appointed shall be as laid down by the Minister from time to time after consultation with the Public Service Commission.

(3) Any person who immediately prior to the commencement of this Act was employed by virtue of appointment under subsection (2) of section *five* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), may, notwithstanding the repeal of that Act by section *one hundred and eighty-one* of this Act, continue to be so employed as if this Act had not been passed.

CHAPTER II.

CONTROL AND USE OF PRIVATE AND PUBLIC WATER.

4. (1) The provisions of this Act, except section *sixty-two*, shall not be construed as affecting or derogating from— Saving of certain rights.

- (a) any right to water which at the commencement of this Act has been lawfully acquired, is possessed and is being beneficially exercised by any person;
- (b) any right to water lawfully acquired by any person before the commencement of this Act for the purpose of supplying water to the public and existing at such commencement; or
- (c) any right to water or to the use of water conferred upon any person or attaching to any piece of land by virtue of any private or special law not specifically repealed or amended by this Act.

(2) Nothing in this Act contained shall be construed as affecting or derogating from any rights, powers, duties or functions vested in, conferred upon or assigned to the Rand Water Board under any law.

5. Subject to rights lawfully acquired and existing at the commencement of this Act, the sole, exclusive and unlimited use and enjoyment of private water belongs to the owner of the land on which such water is found: Provided that nothing in this section contained shall be construed as derogating from the right of an owner of land to a reasonable share of water which, rising on the land of an upper owner, flows in a known and defined channel on, or along the boundary of, land situated beyond that upon which such water rises, and has for a period of not less than thirty years been beneficially used by the owner of the land so situated. Use of private water.

6. (1) There shall be no right of property in public water and the control and use thereof shall be regulated as provided in this Act. Ownership of public and private water.

(2) Whenever a riparian owner obtains, by artificial means on his own land, a supply of water which is not derived from a public stream, such water shall be deemed to be private water.

(3) The said owner shall not be entitled to claim a share of any water to which he would otherwise have been entitled in accordance with section *nine* or *ten*, so long as the water court is of the opinion that the supply of water so created is of such volume and can be so utilized by such owner that the use by him of water from a public stream to which his land is riparian would be a wasteful use.

7. Notwithstanding anything contained in this Act— Use of public water by authorized persons for certain purposes.

(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 stock or drinking, washing or cooking, or use in a vehicle at that place;

(b) any officer or servant of a provincial administration, divisional council or other lawfully constituted body which is responsible for the construction, maintenance, repair or control of any road (other than a road within the area of jurisdiction of any municipal or other like institution) may, while he is lawfully at any place where he has access to a public stream, take and use so much of the water from such stream as may be necessary for the purpose of constructing, maintaining, repairing or controlling such road, provided no riparian owner along the course of such stream is thereby deprived of water from such stream for his own use for the irrigation of land which is then under irrigation or for domestic purposes or for the watering of his stock.

8. (1) The owner of any sub-division of land referred to in the definition of "riparian land" in section *one* is entitled to such share of the water of a public stream to which the owner of the original piece of land of which such sub-division formed a part was entitled immediately prior to the sub-division of such land, as may be agreed upon by the owners concerned or apportioned by the water court, even if that public stream does not flow on or along the boundary of such sub-division, except where the right to such share has been excluded by agreement, order of a competent court or other lawful means.

Rights to public water in respect of sub-divisions of land.

(2) Nothing contained in this section shall be construed as rendering riparian to a public stream any sub-division of land held under separate title at the commencement of this Act, but not riparian to that stream at such commencement.

9. (1) Subject to the provisions of this Act, and to any existing right, every riparian owner is entitled to the reasonable use of such share as may have been lawfully acquired by him from any other person and of his share (as determined under section *fifty-two*) of the normal flow of a public stream to which his land is riparian for use for agricultural and urban purposes on such land: Provided that—

Use of normal flow of a public stream.

- (a) a riparian owner shall not use such water wastefully or detain any portion thereof unreasonably or allow it to run off in unreasonable quantities to the detriment of lower owners;
- (b) a riparian owner who uses any portion of such normal flow for agricultural purposes shall on his own land, if practicable, or otherwise at the nearest convenient point elsewhere, return such water to the public stream from which it was abstracted with no other loss than that which has been occasioned by such use, unless he is legally obliged to pass the water on to other land;
- (c) a riparian owner shall not use any portion of such normal flow for the irrigation of land if thereby he deprives any lower riparian owner having a right to the use of such normal flow, other than an inhabitant within the area of jurisdiction of a local authority who is being supplied with water by that local authority, of water for domestic purposes or the watering of stock;
- (d) a lower riparian owner referred to in paragraph (c) shall satisfy his needs as to domestic use and the watering of his stock out of so much of the normal flow as he is entitled to use for agricultural purposes before he shall be entitled to demand, for the purposes of his domestic use or the watering of his stock, that any other riparian owner shall abate any of the share of the normal flow such last-mentioned owner is entitled to use for agricultural purposes;
- (e) subject to the provisions of this Act, and to any existing right, the owners of land riparian to a tributary to a public stream shall be entitled to so much of the normal flow of such tributary as they may require for any of the aforesaid uses in preference to any right of any other owner to the normal flow of such tributary for such uses on land which is riparian thereto only by virtue of its being riparian to the main stream into which the said tributary flows.

- (2) (a) The reference to storage in the definition of "normal flow" in section *one* shall not be deemed to include a reference to the impoundment of such share of the normal flow of a public stream as a riparian owner is or may become entitled to by virtue of a lawful distribution of such normal flow, and a riparian owner having a right to the use of a portion of the normal flow of a public stream by virtue of such a lawful distribution of such normal flow, may impound and store such portion in any reservoir which he has lawfully constructed in the channel of such public stream for the impoundment and storage of surplus water to which he is entitled in terms of sub-section (1) of section *ten*.

- (b) A riparian owner who has not constructed such a reservoir, shall not, except in pursuance of permission granted under sub-paragraph (i) of paragraph (b) of sub-section (2) of section *eleven*, impound and store the portion in question in the channel of a public stream, but may impound and store that portion in any reservoir lawfully constructed by him outside the channel of such stream.

10. (1) Subject to the provisions of this Act, and to any existing right, every riparian owner is entitled to the use of so much of the surplus water of a public stream to which his land is riparian as he can beneficially use for domestic purposes, for the watering of his stock, and for agricultural and urban purposes, and to impound and store such surplus water for those purposes.

Use of surplus water of a public stream.

(2) A riparian owner referred to in sub-section (1) shall not be compelled to curtail his use of any portion of the said surplus water to which he is entitled in terms of the said sub-section in favour of a lower riparian owner for such owner's domestic use or the watering of his stock or for agricultural or urban purposes, if such lower owner is not in terms of any agreement entitled to the use of such water for such purposes.

11. (1) (a) Save as is provided in sub-section (3) of section *fifty-six* and section *sixty-seven*, no person shall use public water for industrial purposes except with the permission of a water court and, where the quantity used exceeds sixty thousand gallons on any one day or fifty thousand gallons on an average per day during any month, under permit from the Minister: Provided that the permission of the water court shall not be required in the case of a local authority or any other body constituted under any law which has the right to control and supply either private or public water within its duly constituted area of jurisdiction, or in the case of any person to whom such water is supplied by such a local authority or other body: Provided further that, subject to the provisions of section *nine*, a person who is entitled or has acquired a right to use public water for agricultural purposes may, under permit from the Minister, and subject to such conditions as he may deem fit to impose, use water for the development of power not exceeding fifteen horse power, without the permission of the water court.

Use of public water by certain persons subject to permission of water court.

- (b) Neither the permission of a water court nor a permit from the Minister shall be required in respect of the use by any person in connection with any undertaking of a quantity of public water not exceeding during any month the average quantity per month of such water lawfully used by him in connection with that undertaking during the last period of six months within the period of twelve months immediately preceding the commencement of this Act during which water was so used by him, nor shall the permission of a water court be required for the use by any person in connection with any undertaking of a quantity of public water which he has been authorized to use by order granted by a water court prior to the commencement of this Act under any law hereby repealed.

(2) A water court may on the application of a person (including the Government, the South African Railways and Harbours Administration and any provincial administration)—

- (a) who is entitled in terms of this Act to use public water for agricultural purposes or who has acquired a right to the use of such water, authorize the applicant to use the share of such water to which he is so entitled or to the use of which he has acquired such a right, or any part of such share, for agricultural, industrial or urban purposes or such other purposes as the water court may determine, either on riparian land or elsewhere;
- (b) who is not entitled to use public water—

- (i) if the water court is of opinion that the grant of such permission will be in the public interest, permit the applicant to abstract from a public stream or to impound and store within or outside the channel of a public stream and to abstract, for use at any place for agricultural, urban or industrial purposes or such other purposes as the water court may determine, whether on land riparian to such stream or elsewhere, a stated quantity of public water, whether surplus water or normal flow of such stream;
- (ii) if the water court is satisfied that during any period all the water of a public stream, whether normal flow or surplus water, is not or will not be used on land riparian to every stream in or into which such water naturally flows, permit the applicant to abstract from such stream or to impound and store outside the channel of such stream and to abstract during the said period so much of the water as in the opinion of the water court is not or will not be so used, for agricultural, industrial or urban purposes, either on riparian land within the catchment area of such stream or elsewhere.

(3) A water court shall not consider an application for permission to use a quantity of water exceeding sixty thousand gallons on any one day or fifty thousand gallons on an average per day during any month for industrial purposes, unless the application is accompanied by a permit issued by the Minister under sub-section (5) of section *twelve*.

(4) Before granting any permission under sub-paragraph (i) of paragraph (b) of sub-section (2), the water court shall determine in what manner and to what extent the rights of the persons or of any one or more of the persons entitled to the use of water from the stream in question shall be abated for the purpose of making available the water in respect of which such permission is to be granted: Provided that—

- (a) such abatement shall as far as practicable be made in the first instance in respect of the rights of persons who have not exercised such rights;
- (b) any rights to the water of the public stream in question vested in any person by virtue of any statute not specifically repealed or amended by this Act shall not be subject to any abatement;
- (c) the rights of a riparian owner to the use of the normal flow of such stream for domestic purposes and for the watering of his stock shall not be so abated or otherwise prejudicially affected without his written consent.

(5) Any permission under sub-paragraph (ii) of paragraph (b) of sub-section (2) may be granted permanently or for such period as the water court may determine.

(6) The water court may—

- (a) in respect of a permission granted under paragraph (a) or sub-paragraph (ii) of paragraph (b) of sub-section (2), impose such conditions as in its opinion will prevent lower riparian owners from being prejudicially affected; and
- (b) in respect of a permission granted under sub-paragraph (i) of paragraph (b) of that sub-section, order the payment of compensation (the amount and manner of payment whereof shall be determined by the water court) to any person whose rights have been abated,

and may impose such other conditions in respect of any permission granted under the said sub-section as it may deem desirable.

12. (1) Any person who desires to establish an industrial undertaking in respect of which any quantity of water is required to be used for industrial purposes shall, before initiating or establishing such undertaking—

- (a) advise the director of the nature and the method of purification of the waste water, effluent or waste, if any, which will be occasioned by the operation of such undertaking; and
- (b) if he desires to use for industrial purposes a quantity of public water exceeding sixty thousand gallons on any one day or fifty thousand gallons on an average

Permit for industrial use of water to be obtained from Minister in certain cases.

per day during any month (whether or not any portion of such water is, in the case of water abstracted from a public stream, subsequently returned to that stream), apply to the Minister for a permit authorizing such use.

(2) Any person who has during the period of six months referred to in paragraph (b) of sub-section (1) of section eleven used in connection with any undertaking a quantity of public water exceeding on an average fifty thousand gallons per day, shall within six months after the commencement of this Act lodge with the director a statement showing the quantity of such water so used during that period and particulars of the undertaking in connection with which that water was so used.

(3) An application under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed by regulation.

(4) Upon receipt of such application the Minister shall, after consultation with the Minister of Economic Affairs, and after such investigation as he may deem fit, consider the application with due regard to—

- (a) the quantity of water which is, in his opinion, ordinarily available for use at the proposed source of supply;
- (b) whether or not the granting of a permit under this section would be likely to result in such a diminution of the supply as to endanger the reasonable supply of water from the same source to persons in the area of jurisdiction of the local authority, body or person concerned with the supply of such water, or (as the case may be) to persons entitled to use water from that source; and
- (c) whether it would not be desirable in the public interest or with a view to the decentralisation of industrial undertakings or the nature of the waste water, effluent or waste which will be occasioned by the operation of the undertaking in question or the method to be applied in the purification of such waste water, effluent or waste, that such undertaking be established at a place other than the place stated in the application.

(5) The Minister may thereupon grant a permit in terms of the application or with such modifications as he may deem fit, or refuse to grant a permit.

(6) Nothing in this section contained shall be construed as exempting any person from applying to a water court for permission to use public water for industrial purposes.

13. (1) If an owner of land which is situated within the area of jurisdiction of a local authority is entitled to the use of the water of a public stream to which such land is riparian for the irrigation of that land, the said local authority may, if it requires such water or any portion thereof for urban purposes, with the consent of the Administrator of the province in which such local authority has been established and of the Minister, take such water or any portion thereof as it may so require.

Local authority entitled to take water within its area for urban use.

(2) A local authority shall before exercising the power conferred upon it by sub-section (1), give to the owner concerned not less than six months' notice in writing of its intention to do so, and shall pay to such owner such compensation as may be agreed upon or failing agreement determined by a water court.

14. (1) If the maintenance of railway services by the South African Railways and Harbours Administration is at any time rendered difficult owing to a temporary or partial failure of an existing supply of water which that Administration is lawfully using for railway purposes, the said Administration may in accordance with the provisions of sub-section (2) make application for a temporary order permitting it to use a stated quantity of public water for railway purposes.

Use of public water by Railways and Harbours Administration under special circumstances.

(2) An application for an order under sub-section (1) shall be made to a judge of the division of the Supreme Court of South Africa which exercises jurisdiction in the area within which the water to which the application relates is to be abstracted.

(3) Any such judge may, notwithstanding anything to the contrary contained in this Act, make an order permitting the use of such water for such period and subject to such terms and conditions as he may determine.

(4) If the said judge makes an order in terms of sub-section (3), and owners of land riparian to the public stream from which the temporary supply of water is abstracted in pursuance of the order, or any other persons who are entitled to the use of the water of such stream, are adversely affected by being temporarily deprived of the use of such water and have suffered loss as a result thereof, the said Administration shall pay to those owners or persons such compensation as may have been agreed upon or as may, at any time subsequent to the making of the order, and after due notice to the parties concerned, be determined by the said judge or any other judge of the same division of the Supreme Court.

(5) Any proceedings under this section shall for the purposes of this Act be deemed to be proceedings before a water court, and the judge presiding at such proceedings shall be deemed to be a water court judge.

(6) The use of water by the aforesaid Administration for railway purposes in the exercise of any right to water lawfully acquired by it from any riparian owner or otherwise lawfully enjoyed by it immediately prior to the commencement of this Act, shall be deemed to have been permitted by a water court.

15. Notwithstanding the repeal by this Act of the unrepealed provisions of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), and of the Irrigation Amendment Act, 1934 (Act No. 46 of 1934), any permission granted or determination made or order issued or other act performed by a water court, and any undertaking or security given by any person, under section *fifteen* or *sixteen* of the said Irrigation and Conservation of Waters Act, 1912, prior to the commencement of the said Irrigation Amendment Act, 1934, shall remain of the same force and effect as if this Act had not been passed.

Saving in respect of areas protected under repealed provisions of Act 8 of 1912.

16. (1) An owner of riparian land situated within the catchment to which any permission, determination or order referred to in section *fifteen* relates, which is registered under separate title deed at the date of commencement of this Act, may, notwithstanding such permission, determination or order, construct on such land—

Limitation on construction of water works and abstraction of water in protected areas.

- (a) water works of a storage capacity not exceeding twenty-five million gallons in the aggregate in which he may impound and store for his own use surplus water in any public stream to which his land is riparian; and
- (b) diversion water works capable of diverting a flow of water not exceeding ten cubic feet per second by means of which he may divert for his own use surplus water from any such public stream.

(2) The provisions of sub-section (1) shall not apply in respect of an owner to whom permission has been granted by a water court to construct and who has constructed storage or diversion water works in the catchment referred to in the said sub-section: Provided that if such storage works are of a smaller capacity than twenty-five million gallons or such diversion works are capable of diverting a flow of less than ten cubic feet of water per second, the owner of such works may, according to the circumstances—

- (a) enlarge such water works to impound and store not more than twenty-five million gallons of water therein or construct additional water works which, together with such works, will be capable of storing in the aggregate not more than twenty-five million gallons of water; or
- (b) enlarge such water works to enable him to divert a flow of water not exceeding ten cubic feet per second or construct additional water works which, together with such water works, will be capable of diverting a flow of water not exceeding ten cubic feet per second.

17. (1) If an owner of riparian land referred to in sub-section (1) of section *sixteen* desires to construct thereon water works of a capacity exceeding that mentioned in paragraph (a) or (b) of that sub-section, he may apply to a water court for permission to construct such works, and the water court may grant permission for the construction of such works, either un-

Construction of works and abstraction of water in protected areas with permission of water court.

conditionally or subject to such modifications and conditions as it may deem necessary, if it is satisfied that the rights of persons who have been granted protection in respect of their works in terms of any order referred to in section *fifteen* will not be adversely affected thereby, and shall in that event at the same time determine the amount of water which the applicant may by virtue of such permission impound or divert.

(2) Before granting any permission under sub-section (1), the water court shall afford every riparian owner who is likely to be affected thereby an opportunity to raise any objection before it to the granting of such permission, whether as regards the amount of water proposed to be stored or diverted or as regards any other matter.

(3) An irrigation board which may be entitled to raise any objection under sub-section (2) may appear before the water court on behalf of the persons liable for the payment of rates to the board, and any notice required to be served on such persons in connection with any such objection shall be deemed to have been duly served on them if the said notice has been served on the board.

18. (1) If the storage capacity of a storage work in respect of which protection has prior to the commencement of the Irrigation Amendment Act, 1934, been granted by a water court under section *fifteen* or *sixteen* of the Irrigation and Conservation of Waters Act, 1912, has become reduced by siltation or any other cause to less than the capacity authorized by such water court, the owner of such work may, with the permission of the water court, enlarge the said work or construct another storage work in the same public stream above or below the first-mentioned work in order to impound and store a total quantity of water not exceeding in the aggregate the capacity so authorized.

Rights of Government and persons enjoying protection to construct works in protected areas.

(2) The Minister may construct a Government water work in any catchment to which a permission, determination or order referred to in section *fifteen* relates, and any Government water work within such a catchment commenced or completed before the date of commencement of this Act shall be deemed to have been authorized by this section.

(3) If any work constructed in terms of sub-section (1) or (2) is situated above the work in respect of which protection has been granted by virtue of the provisions referred to in sub-section (1), and its construction has resulted in a diminution of the share of the water of the public stream in question which any lower riparian owner, whose land is situated in the catchment to which such protection relates, is entitled to impound or divert by means of water works existing and being beneficially used at the date of commencement of such construction, the owner who has constructed such work or the Minister, as the case may be, shall either—

- (a) pay to that lower riparian owner such compensation; or
- (b) in lieu of the water of the use whereof such lower owner has been deprived, supply such owner from time to time with such a quantity of water from the works so constructed,

as may be agreed upon or failing agreement determined by a water court.

19. An owner of land riparian to a public stream who feels aggrieved by the storage, impoundment or diversion by an upper riparian owner along such stream of a greater quantity of the surplus water thereof than he could reasonably be entitled to use, may apply to a water court for an order determining the quantity of water which, in the opinion of the said court, the said upper owner shall be entitled to store, impound or divert, and thereafter the said upper owner shall not be entitled to store, impound or divert a greater quantity of water than the quantity so determined: Provided that no order of a water court under this section shall interfere with the use, enjoyment or exercise of any right previously held, or any permission previously granted in terms of an order made by a water court under this Act or any prior law to store, impound or divert surplus water, unless such permission was cancelled under sub-section (3) of section *sixteen* of the Irrigation and Conservation of Waters Act, 1912, prior to the commencement of the Irrigation Amendment Act, 1934, or has lapsed by virtue of the provisions of the said section.

Remedy against excessive storage, impoundment or diversion of surplus water.

20. (1) Where owing to natural causes a public stream which constitutes the boundary between two or more pieces of land riparian thereto, ceases to flow between or separate such pieces of land and is diverted to a new course, the boundaries of the several pieces of land shall remain as if no such change of course had taken place, and no such change of course shall deprive an owner of riparian land which may be cut off from such public stream by reason of such change of his riparian rights in relation to such stream, which rights shall remain and be regarded as if the said stream had not been so diverted.

Rights of riparian owners in event of change of course of public stream.

(2) An owner referred to in sub-section (1) may at any time within a period of ten years after the change in the course of the public stream to which his land is riparian apply to a water court for an order prescribing such point or points on the new course of the said stream as to the water court may appear necessary for the practical exercise by such owner of his riparian rights, and the water court shall upon such application grant to that owner a right of access to the public stream in question at such point or points along a convenient line to be determined by it as will enable the said owner to take and convey water from such stream for the purposes for which he is entitled to use water therefrom under this Act.

(3) When any such change in the course of a public stream is to the detriment of any owner riparian thereto, he may, within five years after the change has taken place, apply to the water court for permission to construct such works as in the opinion of the water court may be necessary for the restoration of such stream to its former channel.

21. (1) (a) The purification of any waste water or any effluent or waste produced by or resulting from the use of water for industrial purposes shall form an integral part of the process of such use and, subject to the provisions of sub-section (5), any person using water for industrial purposes shall purify such water, effluent or waste so as to conform to such requirements as the Minister may from time to time after consultation with the South African Bureau of Standards, prescribe by notice in the *Gazette* either generally or in relation to water used for or in connection with any one or more specified industrial purposes.

Purification and disposal of industrial water and effluents.

(b) Any requirements prescribed under paragraph (a) shall be such as to ensure that the waste water, effluent or waste to which such requirements relate will, after purification in accordance with those requirements, be at least as free of impurities as would have been the case if the purification thereof had been effected in accordance with the recommendation of the said Bureau.

(2) Public water which has been used for industrial purposes and any effluent produced by or resulting from such use, other than water or effluent referred to in sub-section (3), shall, subject to the provisions of section *eleven*, after purification in accordance with sub-section (1), be returned by the user at the nearest convenient point to the bed of the public stream from which the said water was abstracted: Provided that where water has been so used at any place outside the natural watershed of the catchment area of a public stream from which it was abstracted and in the opinion of the water court it is for physical or economic reasons impracticable to return such water or any such effluent to the said stream, such water or effluent may be returned by the user to the bed of some other public stream at a point determined by the water court.

(3) The provisions of sub-sections (1) and (2) shall not apply in respect of a person supplied with water by the Minister or by any local authority or other person or lawfully constituted body having a right to control and supply public or private water, including underground water, within its area of jurisdiction, if the Minister or, as the case may be, such local authority, person or body or any other local authority has undertaken the duty of disposing of such water or any effluent or waste produced by or resulting from the use thereof after such water has been used by the said person and has been discharged into any channel, drain or sewer under the control of the Minister or the local authority, person or body concerned.

(4) Water used for industrial purposes and returned in accordance with sub-section (2), shall not be diminished in quantity save in so far as such diminution is caused by such use.

(5) (a) Any person or user referred to in sub-section (1) or (2) may apply to the Minister for a permit exempting him from compliance with the provisions of either of those sub-sections, and the Minister may, after such investigation as he may consider necessary, if he is satisfied that compliance with the said provisions is impracticable in the particular circumstances, grant a permit subject to such conditions as he may deem fit to impose, exempting such person or user from compliance therewith to such extent as the Minister may determine, or authorizing such person or user to discharge any waste water, effluent or waste referred to in sub-section (1) in an unpurified state or in such state of semi-purification as the Minister may determine, into any public stream at a point to be fixed by the Minister: Provided that, in the case of an application for exemption from compliance with the provisions of sub-section (1), the Minister shall in considering such application have due regard to the regulations made under paragraph (d) of sub-section (1) of section *ten* of the Sea-shore Act, 1935 (Act No. 21 of 1935), and shall not issue such a permit unless he is satisfied that—

(i) the conditions to be imposed in connection with any such permit will be at least as effective for the purpose of preventing the pollution of public or other water, including sea water, as any conditions or requirements which may have been recommended by the South African Bureau of Standards; and

(ii) any point so fixed by him is in such proximity to the sea that it is unlikely that any other person will be prejudicially affected and that the dilution of such waste water, effluent or waste by sea water or other water contained in the said stream will be such that neither aquatic nor marine fauna or flora in the public stream or the sea will be detrimentally affected.

(b) Any interested person, other than an applicant for a permit under paragraph (a), may after written notification to the Minister apply to a water court for the cancellation or modification of any permit issued under that paragraph, and the water court may make such order on the application as it may consider equitable.

(c) The Minister may at any time by notice in writing to the holder of any permit issued in terms of paragraph (a), withdraw that permit or amend it in such manner as he may deem fit.

(6) (a) The Minister may in prescribing any requirements under sub-section (1) or imposing any conditions under sub-section (5), also specify the steps to be taken by any person carrying on any mining or other industrial operations, in order to prevent the pollution of public or private water, including underground water, by seepage or drainage from any area on which those operations are carried on both while such operations are in progress and after the abandonment thereof.

(b) Any such person who fails to take the steps so specified within a period determined by the Minister and made known by notice in the *Gazette* or by notice in writing addressed to such person, shall be guilty of an offence.

(7) For the purposes of this section, a local authority which uses water for the purification or disposal of sewage or any effluent or waste referred to in sub-section (3), shall be deemed to use such water for industrial purposes.

(8) Any person who contravenes or fails to comply with the provisions of this section shall be guilty of an offence.

22. (1) Notwithstanding the provisions of the Public Health Act, 1919 (Act No. 36 of 1919), or any other law, but subject to the provisions of sub-section (2), a local authority having jurisdiction over the disposal of sewage may, after purifying

Disposal of effluents by local authorities.

the effluent derived from the treatment of such sewage in accordance with standards prescribed under sub-section (1) of section *twenty-one*, and with the permission of the Minister, use such effluent for any purpose approved by the Minister or dispose of such effluent for use by any person or discharge such effluent into a public stream.

(2) The Minister may in writing, and on such conditions as he may deem fit, exempt from compliance with the provisions of section *twenty-one*, any local authority which does not dispose of water used for any industrial purpose other than the purification or disposal of sewage.

(3) Any local authority which contravenes or fails to comply with any condition subject to which any exemption has been granted to it under sub-section (2) shall be guilty of an offence.

23. (1) Any person who wilfully or negligently, and, where any provision of section *twenty-one* or *twenty-two* applies, contrary to that provision, does any act whereby any public or private water, including underground water, is polluted in such a way as to render it less fit for the purposes for which it is ordinarily used by other persons (including the Government, the South African Railways and Harbours Administration and any provincial administration) entitled to the use thereof, or for the propagation of fish or other aquatic life, or for recreational or other legitimate purposes, shall be guilty of an offence.

Prevention of pollution of water.

(2) (a) The Minister may out of moneys appropriated by Parliament for the purpose, take any steps which he may consider necessary to prevent the pollution, as a result of seepage or drainage from any area on which mining or other industrial operations have been carried on, of public or private water, including underground water, after such operations have been abandoned, and may in his discretion recover the cost or any part of the cost incurred in taking such steps from any person who carried on or is entitled to carry on such operations.

(b) The Minister or a person acting under his authority may at any time enter upon any land for the purpose of taking any steps referred to in paragraph (a), and may take with him on to such land any men, animals, vehicles, equipment, appliances, instruments, stores or materials, and may erect such camps and construct such works as may be necessary for that purpose.

(c) No compensation shall be payable to any person for any loss which may be sustained by him in consequence of any action taken under this sub-section, except by order of a competent court.

24. The Minister may from time to time grant exemption from the operation of any provision of section *twenty-one* to any person: Provided that no such exemption shall be granted in respect of any period ending on a date more than three years after the commencement of this Act or such later date, not more than five years after the said commencement, as may with the consent, by resolution, of both Houses of Parliament, be determined by the Governor-General by proclamation in the *Gazette*.

Commencement of section 21 in relation to certain persons.

25. (1) Nothing in this Chapter contained shall be construed as—

Savings in respect of certain persons and soil erosion works.

(a) compelling any person who, prior to the first day of July, 1912, constructed or had in course of construction, works for the use of water of any stream, to allow to flow down past his works water which he could beneficially use by means of or for the purpose of his works and which he was at that date entitled so to use; or

(b) preventing any person who, prior to the first day of July, 1912, used and was entitled to use the water of any stream for agricultural purposes on non-riparian land, from continuing so to use such water; or

(c) preventing any person from doing on his own land any act necessary to prevent the erosion thereof, provided he does not thereby waste public water through the unbeneficial storage or detention thereof or the unbeneficial flooding of veld.

(2) The storage or detention of public water or the use of public water for the flooding of veld, in so far as may be reasonably necessary in connection with any soil conservation work authorized in terms of the Soil Conservation Act, 1946 (Act No. 45 of 1946), shall not be deemed to constitute unbeneficial storage, detention or use of such water: Provided that the Minister may, in respect of any public stream, by notice in the *Gazette* prescribe such specifications and conditions subject to which any soil conservation works may be constructed, as he may consider necessary to ensure that public water will not be wastefully stored or detained or used for the flooding of veld to the prejudice of lower riparian owners or any owner of a water work in respect of which protection was prior to the commencement of the Irrigation Amendment Act, 1934, granted under section *fifteen* or *sixteen* of the Irrigation and Conservation of Waters Act, 1912.

(3) Any person who fails to comply with any specifications or conditions prescribed in terms of sub-section (2) shall be guilty of an offence.

26. The Minister may make regulations relating to—
- Regulations as to permits and control of pollution of water.
- (a) the form of application for permits under section *twelve* and the particulars to be furnished in connection with any such application or under paragraph (a) of sub-section (1) of section *twelve*;
 - (b) the form of any application under sub-section (5) of section *twenty-one*, and the particulars to be furnished in connection with any such application;
 - (c) the prevention of wastage or pollution of public or private water, including underground water, and the powers and duties of persons appointed to exercise control in respect thereof;
 - (d) generally, any other matter which he considers it necessary or expedient to prescribe in order that the objects of sections *twenty-one* to *twenty-four*, inclusive may be achieved.

CHAPTER III.

CONTROL AND USE OF SUBTERRANEAN WATER AND WATER FOUND UNDERGROUND.

27. In this Chapter "subterranean water" means such water naturally existing underground, or abstracted therefrom as is contained within the areas declared to be subterranean water control areas under section *twenty-eight*.

Definition of subterranean water.

28. (1) The Governor General may from time to time by proclamation in the *Gazette* declare any area defined in the proclamation to be a subterranean water control area if the Minister is of the opinion that such area is a dolomite or artesian geological area or that the abstraction of water naturally existing underground in such area may result in undue depletion of its underground water resources, and may in like manner withdraw or amend such proclamation.

Governor-General may proclaim subterranean water control areas.

(2) Any area which has in terms of section *twenty-five* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), been declared to be a dolomitic geological area shall be deemed to have been declared to be a subterranean water control area under this section.

29. All subterranean water shall, until the contrary is proved, be presumed to be contained in or to flow in defined channels.

Presumption in respect of subterranean water.

30. (1) Subject to the provisions of sub-section (2), an owner of land is entitled to abstract or obtain any subterranean water thereunder for his own use for any purpose on such land.

Use of subterranean water.

(2) The Minister may in relation to any subterranean water control area, make such regulations as he may deem necessary for exercising control over the drilling of boreholes for the purpose of locating water for use for any purpose, the sinking of wells and the abstraction, protection against pollution and preservation of subterranean water contained in such area, including regulations limiting the number of boreholes or wells which may be sunk in any such area or the quantity of water which may be abstracted by means of any borehole or well, whether sunk before or after the commencement of this Act,

or prohibiting the sinking of such boreholes or wells except with the consent of the Minister or a person acting under his authority and subject to such conditions as he may specify.

(3) An owner referred to in sub-section (1) shall not, without a permit issued by the Minister under sub-section (5), sell, give or otherwise dispose of subterranean water abstracted or obtained by him in accordance with sub-section (1) to any person for use on any other land or convey such water after it has been so abstracted or obtained beyond the boundaries of his land for his own use.

(4) (a) The owner of any mine on which mining operations are being lawfully carried on may remove from the mining area any subterranean water whereof the removal is necessary for the efficient carrying on of such mining operations or the safety of persons employed therein, and may, unless the Minister otherwise directs, use such water in such mining operations or for domestic purposes connected therewith, and may, under permit from the Minister, use such water for other purposes or sell, give, exchange or otherwise dispose of such water.

(b) Any such owner who does not so use, sell, give or exchange any such water, shall dispose thereof in such manner as the Minister may direct.

(5) The Minister may, subject to such conditions as he may deem fit—

(a) on the application of an owner referred to in sub-section (1), issue a permit to such owner entitling him to convey, for his own use, subterranean water abstracted or obtained by him in terms of that sub-section beyond the boundaries of the land on which it was abstracted or obtained, or to sell, give or otherwise dispose of such water to some other person for use on other land; or

(b) on the application of the owner of a mine referred to in sub-section (4), issue a permit to such owner entitling him to use, sell, give, exchange or otherwise dispose of subterranean water removed from such mine in terms of that sub-section.

(6) Notwithstanding the provisions of this Chapter, the Minister may convey and supply any subterranean water abstracted or obtained by the Government to any person for use on any land for any purpose authorized by the Minister, whether such water has been abstracted or obtained on land belonging to the Government of the Union or on other land: Provided that no water so abstracted or obtained shall be so conveyed or supplied by the Minister if it has been found on land not belonging to the Government unless the Government has acquired a right to such water by agreement with the owner of the said land or by virtue of any expropriation in accordance with section *sixty*.

31. (1) Any person who sinks, for the purpose of locating water, boreholes on land by means of a water-boring machine or other apparatus operated for the sinking of boreholes shall, within three months after the commencement of this Act, or, if he commences to operate any such machine or apparatus on any date after the commencement of this Act, within one month after the date upon which he so commences to operate, furnish the director with his full name, his permanent address and details as to the type and make of the said water-boring machine or apparatus.

Registration of private water boring contractors.

(2) Such person shall, within one month of any change in his address, in writing notify the director of such change.

(3) The director shall cause a register to be kept of the information furnished to him under sub-section (1) or (2).

(4) The provisions of this section shall not apply in respect of the sinking of boreholes by a mining company in connection with mining operations.

32. (1) A person referred to in sub-section (1) of section *thirty-one* who proposes to sink a borehole for the purpose of searching for or abstracting water, shall, before he commences to do so, give to the Director of Geological Survey notice in writing of his intention to do so, and shall keep a journal of the progress of the work, which shall indicate—

Facilities for obtaining information as to water found underground.

- (a) the diameter and the final depth of the borehole;
- (b) measurements of the strata passed through and a description of such strata;
- (c) the levels at which water is struck and subsequently rests;
- (d) particulars of any test made and of the quantity and apparent quality of water obtained;
- (e) the rate of flow throughout the test and the duration of the test;
- (f) where practicable, the water levels during the test and thereafter until the water has returned to its natural level.

(2) Where any such borehole is sunk in connection with an existing pumping station or water supply, the particulars of any test required to be kept under paragraph (d) of sub-section (1) shall also include the rate of pumping at the existing works during such test.

(3) The said person shall allow any person authorized by the Director of Geological Survey for the purpose at all reasonable times—

- (a) to have free access to any such borehole;
- (b) to inspect the borehole and the material excavated or taken therefrom;
- (c) to take specimens of such material and of water abstracted from the borehole;
- (d) to take readings in or in the vicinity of any such borehole with geophysical instruments; and
- (e) to inspect and take copies of or extracts from the journal required to be kept under sub-section (1).

(4) On completion or abandonment of any such borehole, the said person shall send a complete copy of the said journal having reference to the said borehole to the Director of Geological Survey.

(5) Where the person sinking a borehole on any land is not the owner or occupier of the land, the obligation to allow a person authorized by the Director of Geological Survey to exercise the rights specified in paragraphs (a) to (d) of sub-section (3) shall be the obligation of the owner or occupier as well as of the person sinking the borehole.

(6) Where any person contracts or proposes to sink any borehole on land belonging to or occupied by any other person, the contractor shall be deemed for the purpose of this section and of section *thirty-one* to be the person sinking the borehole.

(7) The owner or occupier of land on which a borehole referred to in this section is sunk, may give notice in writing to the Director of Geological Survey requiring him to treat as confidential any copy of or extract from the journal referred to in sub-section (1) or any specimen taken under paragraph (c) of sub-section (3), and the said Director shall thereupon not allow that copy, extract or specimen, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person not being an officer of the department or of the Division of Geological Survey, unless the owner or occupier giving the notice consents thereto.

33. Any person who contravenes or fails to comply with any provision of section *thirty-one* or *thirty-two* which is applicable to him, shall be guilty of an offence. Offences.

CHAPTER IV.

WATER COURTS.

34. (1) There is hereby established—

- (a) a water court to be known as the Transvaal Water Court, which shall have jurisdiction in the province of the Transvaal;
- (b) a water court to be known as the Orange Free State Water Court, which shall have jurisdiction in the province of the Orange Free State;
- (c) a water court to be known as the Natal Water Court, which shall have jurisdiction in the province of Natal;
- (d) a water court to be known as the Cape Water Court, which shall have jurisdiction in that portion of the province of the Cape of Good Hope not included in the area referred to in paragraph (e) or (f) and, for the purposes of the application of the provisions of sections *one hundred and six* and *one hundred and seventy-four*, and until the water court referred to in paragraph (g) is established, also in the territory of South-West Africa;

Establishment of water courts.

- (e) a water court to be known as the Eastern Districts Water Court which shall have jurisdiction in that portion of the province of the Cape of Good Hope in which the Eastern Districts Local Division of the Supreme Court of South Africa exercises jurisdiction;
- (f) a water court to be known as the Griqualand West Water Court, which shall have jurisdiction in that portion of the said province in which the Griqualand West Local Division of the said Supreme Court exercises jurisdiction; and
- (g) with effect from the date on which the provisions of this Act are applied to the territory of South-West Africa in terms of section *one hundred and eighty*, a water court to be known as the South-West Africa Water Court, which shall have jurisdiction in that territory.

(2) Any matter arising out of or in connection with the use or appropriation of the water of a public stream which forms a boundary or any part of a boundary between the areas of two or more water courts, shall be heard and determined by one or other of those water courts agreed upon between the parties or, failing agreement, determined by the Minister, and the decision of any such water court shall, in so far as it relates to the use or appropriation of the water of a public stream within the area of any other of those water courts, have effect as if it were a decision of that other water court.

35. A water court shall be presided over by a water court judge who shall be a judge of the division of the Supreme Court of South Africa which exercises jurisdiction in the area of that water court, or, in the case of the South-West Africa Water Court, by a judge of the High Court of South-West Africa, and shall consist of such water court judge sitting alone or, if he so directs, with assessors, appointed as hereinafter provided.

Constitution of water court.

36. (1) The assessors, if any, required for the hearing and determination of any matter arising for decision by a water court shall be appointed by the presiding judge, and shall—

Appointment of assessors.

- (a) in any matter relating to the amount of compensation payable under section *sixty, ninety-four* or *one hundred and twelve* be two lay assessors, selected from the panel prepared under section *thirty-seven* and having knowledge of the value of land in the area where the expropriated property is situated, and an engineer who shall not, if the Government is a party, be a person in the employ of the Government;
- (b) in any other matter to which the Government is a party, be an engineer who is not in the employment of the Government and a lay assessor selected from the panel prepared under section *thirty-seven*; and
- (c) in any other case be an engineer of the department nominated by the Minister and a lay assessor so selected.

(2) The name of any assessor selected in accordance with sub-section (1) shall be notified to each of the parties to the matter to be investigated or determined and any such party may in accordance with regulation lodge an objection to such assessor with the presiding judge who shall decide on the objection and shall, if he upholds an objection, forthwith appoint another assessor.

(3) No assessor shall be qualified to serve at a hearing before a water court if he has any direct or indirect personal interest in the matter to be heard and determined, or is related within the third degree of consanguinity or affinity to any party to the suit, and every assessor shall before taking his seat declare upon oath administered by the presiding judge that he has no such interest and is not so related and that he will to the best of his ability give judgment upon the matter to be heard in accordance with the evidence submitted.

37. (1) (a) The Minister shall by notice in the *Gazette* divide each water court area into wards as he may consider necessary and shall in respect of each of such wards nominate not less than five and not more than twelve persons as water court lay assessors, and shall in respect of each such ward prepare a panel containing the full christian names and surname, the place of abode and the title, calling or business of every person so nominated.

Preparation of panels of assessors.

- (b) The Minister shall further in respect of each water court area nominate not more than fifteen engineers from amongst whom any engineer assessor required in any case to which the Government is a party shall be

selected, and prepare a panel showing the full christian names and surname, place of residence and title of every person so nominated.

(2) No person shall be qualified to serve as a water court lay assessor nor shall his name be inserted in any such panel of lay assessors unless he is not less than thirty years of age and owns immovable property of the value of not less than two thousand pounds, and no person shall sit as a lay assessor on any water court unless he owns, occupies and cultivates or has owned, occupied and cultivated land within the ward in which the matter before that court has arisen.

(3) The Minister may at any time in his discretion remove the name of any person from a panel prepared by him under sub-section (1), or include the name of any person in such panel, and if any person whose name is on the said panel ceases to be qualified in terms of sub-section (2) or becomes insolvent or of unsound mind, his name shall forthwith be removed from the said panel.

38. (1) If a water court is constituted with assessors each assessor shall have an equal voice with the water court judge in any decision of such court on any matter of fact, and on all such matters of fact the decision of the majority of the members of the court shall be the decision of the court. Rights of assessors in decision of water court.

(2) Any matter of law arising out of the accepted facts for decision by such court, and any question as to whether a matter for decision is a matter of fact or of law, and any question as to costs, shall be decided by the water court judge and no assessor shall have a voice in such decision.

39. (1) If after a water court has been constituted, an assessor nominated or selected thereto— Death of assessor or inability to sit.

- (a) dies or becomes insolvent or of unsound mind during the hearing of an application by such court or so soon before such a hearing that the vacancy cannot be filled in time for the hearing; or
- (b) is unable to take his seat and another assessor cannot be nominated or selected in time for the hearing; or
- (c) having taken his seat is unable to continue to sit,

the parties to the application may agree to its being heard and decided by the remaining member or members of the court: Provided that in the case of a difference of opinion where the court consists of the water court judge and one assessor, the judgment of the judge shall be the judgment of the court.

(2) Any order or award made or judgment given in the circumstances described in sub-section (1) shall be deemed for all purposes to be an order, award or judgment of a water court.

(3) Whenever in the circumstances described in sub-section (1), the parties to an application do not agree to the hearing and decision of that application by the remaining members of the water court, the hearing shall be adjourned by the water court judge for the nomination or selection, as the case may be, of an assessor in the place of the assessor who has died, become insolvent or of unsound mind or become unable to take his seat or continue to sit.

40. A water court shall have power—

- (a) to make orders and awards, including orders for the payment of money, where necessary, upon— Jurisdiction, powers and authority of water court.
 - (i) applications in connection with disputes regarding the use, diversion or appropriation of public water;
 - (ii) applications under the proviso to section five as to the right to a reasonable share of water referred to in that proviso;
 - (iii) applications in connection with claims for servitudes by means of which rights to use or dispose of public water or subterranean water are or may be exercised;
 - (iv) applications as to any matter which in terms of this Act or any other law may be brought before a water court;
- (b) on the application of any interested person, to investigate, define and record the rights to the use of public water of any particular stream and, subject to the provisions of section forty-two, and to the due recognition

of all rights to the public water in question which have been defined and any apportionment which has been made by order of a competent court or by arbitration or agreement or in any other lawful manner, to apportion such public water for any of the purposes recognised by this Act;

- (c) to enquire into and, in its discretion, determine any existing, future or contingent right or obligation in respect of the use of public water or any right of servitude by means of which public water or subterranean water is being used or disposed of, notwithstanding that no person can claim any relief consequential upon such determination;
- (d) to investigate, determine and record whether any particular stream is a public or a private stream;
- (e) to investigate, define and record the normal flow of a public stream at any point along the course of such stream;
- (f) to determine and fix the place or places, either upon land riparian to a public stream or upon any land higher up the course of such public stream, at which an owner of such land shall be entitled to divert water from such stream, and to determine, if required, the nature and extent of the right of use at such place or places, due regard being had to the rights of any other owners;
- (g) to investigate any application for the removal or alteration of any dam, weir or other obstruction in the course of a public stream and to make orders and awards thereon;
- (h) to grant permission for the use of public water;
- (i) to give such directions for the erection, maintenance, control and supervision of devices for the proper measurement and division of the normal flow of any public stream and as to payment of the costs thereof as may be necessary to give effect to its orders or awards; and
- (j) generally to do any act or thing which may under this Act or any other law be done by a water court.

41. (1) Any judge of any division of the Supreme Court of South Africa which exercises jurisdiction within the area of a water court, or, in the case of the territory of South-West Africa, of the High Court of South-West Africa, shall have power—

Powers of certain judges as to water court matters.

- (a) at any time after the lodging of an application for the hearing of a matter by that water court—
 - (i) to order substituted service of any process, including any application, on any particular person or class of persons;
 - (ii) to give any other directions as to the service of the application;
 - (iii) to decide any objection to an assessor;
 - (iv) to adjourn the hearing or the further hearing of the application;
 - (v) to grant leave to take evidence on commission or on affidavit;
 - (vi) to grant leave to an applicant to withdraw his application upon such terms as to notice to any other party to the application as to such judge may seem necessary;
 - (vii) to grant leave to any person to intervene as a party to a suit;
 - (viii) to grant leave to an applicant to join further persons as respondents in a suit;
 - (ix) to grant any order permitting an applicant, a respondent or any party directly interested in the application to make surveys or take gaugings upon the land of a respondent or an applicant; and
 - (x) to make any special supplementary order as to any costs, fees or expenses referred to in subsection (3) of section *forty-seven*;
- (b) at any time, whether prior to or after the lodging of an application for the hearing of a matter by that water court—
 - (i) to decide whether a pending dispute is one cognisable by that water court or by some other court:

- (ii) to grant an interdict pending the decision of a matter by that water court; and
- (iii) to grant any interlocutory order he may deem fit, the generality of this provision not being limited by anything contained in the preceding paragraphs.

(2) Any judge of the Supreme Court shall prior to the lodging of an application for the hearing of a matter by a water court have concurrent jurisdiction within its area of jurisdiction to grant an interdict pending the decision of any matter by a water court.

(3) A judge referred to in sub-section (1) or (2) shall have power to make such orders as to costs as the said judge may deem just in connection with any order or direction made by him.

(4) Any judge referred to in sub-section (1) shall have power upon application to declare any agreement made between all the parties to a dispute affecting water rights to be an order of court: Provided that—

- (a) any such application shall state the full names of the parties affected by the making of such order, the particulars of the rights which are the subject of the dispute and the grounds of the dispute; and
- (b) the judge shall be satisfied that every party affected by the application has been duly served with notice thereof and that the said agreement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with any provision of this Act.

(5) Any proceedings in terms of this section, except proceedings under sub-section (2), shall be deemed to be proceedings before a water court, and any order made by a judge in respect of such proceedings shall be deemed to be an order of a water court, and no order made under this section shall be subject to appeal to any court.

42. (1) Such part of any order made by a water court under paragraph (b) of section *forty* which determines the manner of distribution of the water apportioned in terms of the said order, shall be provisional and shall become final after the expiration of a period fixed by the said court in such order: Provided that if a variation of the said part of such order has before the expiration of the said period been sought and granted by the court, the court may make such order final.

Apportionment suits and orders.

(2) In respect of any application to a water court for the hearing of an apportionment suit and the distribution of water in terms thereof, it shall not be essential for the applicant to—

- (a) have searches made in a deeds registry of owners of land in respect of which an apportionment of public water of any particular stream is sought; or
- (b) take gaugings of the flow of such stream,

if the water court is satisfied by other evidence that sufficient proof has been submitted to it to enable it to adjudicate upon such application.

43. Except as provided in this Act or with the written consent of all the parties concerned, no court other than a water court shall have jurisdiction in the first instance to hear and determine any dispute or claim arising out of or in connection with any matter referred to in section *forty*, and no process shall issue out of any other court.

Original jurisdiction of water court as to water disputes.

44. (1) If a party to any matter brought before a water court is the owner of land which has been included in the schedule of an irrigation board prepared or revised in accordance with section *eighty-eight*, the irrigation board concerned, shall, whether or not the board is a party to the dispute, be entitled to appear before the water court and with the consent of that court to produce such evidence as the board may consider necessary.

Appearance of irrigation board or local authority before water court in certain circumstances.

(2) A local authority which controls or distributes water within its area of jurisdiction to persons who are liable for the payment of rates or charges to such local authority and who have a right to the use of or use such water, shall be entitled to appear as applicant and be liable to be cited as respondent on behalf of such persons in connection with any proceedings in a water court: Provided that nothing in this sub-section contained shall be construed as preventing any such person from appearing in such proceedings.

45. In any proceedings before a water court—

Representation in appearance before a water court.

- (a) a party to such proceedings may appear personally;
- (b) a local authority or a company or an irrigation board, if a party to such proceedings, or, in the case of a local authority or an irrigation board, entitled to appear in accordance with section *forty-four*, may appear by the person nominated by such local authority, company or irrigation board;
- (c) a person or body, being a party to such proceedings or otherwise entitled under this Act to appear, may appear by an advocate or attorney.

46. (1) A party to an application before a water court or an irrigation board or a local authority entitled to appear in accordance with section *forty-four*, may procure the attendance of any witness, whether such witness resides within the water court area in which the said court has jurisdiction or not, in the manner prescribed by regulations made under section *fifty-five*.

Summoning of witnesses and penalty for non-attendance.

(2) If any person who has been duly subpoenaed to attend the proceedings in a water court for the purpose of giving evidence or producing any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the water court judge, to remain in attendance throughout the proceedings, the water court judge may, upon being satisfied upon oath or by return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him impose upon the said person a fine not exceeding twenty-five pounds, or in default of payment, imprisonment for a period not exceeding one month.

(3) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the proceedings, the water court judge may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in sub-section (2).

(4) The water court judge may on cause shown remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The water court judge may order the costs of any adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under sub-section (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a magistrate's court in circumstances such as are described in the relevant sub-section, and the provisions of any law which are applicable in respect of such a penalty imposed by a magistrate's court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said sub-sections.

47. (1) A water court shall make such order or award in any proceedings brought before it as it may deem just, including any order as to costs of any such proceedings as it deems fit in accordance with a scale of costs prescribed by regulations made under section *fifty-five*: Provided that a water court shall not in any order for the payment of costs include any sum as fees for appearance before it (other than witness fees) unless the person so appearing is an advocate or an attorney referred to in paragraph (c) of section *forty-five*.

Order or award of a water court and fixing of costs.

(2) Any order as to costs may include the costs of—

- (a) any necessary search made in a deeds registry;
- (b) making of surveys and plans;
- (c) taking gaugings of the flow of water;
- (d) transcripts of the evidence in the suit; or
- (e) necessary travelling expenses of parties or their representatives,

and any costs awarded by a water court shall be subject to taxation by the registrar of such court.

(3) Advocates' fees, the qualifying expenses of any professional witness and costs awarded in respect of any matter referred to in sub-section (2), shall not be included in the party and party costs of any proceedings of a water court unless a special order to that effect has been made by such court or by a judge in terms of sub-paragraph (x) of paragraph (a) of sub-section (1) of section *forty-one*.

48. (1) If during the sitting of a water court, any person wilfully insults a member of such court or any officer thereof attending at such sitting, or wilfully obstructs or interferes with an officer of a water court in the execution of his duties, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the water court judge may order such person to pay a fine not exceeding fifty pounds or in default of payment to be imprisoned for a period not exceeding one month, or to be so imprisoned without the option of a fine. Contempt of a water court.

(2) Any order made under sub-section (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that sub-section, and the provisions of any law applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the said sub-section.

(3) Any person who wilfully disobeys an order of a water court or fails to carry out any order which a water court has required him to carry out, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding two hundred and fifty pounds or, in default of payment, imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

49. (1) Save as is provided in sub-section (5) of section *forty-one* and in section *fifty*, any party to proceedings before a water court in which such court has given a final judgment may appeal against such judgment to the Appellate Division of the Supreme Court. Appeals from orders or awards of a water court.

(2) Any such appeal shall be prosecuted as if it were an appeal from a decision of a provincial division of the Supreme Court, or in the case of an appeal from the South-West Africa Water Court, of the High Court of South-West Africa, and all the provisions applicable in relation to an appeal from any such decision shall *mutatis mutandis* apply in respect of an appeal under this section.

(3) Pending the determination of such an appeal, the judge who presided over the water court which granted the order or award in respect of which such appeal is pending or, if such judge is not available, any other judge attached to the same division of the Supreme Court of South Africa or, in the case of the South-West Africa Water Court, of the High Court of South-West Africa, shall have power to grant a stay of execution in whole or in part of such order or award upon such terms and conditions as to him appear just.

50. (1) The parties to any dispute concerning the use, diversion or appropriation of water, may in writing agree to submit the matter in dispute for final decision to a water court, and thereupon any order or award made by the water court in regard to the matter in question shall be binding upon the said parties and shall not be subject to appeal to any court. Agreement to accept decision of water court as final, and settlements during proceedings.

(2) If the parties to a dispute which is the subject of proceedings before a water court arrive at a settlement during the course of such proceedings, the water court may make such settlement an order of court, provided the water court is satisfied that the settlement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with any provision of this Act.

51. (1) Any order or award of a water court affecting rights to water which is final and which is not subject to appeal, or as to which no appeal has been noted within the prescribed time, or as to which an appeal has been noted but has not been prosecuted or has been dismissed, or any order or award made upon appeal to the Appellate Division of the Supreme Court under this Act shall, if the water court or the said Appellate Division, as the case may be, so directs, upon production of the said order or award, be registered by the registrar of deeds in charge of the deeds registry concerned against the title deed. Registration of orders and awards against title deeds of land concerned.

of any land to which the order or award refers and recorded in the appropriate registers, and the owner of any such land shall produce his title deeds for the purpose.

(2) The cost of such registration shall be borne by one or other of the parties to the proceedings in pursuance of which such order or award was made, as the water court or the said Appellate Division may direct.

(3) If the title deed of any such land cannot readily be produced for purposes of registration, the registrar of deeds concerned shall note the said order or award on the duplicate title deed filed in his registry and in the appropriate registers in that registry, and no further transaction relating to the said land shall be registered until registration of the said order or award has been completed by endorsement thereof on the title deed, and the said registrar of deeds is hereby authorized to impound the said title deed and to make the necessary endorsement thereon whenever it may for any reason be lodged in his registry.

52. (1) In determining a riparian owner's share of the normal flow of a public stream for the purposes of sub-section (1) of section *nine*, a water court shall take into consideration—

Considerations to be applied in determining an owner's share of public water.

- (a) the nature of the soil which is to be irrigated;
- (b) the comparative extents of irrigable land on the respective pieces of land which formed the subject of original grants, the owners of which are entitled to the use of the water of the public stream to which such land is riparian;
- (c) any natural sources of water supply on the said respective pieces of land other than that derived from the public stream in question;
- (d) that the quantity of water which may reasonably be used for agricultural purposes should be regulated as between the riparian owners concerned according to the quantity of water flowing in the stream;
- (e) the depth of water required per unit of irrigable land for the beneficial irrigation of such land;
- (f) any other features which it considers necessary in order to arrive at a fair apportionment of the water in question:

Provided that, in applying the consideration described in paragraph (b), a water court shall not, for the purpose of apportioning the normal flow of a public stream, take into account a greater area of irrigable land on any piece of land referred to in the said paragraph than an area which it deems to be commensurate with the total area of land which might be irrigated if the total quantity of the water ordinarily available for apportionment were allotted to such piece of land.

(2) In adjudicating upon any application made in terms of section *nineteen* a water court shall take into consideration—

- (a) the annual rainfall in the area in which the applicant's land is situated;
- (b) the number of times during an average year that the public stream in question is likely to flow;
- (c) the evaporation in the area in question;
- (d) the depth of water required per unit of irrigable land for the beneficial irrigation of such land;
- (e) the quantity of water which, under the circumstances, should reasonably be stored for the purpose of obtaining crops or for such other purposes as are described in sub-section (1) of section *ten*;
- (f) any natural sources of water supply on the land affected other than that derived from the public stream in question; and
- (g) any other features which it considers necessary in order to arrive at a just decision in the matter.

(3) No riparian owner shall be entitled to divert on to his riparian land or to impound and store for use for agricultural or urban purposes more water, whether normal flow or surplus water, than he can reasonably be expected to use for such purposes, and the quantity of water so diverted or impounded and stored shall not be greater than is required to apply such water efficiently and economically to such purposes.

(4) Any unbeneficial irrigation of veld by frequent and excessive flooding thereof, or the leading of public water onto or into places such as brak pans, hollows, swamps or any other places from which no advantage will be derived, shall be deemed to be unreasonable use of water.

(5) No water of any public stream shall be used for the irrigation of veld until all the irrigable land which is riparian to such stream and which is being cultivated and is capable of being supplied with such water by means of existing works has received sufficient water to meet reasonable requirements: Provided that the provisions of this sub-section shall not be construed as precluding the irrigation of pasture land in any area in which a soil conservation scheme is in operation in terms of the Soil Conservation Act, 1946 (Act No. 45 of 1946), in so far as may be necessary for the purpose of providing grazing required for stock or dairy farming purposes.

53. (1) In determining the normal flow of a public stream, a water court shall do so in a manner best suited to the locality and to the local conditions pertaining in respect of the seasonal flow of such stream, the climatic influences and the methods and requirements of irrigation and, subject to the provisions of sub-sections (2) and (3), shall take into consideration any other features which it considers necessary in the circumstances of each particular case in order to arrive at a just and equitable determination.

Considerations in determining normal flow under varying conditions.

(2) A public stream shall not be deemed to have a normal flow unless a portion of the actual and visible flow is derived from springs, seepage of any kind, including return seepage from irrigated land, melting snow, the steady drainage from swamps, vleis, natural or indigenous forests, or other like sources of supply.

(3) In respect of any public stream in the Province of the Cape of Good Hope which has under any law been declared by a competent court to be perennial, the normal flow at any point along the course of such stream shall be fixed by a water court at such depth or volume as will ensure that a sufficient volume of water will flow down to lower riparian owners to satisfy the requirements as to reasonable use of all the water furrows and other direct means of irrigation within the limits along the course of such stream within which a distribution has previously been made, or to satisfy the reasonable requirements of all irrigable land below the said point which is dependent for such requirements upon water passing such point.

54. The procedure of a water court shall be in accordance with the provisions of this Act and regulations made under section *fifty-five*: Provided that if there be no such provisions or regulations applicable in any particular circumstances, a water court shall act in such manner and on such principles as it shall deem best fitted to do substantial justice and to carry out the objects and provisions of this Act.

Procedure to be observed by a water court.

55. The Minister may make regulations relating to—

Water court regulations.

- (a) the procedure in water courts, including the procedure to be adopted in connection with the registration of orders or awards in terms of section *fifty-one* and of servitudes in terms of section *one hundred and fifty-one*;
- (b) the fees which may be charged in water courts and the allowances which shall be paid to members thereof who are not in the full-time service of the State;
- (c) the appointment of a registrar and other officers of a water court;
- (d) the forms of and service of notices and other documents required under this Act to be given or served in connection with proceedings in a water court; and
- (e) generally any other matters which he considers it necessary or expedient to prescribe in so far as the functioning of water courts is concerned.

CHAPTER V.

GOVERNMENT WORKS.

56. (1) The Minister may, out of moneys provided by Parliament for the purpose, and subject to the provisions of this Act, construct any Government water work which he may deem necessary or desirable for the purpose of conserving or

Construction and control of Government water works.

utilizing any water or the drainage of land, or for abstracting, storing or preventing the waste of or controlling any water derived from any underground source.

(2) Any Government water work constructed or in the course of construction at the date of commencement of this Act shall be deemed to have been constructed or commenced under this section.

(3) Notwithstanding anything to the contrary contained in this Act, the Minister may supply or distribute water from any Government water work to any person including any department of State, the South African Railways and Harbours Administration and any provincial administration, for use at any place and for any purpose approved by the Minister.

(4) The rights and privileges of ownership in any Government water work shall be vested in the State and shall be exercised by the Minister and shall not be transferred to any person except under the provisions of paragraph (b) of sub-section (1) of section *sixty-nine*.

(5) The control of any Government water work and the power to regulate or prohibit the abstraction of any water from any area submerged as a result of the construction of such work or the use of or entry into such work or any such submerged area is vested in the Minister.

(6) Whenever the Government has constructed any road for or in connection with a Government water work, or in connection with any holdings which have been established by the Government for the purposes of land settlement in terms of the laws relating to land settlement, and the control of such road has not been assumed by any local authority or other like institution which is lawfully entitled to exercise control over that road, the Minister may exercise control over such road and over the use thereof and the regulation of traffic thereon, and shall have power to make any regulations which he deems necessary for that purpose and to prescribe penalties for any contravention of or failure to comply with any such regulation or any direction or order issued thereunder and made known in such manner as may be prescribed in such regulations.

57. (1) The Minister may, subject to any existing right, construct any water work for or on behalf of any person and may enter into agreements with such person relating to the construction of such work and any matter incidental thereto.

Construction by Minister of water works for any person.

(2) The Minister may at any time before or after the commencement of the construction of any such work, by notice in the *Gazette* apply the provisions of section *sixty* to any area defined in the notice which in his opinion is or is likely to be affected by that work, and thereupon the said provisions shall *mutatis mutandis* apply as if the said area were a Government water control area and as if the said work were a Government water work.

(3) The Minister may from time to time by notice in the *Gazette* alter the boundaries of any area defined under sub-section (2) as he may consider necessary.

58. (1) The construction of a Government water work or any subsequent works in connection therewith whereof the estimated cost exceeds one hundred thousand pounds shall not be commenced by the Minister unless he has before the date on which the appropriation of money for the purposes of such work was first considered by the House of Assembly laid upon the Tables of both Houses of Parliament a report in regard to such work.

Reports on certain proposed works to be laid on Tables of both Houses of Parliament.

(2) A report under sub-section (1) shall contain particulars showing—

- (a) a description of the proposed works, including the capacity of any proposed storage reservoir, and any proposals in respect of any future works which may become necessary for the restoration of the capacity of any such reservoir which may be reduced by siltation;
- (b) the estimated cost of such works, the cost of any storage works or canal or distribution system being separately specified, a description and the estimated cost of any land or servitudes to be acquired for the purpose of the works or for any proposed land settlement scheme connected with the project, and the estimated cost of acquiring any existing right which it is deemed necessary to acquire for the purposes of the proposed scheme;
- (c) the estimated cost of deviating any existing road or railway which may be submerged as a result of the construction of the works;
- (d) the purpose and scope of the project;

- (e) the hydrographic data of the stream proposed to be exploited, including rainfall in and characteristics of its catchment area, its silt carrying properties and general conditions in regard to floods;
- (f) an estimate of the water resources which will become available for use as a result of the construction of the works, a statement of the estimated rate of siltation, of any reservoir proposed to be constructed, and the storage capacity proposed to be set aside for siltation;
- (g) the area and location of the land which could be irrigated by means of the proposed works and the nature and suitability of the soil on such land for irrigation as disclosed by a comprehensive soil survey;
- (h) a description of such land;
- (i) the probable extent to which such land as well as other land is likely to become affected by brak as a direct result of irrigation by means of the works;
- (j) the number of owners of such land who are likely to benefit if such works are constructed and, if it is proposed to use any such land or any Crown land for the purpose of land settlement in terms of the laws relating to land settlement, the number of holdings proposed to be allotted and the estimated cost of improving such holdings before allotment;
- (k) the area of land on each such holding or in respect of which each such owner is likely to receive water from the scheme;
- (l) the annual quota of water for agricultural use which it is proposed to fix in terms of paragraph (b) of subsection (2) of section *sixty-three*;
- (m) the kinds of crops for which the area in question is likely to be suitable;
- (n) the existing utilization of water in that area, the development which has taken place as a result thereof, and details of existing water rights within the said area and of the extent to which such rights are being exercised;
- (o) any use, other than use for agricultural purposes, for which it is proposed to supply water from the works or for which such water can be utilized, and the possible extent and scope of such utilization;
- (p) whether hydro-electric power could be developed by means of the works, whether it is proposed to develop such power, and, if so, the extent thereof, the proposed utilization of such power, and the charges likely to be made therefor;
- (q) the proposed method of repayment of the cost, or any portion of the cost of the works by users of water supplied by means of the works, and, if the whole of such cost is not to be repaid, the amount which is to be repaid and the reasons for the subsidization of the scheme by the Government;
- (r) the estimated annual administration and maintenance costs of the scheme, and the rates or charges which are likely to be assessed under section *sixty-six*;
- (s) a general summary of the revenue expected to be derived by the Government from the operation of the scheme;
- (t) whether it is proposed that the Minister will administer and control the scheme or dispose thereof or delegate the administration and control thereof as provided in section *sixty-nine*;
- (u) any other facts which may be relevant to the feasibility and practicability of the project; and
- (v) any other matters which the Minister may deem fit to include.

59. (1) The Governor-General may, by proclamation in the *Gazette*, declare the area defined in such proclamation, being—

Governor-General
may declare
control areas.

- (a) an area comprising every piece of land which or a portion whereof is affected or likely to be affected by any Government water work constructed or deemed to have been constructed or in course of construction or intended to be constructed under this Act; or

- (b) an area within which the abstraction, utilization, supply or distribution of the water of any public stream should in his opinion be controlled in the public interest or with a view to raising the standard of beneficial utilization of such water by the persons entitled to use that water,

to be a Government water control area, and may from time to time in like manner amend or repeal any such proclamation.

(2) Whenever, in the opinion of the Governor-General—

- (a) the flow of a public stream in any particular area should in the national interest be regulated or controlled by damming, cleaning, deepening, widening, straightening or altering the course of the channel or by taking such other steps as may be necessary for the prevention or control of silt or for the purpose of lessening the possibility of damage to land which is riparian to such stream in the event of flood; or
- (b) any land is required for the protection of any portion of the catchment area of a public stream,

the Governor-General may, by proclamation in the *Gazette* declare the channel of any such stream or any portion thereof, together with such portion of the land on either side or on both sides of the said channel, or any other area situated within the catchment of such stream, as he may consider necessary for such purpose, and as may be defined in the proclamation, to be a catchment control area, and he may from time to time in like manner amend or repeal any such proclamation.

(3) Any Government irrigation area defined under section *ninety-eight* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), shall be deemed to have been declared a Government water control area under sub-section (1) of this section, and any area declared under section *seven ter* of the said Act to be a flood control area shall be deemed to have been declared a catchment control area under sub-section (2) of this section.

60. (1) The Minister may, subject to an obligation to pay compensation as hereinafter provided, expropriate any land or any right in respect of land or any existing right or appropriate any substance or material on any land or temporarily use any land or any water work on any land within a Government water control area or a catchment control area, as he may consider necessary for or in connection with any Government water work within such Government water control area or, as the case may be, for the effective carrying out of any work which he may consider necessary in connection with any of the purposes mentioned in sub-section (2) of section *fifty-nine* within such catchment control area.

Expropriation of land, servitudes, etc., in certain areas.

(2) Not less than three months before the Minister expropriates any such land or right in respect of land or existing right or appropriates any material or substance on any such land or commences to use any such land or water work, he shall give to the owner of the land, right, water work, substance, material or existing right and to every person who is shown upon the title deed of such land, or in the records of the Registrar of Mining Titles or of any other Government office in which rights granted under any law relating to prospecting or mining are recorded, to have any interest in such land and whose whereabouts he can readily ascertain, a notice by registered post, setting forth clearly and fully the land, right, water work, substance, material or existing right in question and the compensation offered therefor: Provided that if the whereabouts of any such owner or person having any interest as aforesaid is not readily ascertainable, the Minister shall cause such notice to be given by publication in three consecutive ordinary issues of the *Gazette* and once a week during three consecutive weeks in a newspaper circulating in the district in which the said land or water work is situated or in which the said existing right is exercisable, as the case may be, and the said notice shall in such event be deemed to have been given on the day on which the last publication thereof takes place.

(3) (a) The amount of compensation to be offered in the case of an expropriation of land shall not exceed—

- (i) the fair market value of the land, without improvements; plus
- (ii) the fair value of any necessary or useful improvements thereon; plus

- (iii) the fair value of any luxurious improvements thereon, not exceeding the actual cost of such improvements; plus
- (iv) a sum to make good any actual inconvenience or loss likely to be caused by the expropriation.
- (b) The amount of compensation to be offered in the case of an expropriation of any right in respect of land or any existing right, or in the case of an appropriation of any substance or material on any land, or in the case where any land or water work is temporarily used, shall not exceed a sum to make good any inconvenience or loss caused by such expropriation, appropriation or temporary use.
- (c) Any enhancement in the value of land referred to in paragraph (a) or (b) which may be caused by the construction, operation or extension of a Government water work, or any work or act which the Minister may carry out or perform in connection with any of the matters referred to in paragraph (b) of sub-section (1) or sub-section (2) of section *fifty-nine* shall not be taken into account in determining the amount of compensation referred to in the said paragraphs.
- (4) (a) If an owner refuses to accept the compensation offered by the Minister, either party shall, subject to the provisions of paragraph (b), have the right to have the amount thereof determined by a water court, and in that event the provisions of sub-section (3) shall *mutatis mutandis* apply.
- (b) Where an application for the determination of the amount of any such compensation is not lodged with the water court within a period of one year from the date of the relevant offer, the owner concerned shall be deemed to have accepted the amount offered.
- (5) Notwithstanding anything contained in any other law, the provisions of this section shall apply in respect of any land, right, water work, substance, material or existing right referred to in sub-section (1)—
 - (a) in any area which is a scheduled native area in terms of the Native Trust and Land Act, 1936 (Act No. 18 of 1936); or
 - (b) in any area which is a released area in terms of that Act:

Provided that the Minister shall not exercise any powers vested in him by this section in respect of any land, right, water work, substance or material within any such area except with the approval of the Governor-General.

(6) Upon the expiration of a period of three months from the date on which the notice referred to in sub-section (2) was given, or at any time prior to such expiration if agreed to by all interested parties, the department may forthwith enter upon and take possession of or use the land, water work, substance or material or exercise the right, to which such notice refers, as it may deem fit, irrespective of whether or not the amount to be paid in compensation has been agreed upon or settled as hereinbefore provided.

(7) Whenever the Minister has made an expropriation under the provisions of this section—

- (a) the owner or other person in possession of the title deed to any land concerned shall upon demand deliver such title deed to the director; and
- (b) the registrar of deeds in charge of the deeds registry in which the title deed to the land concerned is registered shall, if requested thereto by the director and pending the transfer or registration of the said land or right expropriated, as the case may be, make a note in the appropriate registers that such land or right has been acquired by the Minister.

(8) If the Governor-General has under any prior law, or the Minister has under this Act, acquired by expropriation or otherwise, any land or right in connection with any water which he is entitled to use, supply or control, or in connection with any water work which he has constructed or is constructing or intends to construct, whether on behalf of the Government or on behalf of any person, the Governor-General or the Minister, as the case may be, may at any time transfer such land or right to any person on behalf of whom he has constructed or is constructing or intends to construct such work or to whom the said work or the control thereof or the use, supply, distribution or control of the said water has been transferred in accordance with the provisions of this Act or the said prior law.

(9) The provisions of section *one hundred and forty-two*, paragraph (c) of sub-section (1) of section *one hundred and forty-five*, sub-section (2) of section *one hundred and forty-six* and sub-section (2) of section *one hundred and fifty-one* shall *mutatis mutandis* apply in relation to any servitude acquired under this section.

61. (1) Whenever any area has under sub-section (2) of section *fifty-nine*, been declared to be a catchment control area, the Minister may—

Suspension of owner's rights in or over land in a catchment control area for certain purposes.

- (a) out of moneys provided by Parliament for the purpose, cause such work as he may deem necessary in connection with any of the purposes set out in the said sub-section to be carried out by the department on any land in that area;
- (b) by notice in writing suspend for a period to be specified in such notice (which period may from time to time in like manner be extended) all or any of an owner's rights in or over any land in the said area, and at the expiration of a period of three months from the date of such notice, enter upon and take possession of the land in order to carry out such work.

(2) The Minister may in respect of any land in a catchment control area in his discretion withdraw any suspension of rights under paragraph (b) of sub-section (1) in the case of an owner who has, within three months of the date of the notice referred to in that sub-section, entered into a written undertaking to construct or carry out at his own expense such works or measures (to be specified in the undertaking) as the Minister may require, and may if in his opinion an owner has failed to comply with the terms of any such undertaking, give that owner one month's notice in writing of the termination of such withdrawal.

(3) (a) The Minister may at any time by notice in writing cancel any suspension of rights under sub-section (1), and thereupon the suspended rights shall be restored to the owner or his successor in title subject to the provisions of paragraph (c) and to such conditions as to occupation and use of the land as the Minister may deem fit to impose, which conditions shall attach to the land and at the request in writing of the Minister be noted free of charge by the registrar of deeds in charge of the deeds registry in which the title deed to the land concerned is registered on the title deed of the said land and in the appropriate registers.

(b) For the purpose of paragraph (a) the owner or other person in possession of the title deed to the land shall upon demand deliver such title deed to the director, and the said registrar of deeds shall, if requested thereto by the director and pending the noting of the said conditions on the said title deed, make a note of such conditions in the appropriate registers.

(c) The Minister may from time to time assess rates on any land within a catchment control area in which any work has been carried out by him under this section whether or not such work has been carried out on that land, and may recover any rates so assessed from the owner of that land.

(d) The cancellation of any suspension of rights in terms of paragraph (a) of this sub-section shall not be deemed to prevent the Minister at any time thereafter from again suspending any such rights in respect of the land in question in terms of paragraph (b) of sub-section (1).

(4) The provisions of the proviso to sub-section (2) of section *sixty* shall *mutatis mutandis* apply in respect of the service of any notice under paragraph (b) of sub-section (1) or sub-section (2) of this section.

62. (1) (a) Any person who at the date upon which any area is declared to be a Government water control area under sub-section (1) of section *fifty-nine*, is abstracting, impounding or storing any water from any public stream within that area by means of lawfully constructed water works then in existence, shall within three months after being called upon to do so by the director in writing communicate to the latter particulars showing—

Control and use of public water in a Government water control area.

- (i) his name, permanent address and a description of the land upon which the water works are situated;
- (ii) the nature and size of the water works;

- (iii) the value of such works;
 - (iv) in the case of a pumping installation, the quantity of water which such installation is capable of abstracting per hour;
 - (v) the extent of land which has been or is to be irrigated annually by means of such works and any other purpose for which the water abstracted by means of the works has been or is to be used; and
 - (vi) any other particulars which the director may require,
- and the director shall cause a register of such particulars to be kept.
- (b) Any such person who is beneficially using the water abstracted, impounded or stored, shall be entitled to a permit to be issued by the Minister on such conditions as he may deem fit to impose, to enable him to continue to abstract, impound or store the quantity of water that he has been lawfully abstracting or impounding and storing.
 - (c) No person shall abstract, impound or store water from a public stream referred to in paragraph (a), without having furnished the particulars mentioned in that paragraph as required by the director, or otherwise than in accordance with the conditions specified in any permit referred to in paragraph (b).
- (2) (a) No person shall, except as provided in sub-section (1), or under the authority of a permit from the Minister and on such conditions as may be specified in that permit, construct, alter or enlarge any works for the impounding, storage or abstraction of water from a public stream or natural channel in any such Government water control area, or impound or store or by means of any water works abstract water from any such public stream or natural channel, unless the Minister has by notice in the *Gazette* authorized the construction of such works or the impounding, storage or abstraction of such water, or otherwise than in accordance with the conditions specified in any such notice.
- (b) The conditions specified in any permit or notice under paragraph (a) may include provisions relating to the nature of any works which may be constructed or the size or capacity of any such works or the quantity of any water which may be impounded or stored or the rate of flow of any water which may be abstracted, and different conditions may be specified in respect of different periods in any year or in respect of different persons or classes of persons.
 - (c) Any person who has in any such Government water control area constructed a water work in respect of the construction of which a permit is not required, shall, within one month after the completion of such work in writing communicate to the director the particulars referred to in sub-paragraphs (i) to (v) of paragraph (a) of sub-section (1) in relation to such work, and the director shall cause a register of such particulars to be kept.
 - (d) Any person referred to in paragraph (c) who fails to comply with the requirements of that paragraph, shall be guilty of an offence.
- (3) If at any time the Minister is of the opinion that public water abstracted or impounded and stored in terms of this section is not being beneficially used, he may cancel any permit issued by him under this section or, in the case of a person referred to in paragraph (c) of sub-section (2), in writing direct such person to make such alterations to the water works in question as will, in the opinion of the Minister, result in such water being made available for beneficial use, and such person shall within a period stipulated by the Minister and at his own expense comply with the Minister's directions.
- (4) (a) The Minister may after notice in writing to the owner of any privately owned water work situated within a Government water control area, construct such additional works or make such adjustments or repairs to the said water work, or in writing direct any such owner to construct, at his own expense and within a period stipulated by the Minister, such additional water works or make such adjustments or repairs as may, in the opinion of the Minister, be necessary for the proper measurement and regulation of any public water abstracted or conveyed by or flowing over such water works.

(b) The Minister may recover from any person who in his opinion derives or is likely to derive any benefit from any additional works constructed or any adjustments or repairs executed by him under paragraph (a), such portion of the cost of such works, adjustments or repairs as he may consider equitable.

(5) If any person fails to comply with any direction under sub-section (3) or (4) within the time stipulated in that direction or within such further period as the Minister may allow, the Minister may cause the adjustments or repairs specified in that direction to be made or, as the case may be, the additional water works so specified to be constructed by the department and recover the cost thereof from the person concerned.

(6) Any permit issued under this section shall attach to the land in respect of which it is issued and shall while it remains of force be available to any successor in title of the person to whom it was issued.

(7) Any person who abstracts, impounds or stores water contained in or flowing in a natural channel or a public stream, in contravention of the provisions of this section, shall be guilty of an offence and liable on conviction to the penalties prescribed by sub-section (1) of section *one hundred and seventy*.

(8) There shall be a right of appeal to the water court against any decision of the Minister in connection with an application for a permit under paragraph (b) of sub-section (1) and also in connection with the cancellation of any such permit under sub-section (3), and the water court may make such order on any such appeal as it may deem fit.

63. (1) The provisions of this section shall—

(a) as from the commencement of this Act, apply in respect of every area in respect of which there is in force at such commencement a determination made under section *seven bis* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912); and

(b) as from a date to be fixed by the Minister by notice in the *Gazette*, apply in respect of any area specified in that notice which has under section *fifty-nine* been declared to be a Government water control area,

Determination of areas to be irrigated from Government water works.

and for the purpose of such application in respect of an area referred to in paragraph (a), any determination purporting to have been made in respect of any area under the said section *seven bis* shall be deemed to be a determination duly made in accordance with the provisions of this section.

(2) Subject to the provisions of sub-section (1), the Minister shall, in respect of every area specified in a notice issued under paragraph (b) of sub-section (1), determine, in such manner and subject to such conditions as he may deem fit, either generally or in any particular case—

(a) the extent or the maximum extent of the land comprised in every piece of land included in that area which may be irrigated by means of water from a Government water work in that area, or the extent or the maximum extent of the land belonging to any owner of land in that area which may be so irrigated; and

(b) the quantity of water which may be supplied annually in respect of each morgen of land as so determined,

and may, if he deem fit, at the same time or at any time thereafter determine the portion of any such piece of land or of the land belonging to any such owner which may be so irrigated.

(3) The Minister may from time to time vary any determination made under this section or make fresh determinations whenever alterations in the area to which any such determination relates or in the ownership of the land in any such area have taken place, or whenever in his opinion the available water is not sufficient for the proper irrigation of all the land in respect of which water is in terms of any such determination required to be supplied, or temporarily reduce the extent of the land (included in any piece of land or belonging to any owner) which may be irrigated whenever there is a temporary shortage of water, or vary any determination made in respect of any land scheduled under sub-paragraph (v) of paragraph (a) of sub-section (7) which in his opinion has become brak or is in danger of becoming brak or is otherwise unfit to be irrigated, so that the use of water thereon for irrigation purposes may result in the unbeneficial use or waste of such water or may cause other land to become brak or otherwise unfit to be irrigated.

(4) Any determination made under this section or any variation of such a determination shall be made known by notice in the *Gazette* and in a newspaper circulating in the area to which such determination relates, and shall be in force as from the date of publication of such notice.

(5) Whenever a water shortage is or is expected to be experienced in any area in which a determination is in force, the Minister may, instead of reducing the areas which may be irrigated in terms of such determination, temporarily suspend that determination and allocate any water available for supply and distribution in that area in such manner as he deems fit.

(6) The Minister may, upon the application of an owner of any piece of land scheduled under sub-paragraph (v) of paragraph (a) of sub-section (7), and on such terms and conditions as the Minister may stipulate, permit the use of the water available in respect of that land upon any other piece of land in the area affected.

(7) (a) Whenever the Minister has made a determination under sub-section (2), he shall cause to be prepared in respect of the area in question a schedule setting forth—

- (i) a description of every piece of land in that area in respect of which water is to be supplied;
- (ii) the extent of every such piece of land;
- (iii) particulars of the title deed according to which that piece of land was last transferred;
- (iv) the name of the owner of that piece of land;
- (v) the extent of the land forming part of that piece of land, in respect of which water may be supplied from the said water work or, as the case may be, the extent of the land of which any person is the owner, in respect of which water may be so supplied; and
- (vi) the extent of any land in that area intended for land settlement purposes but not yet allotted as holdings.

(b) Unless the Minister otherwise directs, a schedule prepared in accordance with this sub-section shall be revised annually and any alterations made from time to time in any of the items set forth in paragraph (a) shall, subject to the provisions of section *sixty-four*, be reflected in the said schedule at such revision.

(c) Any schedule purporting to have been prepared under section *seven bis* of the Irrigation and Conservation of Waters Act, 1912, prior to the commencement of this Act, shall be deemed to be a schedule duly prepared in accordance with the provisions of this section.

(8) (a) If there is an increase in the number of individual persons entitled to use for irrigation purposes any water required to be supplied in respect of any land in pursuance of a determination made or deemed to have been made under this section, and the extent of the land forming part of that land in respect of which water would be so required to be supplied in the case of each such person if all such persons were entitled to be supplied with water in respect of equal portions of the area in respect of which water is so required to be supplied, is less than twenty morgen, the piece of land of which such land forms a part, or the total extent of land in the Government water control area in question belonging to the owner concerned, as the case may be, shall, until such time as the Minister on the recommendation of the central land board otherwise directs, cease to form part of an area of land to be irrigated by means of water from the Government water work in question, and shall be excluded from the schedule prepared under sub-section (7) in respect of the area to be so irrigated.

(b) For the purposes of paragraph (a), every member of a partnership or any body, corporate or unincorporate, not being a public company registered as such under the Companies Act, 1926 (Act No. 46 of 1926), which is entitled to use water for irrigation purposes shall be deemed to be an individual person entitled to use such water for those purposes.

(c) The provisions of this sub-section shall, notwithstanding anything to the contrary contained in the N'Jelele Irrigation District Adjustment Act, 1946 (Act No. 37 of 1946), *mutatis mutandis* apply in relation to any land falling within the schedule referred to in section *fourteen* of that Act as if such land were scheduled under sub-paragraph (v) of paragraph (a) of sub-section (7) of this section.

(9) (a) If land which is or at any time has been held under a Crown grant issued in terms of any law relating to land settlement and in respect of which water may be supplied in terms of sub-paragraph (v) of paragraph (a) of sub-section (7) from any Government water work, is alienated or leased for an indefinite period or for a period exceeding ten years or for periods (whether uninterrupted or not) exceeding in the aggregate a period of ten years, to a person who is—

(i) an owner;

(ii) a lessee under any law relating to land settlement; or

(iii) a lessee for a period or periods as aforesaid, of other land in respect of which water may be so supplied from the same or any other Government water work, the land so alienated or leased shall for the period during which it is held by or is so leased to that person cease to form part of the area in respect of which water may be so supplied and be excluded from the schedule prepared under sub-section (7) in respect of that area, unless the Minister on the recommendation of the central land board otherwise directs, and if a person who is not an owner or such a lessee as is referred to in sub-paragraph (ii) or (iii) of land in respect of which water may be supplied from Government water works, becomes an owner or such a lessee of more than one such piece of land in respect of which water may be so supplied from any such works, every such piece of land of which he thereafter remains the owner or such a lessee shall, so long as he is the owner or such a lessee of more than one such piece, cease to form part of any such area and be excluded from any such schedule, unless the Minister on the recommendation of the said board otherwise directs.

(b) The Minister may by notice in the *Gazette* declare the provisions of paragraph (a) to be applicable also where other land than such land as is referred to in that paragraph is alienated or leased as aforesaid, either generally or in any case where the area of any land so alienated or leased to an owner or lessee mentioned in that paragraph, and in respect of which water may be supplied from any Government water work, together with the area of any other land in respect of which water may be supplied to such owner or lessee from the same or any other Government water work, exceeds an area determined by the Minister and specified in the notice.

(c) A notice under paragraph (b) may apply in respect of any or all Government water control areas.

(10) If—

(a) a person who is entitled to use for agricultural purposes water from any Government water work, acquires either permanently or for an indefinite period or for a period exceeding ten years or for periods (whether uninterrupted or not) exceeding in the aggregate a period of ten years, the rights of any other person to the use of water from the same or any other Government water work; or

(b) a person who is not so entitled so acquires the rights of two or more persons to the use of water from Government water works,

all the rights so acquired shall be suspended until such time as the Minister on the recommendation of the central land board otherwise directs.

(11) Any Crown land situated in an area referred to in paragraph (a) or (b) of sub-section (1), which the Government proposes to use for the purposes of land settlement, may be excluded from any determination applicable to such area: Provided that, as soon as any portion of such land has under the laws relating to land settlement been allotted as a holding,

the provisions of this section shall immediately apply in respect of such holding and a determination shall be made accordingly.

(12) The provisions of this section shall, notwithstanding anything contained in the Hartebeestpoort Irrigation Scheme (Crocodile River) Act, 1914 (Act No. 32 of 1914), the Marico-Bosveld Irrigation Scheme Act, 1932 (Act No. 10 of 1932), the Vaal River Development Scheme Act, 1934 (Act No. 38 of 1934), the Oliphants River Irrigation Works Act, 1943 (Act No. 10 of 1943), the Buffelspoort Irrigation Scheme Act, 1948 (Act No. 31 of 1948), or the Bospoort Irrigation Scheme Act, 1949 (Act No. 24 of 1949), apply in respect of the Government water control areas served by the Hartebeestpoort, Marico-Bosveld, Vaal River, Oliphants River, Buffelspoort and Bospoort Government water works.

64. (1) Whenever a schedule is required to be prepared or revised under sub-section (7) of section *sixty-three*, the Minister shall appoint a scheduling board consisting of three officers of the department nominated by him, one of whom he shall nominate as chairman of such board. Scheduling boards for Government water control areas.

(2) As soon as such board has prepared any such schedule or revised schedule, the director shall make known by notice in the *Gazette* and in a newspaper circulating in the area to which such schedule or revised schedule relates that, as from a date to be stated in the notice, a copy of such schedule or revised schedule will lie for inspection at such place or places as are specified in the notice, and the said schedule or revised schedule shall thereupon be open to inspection at the said place or places during ordinary office hours for a period of fourteen days from the date stated in the notice.

(3) The said notice shall intimate that upon a date and at a time and place therein set forth, claims for additions to the said schedule or revised schedule and objections to any of the items appearing therein will be heard and determined in the manner hereinafter provided.

(4) On the date notified in terms of sub-section (3), the said board shall, at a public hearing at the place or places so notified, hear all such claims and objections and determine and adjudicate thereon: Provided that such board may in its discretion from time to time adjourn such hearing as it deems fit.

(5) The said board shall—

- (a) make such additions to the said schedule or revised schedule as may in its opinion be warranted;
- (b) delete from the said schedule or revised schedule or amend any item in respect of which an objection has been proved to the satisfaction of such board;
- (c) correct any error which may have been made in the said schedule or revised schedule and insert therein any matter or particular which in its opinion should be included therein.

(6) The said board shall, after certifying the said schedule or revised schedule as correct, transmit it to the Minister, and such schedule or revised schedule shall, upon approval by the Minister and as from a date to be determined by him, be the schedule for the area to which it relates and shall, subject to the provisions of section *sixty-three*, continue in force until altered at a subsequent revision thereof.

65. Whenever, as a result of a permission granted by the Minister under sub-section (6) of section *sixty-three*, an alteration is made to a schedule in terms of paragraph (b) of sub-section (7) of that section by a scheduling board referred to in sub-section (1) of section *sixty-four*, the registrar of deeds in charge of the deeds registry in which the title to the land affected by such permission is registered shall, if requested thereto by the said scheduling board and notwithstanding the provisions of any other law, register a notarial deed against the title deed of that land incorporating such conditions as the said scheduling board or the Minister may have imposed in regard to the said permission or alteration and make appropriate entries in his registers. Conditions imposed on transfer of a water right may be noted on title deeds of land.

66. (1) (a) The Minister may from time to time assess rates on land which may be irrigated with water abstracted, supplied or distributed from a Government water work or from a public stream or natural channel in a Government water control area, or assess charges for water so abstracted, supplied or distributed, or assess both such rates and such charges, and may recover the rates or charges so assessed from the owners Levying of rates and charges.

of the said land or, as the case may be, from the persons entitled to use such water.

- (b) Rates or charges assessed in terms of paragraph (a) in respect of water used for agricultural purposes shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the owner of any such land shall be liable for any such rates or charges which remain unpaid at the time when he becomes the owner.

(2) The Minister may, in addition to any action he may take in terms of paragraph (a) of sub-section (1) for the recovery of any rates or charges assessed by him under that paragraph and which have not been paid on due date, stop the supply of water from the Government water work in question to the land in respect of which such water is supplied or, as the case may be, to the person who is being supplied with water, until the said rates or charges, together with interest thereon at seven per cent. per annum, have been paid and the Minister shall not be obliged, after the amount due has been paid, to supply any water so stopped or to pay compensation for any loss sustained by any person consequent upon the stopping of the said supply of water.

(3) Whenever rates or charges have been assessed under paragraph (a) of sub-section (1) in respect of any land, the director shall in writing advise the registrar of deeds in charge of the deeds registry in which the title to such land is registered accordingly, and thereupon no transfer of such land shall be passed by that registrar until a certificate signed by an officer of the department has been produced to him stating that all rates or charges assessed on such land have been paid.

(4) No suspension under sub-section (2) of the supply of water to the land or person referred to therein shall relieve any person from any liability in respect of the period of such suspension for any rates or charges assessed by the Minister under this section.

67. (1) Notwithstanding the provisions of the Electricity Act, 1922 (Act No. 42 of 1922), but subject to the provisions of the succeeding sub-sections of this section, the Minister may, in connection with any Government water work, establish any undertaking for the generation of electricity and supply electricity so generated to any person at such rates or charges as he may from time to time determine: Provided that such rates and charges shall, as a general principle and as far as is practicable, be determined in such a manner as to enable the Minister to recover, from time to time, an amount not less than the actual cost of the generation and supply of such electricity.

Minister may generate and supply electricity.

(2) Whenever the Minister desires to establish an undertaking for the generation and supply of electricity by means of a Government water work or to enlarge an existing undertaking for such generation and supply, he shall consult the Electricity Supply Commission established under section one of the Electricity Act aforesaid, and no such undertaking shall be established by the Minister if that Commission notifies him that it desires to undertake the generation and supply of electricity by means of the Government water work in question.

(3) If the said Commission notifies the Minister in terms of sub-section (2), it shall, in collaboration with the Minister, undertake the construction of the necessary plant, or the Minister may undertake such construction on behalf of the said Commission, and the Commission shall thereafter work the undertaking in accordance with the provisions of the said Electricity Act.

- (4) (a) The said Commission may, at any time after the Minister has under sub-section (1) established any undertaking for the generation and supply of electricity or has constructed or commenced to construct any works for the purpose, and after six months written notice to the Minister, take over the construction of such works or any additional works or the working of the undertaking, subject to the payment by the said Commission to the Government of the value of the works, machinery, materials and plant belonging to or used by the Government in respect of the said undertaking.

- (b) For the purpose of such payment and the taking over of the said undertaking, the provisions of paragraphs (b) and (c) of sub-section (1) and sub-section (2) of section *thirty-one* and of section *thirty-four* of the Electricity Act aforesaid shall *mutatis mutandis* apply.

(5) Any plant for the generation of electricity constructed or erected by the Minister shall be in accordance with the regulations made under the aforesaid Electricity Act and shall comply with any requirements of the Electricity Control Board, constituted in terms of section *eighteen* of the said Act, which may be made for the purpose of facilitating co-ordination with other existing or with future undertakings for the supply of electricity, and for such purpose the Minister shall, before constructing or erecting any such plant as aforesaid, consult the said Board.

(6) The Minister shall not supply electricity generated by any one plant exceeding five million units per annum except on the authority of a licence issued by the said Board.

(7) The Minister shall not supply electricity to any person within the area of jurisdiction of any municipal council, borough council, town council, village council, village management board, town board, local board or health board, or construct transmission or distribution lines for such supply through or over any portion of such area, except with the consent of the body concerned: Provided that if such consent is withheld, the matter shall be decided by the Electricity Control Board after a public hearing of which not less than fourteen days' notice shall be given to the parties by the said Board.

68. (1) The Minister may in respect of any Government water work or any area which has under section *fifty-nine* been declared to be a Government water control area or a catchment control area, or any catchment area or areas, appoint an advisory committee consisting of such number of members as the Minister may in each case from time to time determine, to advise him on matters connected with the preservation, conservation, utilization, control, supply or distribution of water resources and water, or any other matter which he may from time to time refer to such committee.

Advisory committees.

(2) (a) One-half of the members of an advisory committee shall be selected from amongst persons nominated in such manner as may in respect of each particular committee be prescribed by regulation.

(b) The officer of the department in charge of any Government water work shall be an *ex officio* member of the advisory committee constituted in respect of that water work, and shall be the chairman of that committee.

(c) The chairman of an advisory committee, other than a committee constituted in respect of a Government water work, shall be appointed by the Minister from amongst the members of such committee.

(3) The members of an advisory committee shall hold office for such period not exceeding three years as may be determined by the Minister upon their election or appointment.

(4) A casual vacancy on an advisory committee shall be filled by the appointment of another member for the unexpired portion of the period for which the member whose office has become vacant was appointed.

(5) The members of an advisory committee who are not in the full-time service of the State may be paid such allowances by the department as may be prescribed by regulation.

(6) Any officer of the department nominated thereto by the director shall be entitled to attend but not to vote at any meeting of an advisory committee and to assist such committee with his advice upon any matter relating to any question under discussion or consideration by such committee.

69. (1) The Minister may—

- (a) at any time and for such period and on such terms and conditions as he may deem fit, delegate all or any of the powers of control, operation, administration or maintenance of any Government water work or any electricity undertaking referred to in section *sixty-seven*, or of control, supply and distribution of water from such Government water work or of electricity by means of such undertaking, assigned to him under this Act or any other law, to any local authority, irrigation board

Delegation of control or alienation of Government water works.

or other statutory body or any department of State, including the South African Railways and Harbours Administration, or any provincial administration;

- (b) at any time, if authorized thereto by resolution of both Houses of Parliament and on such conditions as may be set forth in such resolution, sell or otherwise dispose of any Government water work to any local authority, or any such board, body, department or administration.

(2) The provisions of this Act or any other law relating to Government water works shall, save as otherwise provided in any conditions set forth in any resolution referred to in paragraph (b) of sub-section (1), continue to apply in relation to a Government water work which has been sold or disposed of under that paragraph, as if such sale or disposal had not taken place, and for that purpose any reference in any such provision to the Minister shall be construed as a reference to the local authority, board, body, department or administration to which such water work has been sold or disposed of.

70. The Minister may, in respect of any Government water work, Government water control area or catchment control area make regulations relating to—

Minister may make regulations in connection with Government water works.

- (a) the manner of regulating the flow of water into, the abstraction or distribution of water from, and the use of water in or from any portion of such work or area;
- (b) the protection or preservation of the work or area or any part thereof;
- (c) the control of and access to the work or any area submerged or to be submerged as a result of the construction of the work, including the use of boats of whatever description in or upon any such submerged area;
- (d) the issue of permits under section *sixty-two* and the recording and registration thereof and of the particulars of any water works notified to the director in terms of paragraph (a) of sub-section (1) or paragraph (c) of sub-section (2) of that section;
- (e) the method of assessing and recovering rates or charges under section *sixty-one*, *sixty-six* or *sixty-seven*;
- (f) the manner in which the persons referred to in paragraph (a) of sub-section (2) of section *sixty-eight* shall be nominated;
- (g) the calling and conduct of meetings of an advisory committee referred to in section *sixty-eight*, and the quorum for and procedure at such meetings;
- (h) the allowances payable to members of any such advisory committee;
- (i) the supply and distribution of electricity under section *sixty-seven*; and
- (j) generally any other matters which he considers it necessary or expedient to prescribe in order that the objects of this Chapter may be achieved.

CHAPTER VI.

IRRIGATION BOARDS.

71. (1) Any three or more owners of land riparian to a public stream or any tributary thereof, who together own not less than one-tenth of the land irrigated or proposed to be irrigated by means of water from that stream or tributary, may, if they consider it desirable that—

Petition for constitution of irrigation district.

- (a) a combined system of water works should be constructed for the abstraction or the impoundment and storage of any water of that stream or tributary for the purpose of irrigating the said land; or
- (b) any existing water works used for the irrigation of such land and the distribution of water should be specially controlled, or that such works should be extended or enlarged or otherwise improved; or
- (c) the use of the water of the said public stream or tributary should be specially controlled; or
- (d) there should be a combined system of drainage for such land,

transmit to the Minister a petition requesting that the area comprising such land or such larger area as may be specified

in the petition, be declared an irrigation district, whether or not such area is already comprised within an existing irrigation district.

(2) Such petition shall state—

- (a) the boundaries and approximate extent of the area proposed to be included in the irrigation district;
- (b) the approximate extent of the land within such area which is irrigated and which it is proposed to irrigate;
- (c) the purposes in connection with which it is proposed to constitute the district; and
- (d) the nature and class of any water works which it is proposed to construct.

72. (1) If the Minister is satisfied that the persons who have signed a petition transmitted to him under section *seventy-one* are owners of not less than one-tenth of the land irrigated or proposed to be irrigated within the area to which such petition relates, and the petition is supported by such evidence as the Minister may require, he shall cause a summary of the petition to be published in the *Gazette* and in a newspaper circulating in that area and cause such enquiry to be made into the subject matter of the petition as he deems fit. Enquiry into subject matter of petition.

(2) (a) For the purpose of any such enquiry the Minister may, if he deem fit, cause arrangements to be made for the holding of a public meeting of persons interested in the subject of such petition, for the purpose of ascertaining the views of such persons.

(b) Any such meeting shall be presided over by an officer of the department and notice of the time, date and place thereof shall be published in the *Gazette* and a newspaper circulating in the area in question not less than three weeks before the date on which the meeting is held.

(3) (a) After completion of any such enquiry the Minister may in his discretion recommend to the Governor-General that the area specified in the petition in question or such other area as he may determine be declared an irrigation district, if he is satisfied—

- (i) that not less than two-thirds of the owners of land situated within the area so specified or within such other area, as the case may be, who together own not less than two-thirds of the land irrigated and proposed to be irrigated within such area; and
- (ii) where an area served by a tributary stream is to be included in any such area, that not less than two-thirds of the owners of land so served, who together own not less than two-thirds of the land irrigated and proposed to be irrigated from such stream, in the area in question,

are in favour of the declaration of such irrigation district.

(b) A recommendation under this section may include a recommendation that the area to be declared an irrigation district, be divided into sub-districts as specified in the recommendation.

73. The Minister may at any time of his own motion recommend to the Governor-General that any area which has under section *fifty-nine* been declared to be a Government water control area or a catchment control area or any portion of any such area, or any other area (which may include any such Government water control area or catchment control area or any portion of any such area) be declared to be an irrigation district. Constitution of irrigation district otherwise than on petition of owners.

74. (1) The Governor-General may, upon the recommendation of the Minister in terms of paragraph (a) of sub-section (3) of section *seventy-two* or section *seventy-three*, by proclamation in the *Gazette* declare the area specified in such recommendation to be an irrigation district, and may by the same or by a subsequent proclamation in the *Gazette* divide any such district into sub-districts and define the area of each such sub-district, and at any time by like proclamation withdraw any such sub-division or amend it as he may deem fit. Declaration of an irrigation district.

(2) Any proclamation under sub-section (1) shall specify the name by which the irrigation district in question shall be known

75. (1) An area which has been declared to be a Government water control area or a catchment control area under section *fifty-nine* or which forms part of any such area, shall not cease to be or to form part of such area by reason of the fact that it has been declared to be an irrigation district under section *seventy-four* or has been included in any such district.

Effect of declaration of Government water control area or catchment control area to be an irrigation district.

(2) (a) The Minister may assign to the irrigation board established in respect of an irrigation district which comprises or includes an area declared to be a catchment control area as aforesaid, or any portion of such an area, any or all of the powers vested in him in relation to such catchment control area or such portion thereof by virtue of the provisions of section *sixty-one*: Provided that any expenditure incurred by the board in carrying out any work which it may deem necessary to carry out in connection with any of the purposes set out in sub-section (2) of section *fifty-nine* shall be met by the board.

(b) For the purpose of the exercise by an irrigation board of any powers assigned to it under paragraph (a), any reference in the relevant provisions of the said section *sixty-one* to the Minister or the director shall be construed as a reference to the said board.

76. (1) The Governor-General may upon a recommendation of the Minister, made after such enquiry as the Minister may consider necessary, by proclamation in the *Gazette*—

Reconstitution of irrigation districts.

- (a) combine any irrigation district or any portion thereof with another irrigation district to which it is contiguous or any portion of such other irrigation district; or
- (b) constitute any portion of an irrigation district as an irrigation district and sever such portion from the irrigation district of which it forms a part; or
- (c) exclude any area from an existing irrigation district or include any additional area therein.

(2) No recommendation shall be made by the Minister under sub-section (1) unless he is satisfied—

- (a) in the case of a recommendation which does not provide for the inclusion of additional land within an irrigation district, that owners representing a majority of votes, according to the latest voters' list of the said district, who would be qualified to vote at an election of members of the irrigation board of such district if an election were then held, are in favour thereof;
- (b) in the case of a recommendation which does provide for the inclusion of additional land within any such district, that not less than two-thirds of the owners of the additional land proposed to be included, who own not less than two-thirds of such land irrigated and proposed to be irrigated, and owners representing a majority of votes according to the latest voters' list of such district who would be qualified to vote at an election of members of the irrigation board of such district if an election were then held, are in favour thereof;
- (c) in the case of a recommendation which provides for an irrigation district or any portion thereof to be combined with another irrigation district or any portion thereof or for the constitution of any portion of an irrigation district as an irrigation district and the severance of such portion from the irrigation district of which it forms a part, that the requirements specified in sub-paragraphs (i) and (ii) of paragraph (a) of sub-section (3) of section *seventy-two* apply in respect of both of the districts affected or, as the case may be, in respect of the area proposed to be severed from any district as well as the remainder of that district,

or unless the Minister is of the opinion that the owners concerned in any particular case have unreasonably withheld their approval or that it is desirable to carry out the terms of the proposal set out in such recommendation.

(3) Any proclamation issued under sub-section (1) shall indicate the name by which any irrigation district constituted thereby, including any such district constituted by excluding from an existing district any area forming part thereof or by including in an existing district any additional area, shall be known.

(4) A change in the area comprised within an existing irrigation district shall not be deemed to constitute the establishment of a new irrigation district, whether or not the name of such district or of its irrigation board is altered, and, subject to the provisions of sub-sections (5) and (6)—

- (a) all assets, rights, liabilities and obligations vested in or devolving upon the board of such existing district on the date upon which the change takes effect, shall continue to vest in or devolve upon that board as if no change had taken place; and
- (b) any by-law made or decision given or rate or charge imposed by such board shall remain of full force and effect and shall, in so far as it can be so applied, apply also in relation to any additional area included in such existing district:

Provided that the members of such board holding office at the date on which the change takes effect shall vacate their seats on that date or on such later date as the Minister may direct, and thereupon new members shall be elected as if a new irrigation district had been established.

(5) Whenever any portion of the area included within an irrigation district is combined with another such district or any portion of the area included in such other district, or any portion of the area included in any such district has, either alone or together with any other area, been constituted as an irrigation district, the Minister shall appoint a committee consisting of three officers of the department, one of whom he shall designate as chairman of the committee, to apportion the assets, rights, liabilities and obligations of all the irrigation boards affected amongst those boards in such manner as the committee may consider equitable, and any apportionment made by such committee shall be final and binding upon all such boards.

(6) The provisions of sub-section (5) shall apply also where a new irrigation district comprising the areas included in two or more existing districts is established if such new district is established in addition to and not in substitution for such existing districts.

(7) Where the areas or portions of the areas comprising two or more existing irrigation districts are, either alone or together with any additional area or areas, combined to form an irrigation district in substitution for such existing districts—

- (a) all assets, rights, liabilities and obligations vested in or devolving upon the board of any such existing district on the date upon which the substitution takes effect, shall vest in and devolve upon the board of the substituted district; and
- (b) any by-law made or decision given or rate or charge imposed by the board of any such existing district shall remain of full force and effect as if made, given or imposed by the board of the substituted district, and shall, in so far as it can be applied, and to the extent determined by the Minister and made known by notice in the *Gazette* apply also in relation to any additional area included in such substituted district.

77. (1) Whenever an irrigation district comprises another irrigation district, the area so comprised shall, in relation to the irrigation district within which it is comprised, be known as the minor irrigation district, and the irrigation district comprising it shall, in relation to such minor irrigation district, be known as the major irrigation district. Major and minor irrigation districts.

(2) The schedule of rateable areas prepared in terms of section *eighty-eight* in respect of any minor irrigation district shall be the schedule of those rateable areas for the major irrigation district within which the said minor irrigation district is included, and the total of the rates levied by the board of the said major irrigation district in respect of land within the minor irrigation district shall be a charge against the board of such minor irrigation district and shall, for the purposes of paragraph (a) of sub-section (1) of section *ninety*, be deemed to be expenditure incurred by the board of the minor irrigation district.

78. (1) Whenever—

- (a) an irrigation board has not during any consecutive twelve months held any meeting; or
- (b) at a special meeting convened for the purpose in terms of sub-section (2) of section *one hundred and*

Disestablishment of irrigation districts.

one, persons representing a majority of votes, according to the latest voters' list of an irrigation district, who would be qualified to vote at an election of members of the board of such district if an election were then held, vote in favour of the disestablishment of such irrigation district and submit to the Minister a petition requesting that the said irrigation district be disestablished; or

- (c) the Minister has assumed the functions of an irrigation board in terms of sub-paragraph (iii) of paragraph (a) of sub-section (2) of section *ninety-five*, and at any time thereafter he deems it desirable in the interests of the majority of the persons liable for the payment of rates to such board that the said board be disestablished,

the Governor-General may, upon the recommendation of the Minister made after such enquiry as the Minister deems fit, by proclamation in the *Gazette* disestablish the said irrigation district.

(2) The Minister may—

- (a) apply to any superior court having jurisdiction in the area concerned for directions as to the disposal of the property or the liquidation of the affairs of the board of an irrigation district disestablished in terms of sub-section (1), and the said court may make such order in the matter as it deems fit; or
- (b) appoint a committee consisting of three officers of the department, one of whom he shall designate as chairman of the committee, to advise him as to the liquidation of the affairs of the board, and may after consideration of the report of any such committee make such order in the matter as he deems fit and such order shall be final and binding on all persons affected.

79. (1) For every irrigation district there shall be an irrigation board which shall be known by the name to be given to it in the proclamation whereby such irrigation district is established: Provided that whenever the area comprising any irrigation district is changed, the name of the board of such district may also be changed. Establishment of irrigation boards.

(2) An irrigation board shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its duties or the performance of its functions: Provided that an irrigation board shall not buy, hold or sell land without the approval of the Minister, and that no land belonging to it shall be sold except by public auction.

(3) Any land owned by an irrigation board which is situated outside the boundaries of its irrigation district, shall be deemed to form part of the said district and shall be included in such district by the Governor-General by proclamation in the *Gazette*.

80. (1) An irrigation board shall consist of three, six or nine members, as the Minister shall from time to time determine, or, in the case of the board of a district which is divided into sub-districts, of so many members in respect of each such sub-district, not exceeding three, as the Minister may from time to time determine, but so that the total number of members shall not exceed twelve: Provided that if a local authority is supplied with water by an irrigation board in terms of paragraph (j) of sub-section (1) of section *eighty-nine*, the Minister may, unless a nominee of such local authority is elected as a member of the board, appoint any person nominated by such local authority to represent it on the board for such period as he may deem fit, and the person so appointed shall for all purposes be deemed to be a member of the said board. Number of members of an irrigation board.

(2) If an irrigation district which is divided into sub-districts ceases to be so divided, or any such district not divided into sub-districts is so divided, or the number of members of the irrigation board of an irrigation district is increased or reduced, the persons then holding office as members of the irrigation board of such district, shall vacate their offices on a date to be determined by the Minister and an election of members of such board shall be held in the manner prescribed in this Act in respect

of a first election of members of such a board, and all the provisions of this Act relating to such a first election and to the persons elected thereat shall apply in respect of such election and in respect of the members thereupon elected.

(3) The members of an irrigation board shall, subject to the provisions of sub-section (1) of this section and sub-section (5) of section *eighty-four*, be elected in the manner hereinafter specified: Provided that two-thirds of the members of an irrigation board established in pursuance of a recommendation under section *seventy-three* may be appointed by the Minister.

81. Every person whose name is on the voters' list of an irrigation district prepared under section *eighty-three*, shall be eligible for election as a member of the irrigation board of the said district, unless he is disqualified from voting in terms of sub-section (1) of section *eighty-two* or is without the permission of the Minister a party to any subsisting contract with the board exceeding fifty pounds in value, or is without such permission interested in any such contract: Provided that, if an irrigation district is divided into sub-districts, a person shall be eligible for election as a member of the said irrigation board only in respect of the sub-district under which his name appears on the said list.

Qualifications of candidates for irrigation boards.

82. (1) Subject to the provisions of sub-section (3) of this section and of the proviso to sub-section (1) of section *eighty-three*—

Voting for members of irrigation boards.

(a) every person whose name is on the voters' list of an irrigation district prepared under section *eighty-three*, shall be entitled to nominate candidates for election as members of the irrigation board of the district and to vote at an election of members of such board, unless—

- (i) any rates levied by the said board on the land in respect of which such person's name has been placed upon the said list are in arrear for three months or more at the date of such nomination or election, as the case may be; or
- (ii) such person has ceased to be the owner of the land in respect of which his name appears on the said list; or
- (iii) such person is the accredited representative of an owner who has ceased to be the owner of the land in respect of which that person's name appears on the said list or that person has ceased to superintend the operations carried out on such land;

(b) every person entitled to vote in terms of paragraph (a) shall have in respect of every vacancy to be filled at an election—

- (i) in the case of a person in whose name any land has been scheduled under sub-paragraph (ii) of paragraph (b) of sub-section (1) of section *eighty-eight*, or, in the case of a first election, under sub-paragraph (v) of paragraph (a) of that sub-section, one vote for every five morgen or part of five morgen of the land so scheduled; or
- (ii) in the case of any other person, so many votes as may, in respect of each irrigation district affected, be determined in the manner prescribed by regulation:

Provided that no person shall exercise more than ten votes in respect of any single candidate.

(2) The Government, including the South African Railways and Harbours Administration and any provincial administration, or a local authority or other corporate body included in the said voters' list may vote by a person duly nominated thereto by the Government department, administration, local authority or other corporate body concerned.

(3) A person whose name appears on a voters' list prepared in respect of a sub-district of an irrigation district shall be entitled to nominate candidates and to vote only in connection with elections of members for that sub-district.

83. (1) The director shall, for the purposes of the first election of members of the irrigation board of an irrigation district, prepare a preliminary voters' list showing—

Voters' List.

- (a) the names of the owners of land in relation to which the provisions of sub-paragraph (v) of paragraph (a) of sub-section (1) of section *eighty-eight* apply; and

- (b) the names of owners of other land, if any, within the district which, in the opinion of the Minister, is or is likely to be affected by any works constructed or intended to be constructed by the irrigation board concerned,

and the number of votes which each such owner is, in accordance with paragraph (b) of sub-section (1) of section *eighty-two*, entitled to exercise in respect of such first election: Provided that—

- (i) if the said irrigation district is divided into sub-districts, the voters' list of such district shall be divided into sub-districts and the names of the said owners shall be shown under the respective sub-districts in which the said land is situated;
 - (ii) if land referred to in paragraph (a) is owned by two or more persons, each of whom does not own a separate and defined portion thereof, each such person shall be entitled to have his name included in the said voters' list in respect of an area determined by dividing the total extent of land so scheduled by the number of such persons, unless the area so determined is less than five morgen;
 - (iii) if the area determined under sub-paragraph (ii) is less than five morgen, the said persons shall be entitled to have their names jointly included in such voters' list and to exercise jointly the number of votes determined in accordance with sub-paragraph (i) of paragraph (b) of sub-section (1) of section *eighty-two* in respect of the land referred to by designating one of their number to vote on their behalf, which said designation shall be in writing and shall be lodged with the director;
 - (iv) whenever the owner of land so scheduled is not permanently resident on such land, his accredited representative shall, so long as he superintends the operations conducted on such land, for all purposes be entitled to have his name placed on the said voters' list in the stead of such owner.
- (2) (a) Any preliminary voters' list prepared under sub-section (1) shall as soon as may be practicable after an irrigation board has prepared a schedule under section *eighty-eight*, be revised by the said board in the manner prescribed by regulation.
 - (b) The voters' list as so revised shall show the names of all owners of land scheduled under section *eighty-eight* and the number of votes which each owner is, in accordance with paragraph (b) of sub-section (1) of section *eighty-two*, entitled to exercise in respect of any election of members of the said board, and the proviso to sub-section (1) shall apply *mutatis mutandis* in respect of such revised list.
 - (c) The said voters' list shall thereafter be revised by such board annually and also whenever the boundaries of the irrigation district in question have been altered or such irrigation district has been combined with another irrigation district, or any portion of such irrigation district has been constituted as an irrigation district.
- (3) A copy of the list prepared or revised in accordance with sub-section (1) or (2) shall be kept by the secretary of the irrigation board concerned and may be inspected free of charge at any reasonable time by any person interested.
 - (4) If for any reason a voters' list prepared by the director under sub-section (1) has not been revised by the irrigation board concerned, the list so prepared shall be deemed to be the voters' list of the irrigation district to which it relates until it has been so revised.
 - (5) Whenever a voters' list has been prepared or revised by an irrigation board under this section, a copy thereof shall be transmitted by the said board to the department.

84. (1) (a) The nomination of candidates for election as members of an irrigation board, the election of members and the procedure and voting thereat shall take place in the manner prescribed by regulation.
- (b) The date of the first election shall be determined by the director, who shall, in respect of such election and the nomination of candidates in connection therewith, appoint a returning officer.

Election of members of irrigation boards and duration of office of members.

- (c) In respect of a nomination of any candidate or any election of members other than the first nomination or election, the chairman of the irrigation board in respect of which such nomination or election is held or a member of the said board nominated by him shall act as returning officer: Provided that the chairman or a member shall not so act if he is a candidate for nomination or election.

(2) Subject to the provisions of sub-sections (3) and (4), the members of an irrigation board shall hold office for a period of three years from the date of their election and a member vacating office shall, if qualified thereto, be eligible for re-election.

(3) After the first election of members of an irrigation board, an election shall be held whenever necessary to fill any vacancy and a person then elected shall hold office as if he had become a member of the board on the date on which his predecessor vacated his office owing to effluxion of time or (as the case may be) would, if he had remained in office for the full period prescribed in sub-section (2), have so vacated his office.

(4) Of the members elected at the first election of members of an irrigation board—

- (a) of an irrigation district which is divided into sub-districts—
- (i) the member elected for any such sub-district who stands first on the poll shall hold office for a period of three years;
 - (ii) the member so elected who stands second on the poll shall hold office for a period of two years; and
 - (iii) the remaining member so elected shall hold office for a period of one year;
- (b) of an irrigation district which is not divided into sub-districts—
- (i) one-third of the members elected, who stand highest on the poll, shall hold office for a period of three years;
 - (ii) one-third of the members elected, who stand next highest on the poll, shall hold office for a period of two years; and
 - (iii) the remaining one-third of the members elected shall hold office for a period of one year:

Provided that if in any case no poll is required to be held, or if two or more candidates have received equal numbers of votes, the respective periods of office of the members affected shall be determined by lot under the supervision of the returning officer.

(5) If for any reason any vacancy existing on an irrigation board be not filled by the election of a member thereto, the Minister shall appoint any person whom he considers suitable to be a member of the board to fill the vacancy for such period as the Minister may deem fit, and any such person appointed in succession to a member of the board who has vacated office, shall hold office for the period in respect of which he would have held office had he been elected to fill the vacancy upon the expiration of the period of office of his last predecessor whose term of office expired by effluxion of time.

85. (1) If a member of an irrigation board ceases to possess the qualifications which would render him eligible to have his name included in the voters' list of the irrigation district in respect of which such board has been established if such list were then revised, or if any such member dies or resigns or becomes insolvent or of unsound mind or is convicted of an offence and sentenced to imprisonment without the option of a fine or otherwise becomes disqualified to be a member of the board, or absents himself from three consecutive meetings of the board without having previously obtained its leave to do so, his office shall become vacant.

Casual vacancies on irrigation boards.

(2) As often as any such vacancy occurs, another person shall be nominated and elected to fill such vacancy and the provisions of this Act and the regulations relating to the nomination of candidates for election as members of an irrigation board, the election of members, and the procedure and method of voting thereat, shall apply *mutatis mutandis* in respect of the filling of such vacancy: Provided that—

- (a) the date for the nomination and election to fill such a vacancy shall be fixed by the returning officer referred to in paragraph (c) of sub-section (1) of section *eighty-four* within two months of the occurrence of the vacancy; and
- (b) the member elected to fill the vacancy shall hold office for the remainder of the period for which the person

who has died or otherwise vacated his office and whose place has been filled would otherwise have continued in office.

86. (1) (a) The members of an irrigation board shall, as soon after the first election of members as is practicable, elect a chairman and a vice-chairman of the board. Chairman and vice-chairman of irrigation board.
- (b) The chairman and the vice-chairman shall respectively hold office as such for a period of twelve months from the date of their election thereto and shall be eligible for re-election, and a chairman or vice-chairman whose period of office has expired shall, so long as he remains a member of the board in question, remain in office as chairman or vice-chairman, as the case may be, until the next succeeding meeting of the said board.
- (c) An irrigation board shall annually elect a new chairman and a new vice-chairman of the board, and if the chairman or vice-chairman dies or otherwise vacates his office, the board shall proceed forthwith to elect another chairman or vice-chairman for the remainder of the period in respect of which the office in question has become vacant.

(2) If the chairman of an irrigation board be absent from any meeting of the board, the vice-chairman shall preside thereat, and if the vice-chairman be also absent from such meeting, the members of the board who are present thereat shall elect one of their number to preside at the said meeting.

(3) Any person who is entitled to preside at a meeting of an irrigation board in terms of this section shall, in the case of an equality of votes upon any matter which the board is determining, have a casting vote in addition to his deliberative vote as a member.

87. (1) An irrigation board shall not be deemed to be defectively constituted by reason of any failure to elect the prescribed number of members of such board, or by reason of any vacancy existing, so long as there is a sufficient number of members on the board to form a quorum. Informalities in elections, etc., not to affect validity of acts done by an irrigation board.

(2) All acts done in good faith by an irrigation board or its chairman or vice-chairman or a person acting as chairman or vice-chairman or a member of an irrigation board or a committee of such board, or an officer of the department to whom the functions, powers and duties of an irrigation board have been delegated in accordance with sub-section (3) of section *ninety-five*, in the carrying out of any powers, functions or duties assigned to or imposed upon such irrigation board by this Act or the regulations made under section *one hundred and two*, shall, although it may afterwards be discovered that there was some defect in the constitution, election or appointment of the board, chairman, vice-chairman, committee, person or officer, or that the board, chairman, vice-chairman, committee, person or officer was otherwise disqualified from so acting, be as valid as if the board, chairman, vice-chairman, committee, person or officer had been duly constituted, elected, appointed or qualified.

88. (1) (a) The director shall, in respect of every area declared to be an irrigation district after the commencement of this Act, prepare a preliminary schedule setting forth— Schedule of rateable areas of irrigation districts.
- (i) a description of every piece of land in the irrigation district;
- (ii) the extent of every such piece of land;
- (iii) particulars of the title deed according to which that piece of land was last transferred;
- (iv) the name of the owner of that piece of land; and
- (v) where applicable, the approximate extent of the land forming part of that piece of land which is irrigated and which is proposed to be irrigated by the owner thereof and in respect of which rates may be levied by the board of the said irrigation district in terms of paragraph (a) of sub-section (1) of section *ninety*, and the extent so determined in respect of any such piece of land shall, until a schedule has been prepared by the said board, be deemed to be the rateable area of that piece of land.

- (b) Every irrigation board shall prepare in manner prescribed by regulation a schedule of rateable areas in respect of its irrigation district, setting forth—
- (i) the particulars described in sub-paragraphs (i) to (iv) of paragraph (a); and
 - (ii) where applicable the extent of the land forming part of every piece of land referred to in the said sub-paragraphs in respect of which water may be supplied by the board from any water works owned or controlled by the board and which will be rateable, and, in the case of a board to which the powers referred to in paragraph (f) or (g) of sub-section (1) of section *eighty-nine* have been assigned, the extent of the land forming part of every piece of land riparian to the public streams in relation to which the said powers have been assigned to the board, which is irrigated by means of water from water works belonging to the owner of such piece of land and which will be rateable: Provided that, in fixing such lastmentioned extent, the board shall have regard to the share or volume of water of the aforesaid public streams which the owner of the land has a right to use thereon, and to the number of morgen which could ordinarily and with due precaution against waste be efficiently and beneficially irrigated in the course of a year by that share or volume, irrespective of the number of morgen actually irrigated, or if such extent cannot be so fixed, the average number of morgen annually irrigated on the said piece of land from the said public streams as ascertained by measurement or enquiry.

(2) A schedule prepared by an irrigation board in accordance with paragraph (b) of sub-section (1), shall take the place of any preliminary schedule previously prepared by the director in terms of paragraph (a) of that sub-section.

(3) An irrigation board shall in manner prescribed by regulation from time to time revise the schedule prepared by it in terms of paragraph (b) of sub-section (1): Provided that, whenever the boundaries of an irrigation district have been altered, or an irrigation district has been combined with another irrigation district, or any portion of an irrigation district has been constituted as a new irrigation district, new schedules in respect of the new irrigation district and of the remainder of the irrigation district of which such new irrigation district formed a part, shall forthwith be prepared in accordance with the provisions of the said paragraph: Provided further that if an irrigation board owes any money to the Government in connection with any loan or advance which it has received from the Government, no alteration shall be made to any of the particulars included in the said schedule in terms of sub-paragraph (ii) of the said paragraph without the consent of the Minister.

(4) Whenever an irrigation board has prepared or revised a schedule under this section, it shall transmit a copy thereof to the department and to the registrar of deeds in charge of the deeds registry in which the title to the land scheduled is registered.

(5) An irrigation board may, on the application of an owner of any piece of land scheduled under this section, and on such terms and conditions as it may stipulate, permit the use of the water available in respect of that land upon any other piece of land in its irrigation district.

(6) If the Minister has delegated all or any of the powers of control, operation or administration of a Government water work to an irrigation board in terms of section *sixty-nine*, and a schedule has been prepared in respect of such Government water work in terms of sub-section (7) of section *sixty-three*, such schedule shall for all purposes be deemed to be the schedule of the irrigation district of such board for that portion of the said district which has under section *fifty-nine* been declared to be a Government water control area and the provisions of this section shall not apply in respect of the said portion of such irrigation district.

(7) A schedule prepared or revised under this section shall be kept by the secretary of the irrigation board concerned and may be inspected free of charge at any reasonable time by any person interested.

(8) The provisions of paragraphs (a) and (b) of sub-section (8) and sub-sections (9) and (10) of section *sixty-three* shall *mutatis mutandis* apply in relation to the supply of water from water works belonging to an irrigation board for use for irrigation purposes on land scheduled under sub-paragraph (v) of paragraph (a) or sub-paragraph (ii) of paragraph (b) of sub-section (1) of this section.

89. (1) The Minister may, by notice in the *Gazette* and notice in writing to the board of an irrigation district assign to that board such functions, powers or duties as he may deem fit enabling or requiring it—

Functions, powers and duties of an irrigation board.

- (a) to protect the sources of the water of any public stream in the said irrigation district;
- (b) to prevent the waste of the water of any public stream in the said district;
- (c) to prevent the leakage or flow of any public water from the surface into subterranean channels;
- (d) to prevent any unlawful abstraction or storage of public water or subterranean water or to cause to be removed any obstruction unlawfully placed in a public stream, and to prevent any unlawful act which is calculated to diminish the quantity of water in any part of the public stream;
- (e) to exercise general supervision over all public streams within the said irrigation district and to cause any such stream to be cleansed, deepened, widened, straightened, restored to its former channel (in the case of a stream which has changed its course) or otherwise improved whenever it appears necessary or expedient to do so;
- (f) to investigate and record the quantity or share of water which, at different stages of flow in all or any public streams in the irrigation district, every person having any rights in respect of such water is entitled to use and the times at which such quantity or share may be taken;
- (g) subject to any existing right, to supervise and regulate the distribution and use of the water of all or any of the public streams in the irrigation district and for that purpose to erect and maintain such devices for measuring and dividing the flow of the said water or controlling diversion thereof as may have been ordered by a water court or, in the absence of any such order, as the said board may consider necessary, and generally to supervise within the said irrigation district the storage, diversion and use of water in public streams;
- (h) to construct, purchase or otherwise acquire and to maintain such water works as may be considered necessary for the drainage of land in the irrigation district or for the proper irrigation of any of the areas scheduled under sub-paragraph (ii) of paragraph (b) of sub-section (1) of section *eighty-eight*, and any other works which such board may deem necessary for the protection and preservation of such water works;
- (i) to control, operate, administer or maintain any Government water work and to control, supply or distribute water therefrom in accordance with section *sixty-nine*, the generality of this provision and of the terms and conditions which the Minister may impose in terms of the said section not being limited by anything contained in the preceding paragraphs;
- (j) subject to the provisions of this Act, to supply any water under the control of such irrigation board to any local authority or other person, including any department of State, the South African Railways and Harbours Administration and any provincial administration, for urban or industrial purposes.

(2) An irrigation board shall from time to time on the directions of the Minister enter into such contracts of insurance against any losses, damage, risks or liabilities which the board may incur, as the Minister may require.

(3) Whenever an irrigation board has constructed or acquired water works in terms of paragraph (h) of sub-section (1), it

shall, subject to the provisions of sub-section (4), take such steps as it may deem necessary to ensure that there is delivered for use on every piece of land which has been included in the schedule prepared by the said board in terms of paragraph (b) of sub-section (1) of section *eighty-eight*, and in respect of which an area has been scheduled under sub-paragraph (ii) of that paragraph, and on every piece of land scheduled under sub-section (7) of section *sixty-three*, which is entitled to receive water from the said water works, a quantity of water, being portion of the water available for agricultural use from such works, which, as nearly as may be practicable, bears to the whole quantity of water available for such use, the same ratio as the ratio which the said area bears to the whole area so scheduled: Provided that, if any such land is sub-divided and any such sub-divided portion is sold or otherwise disposed of to any other person, the person selling or disposing of such sub-divided portion shall make such provision as may in the opinion of the board be necessary to ensure the delivery on to such sub-divided portion of the quantity of water to which it may be entitled.

(4) If any privately owned water work within an irrigation district is used by one owner or a group of owners of contiguous holdings to convey water distributed by the board of that district in terms of this section to the land belonging to such owner or group of owners, such board may deliver the water to which the land in question is entitled into the said water work for the use of that owner or, as the case may be, for distribution by those owners amongst themselves in shares proportionate to the extent of each owner's land entitled to such water, or in accordance with existing rights, as the case may be, or may itself undertake the distribution of that water amongst such group of owners and in that event exercise in relation to such water work any of the powers which may under paragraph (b) or (c) of sub-section (5) be exercised by it in relation to any water work referred to in those paragraphs.

(5) If an irrigation board referred to in sub-section (3) uses the channel of any public stream or any natural channel within its irrigation district for the conveyance of any water from the water works referred to in the said sub-section for the purpose of supplying or distributing such water to the persons entitled thereto—

- (a) the said board shall during such conveyance, and notwithstanding any existing right, have the exclusive control of all water which is so conveyed in the channel of such public stream or in any such natural channel, together with all other water which may during such conveyance be flowing in that stream or natural channel;
- (b) the said board may exercise control over such portions of privately owned water works constructed within the irrigation district for the purpose of abstracting or conveying water from such public stream or natural channel, as it may from time to time deem necessary for the purpose of effecting a proper distribution of the water referred to in sub-section (3), and may, with the written consent of the Minister and after notice in writing to the owner concerned, take over for such period as the Minister may determine when granting such consent, the maintenance and control of any such privately owned water works, if in its opinion the water so abstracted or conveyed by means of such works is not being distributed among the persons entitled thereto in the manner provided in sub-section (4);
- (c) the said board may—
 - (i) after giving notice in writing to the owner of any such privately owned water works, construct such additional works, or make such adjustments or repairs to the existing water works; or
 - (ii) give written notification to such owner to construct such additional works or to make such adjustments or repairs to existing works,
 as may in the opinion of the board, be necessary for the proper measurement and regulation of the water abstracted or conveyed by such water works, and, if in the case of a notification to an owner under sub-paragraph (ii), such owner fails to construct, adjust or repair such works to the satisfaction of the said board within six months of the date of such notification,

the board may undertake such construction, adjustment or repair at the expense of the said owner and may, by action in a competent court, recover the costs incurred from such owner;

- (d) (i) no person shall construct any new or materially alter or enlarge any existing water work on any such public stream or natural channel for the purpose of abstracting or conveying water from such stream or natural channel (other than water to which he is entitled in terms of any order, award, decision, permission, authority or apportionment given or made by a competent court) without the consent in writing of the said irrigation board;
- (ii) no decision of a water court on an application under sub-section (1) of section *ninety-eight*, for relief from any decision made by an irrigation board under sub-paragraph (i), shall be construed as entitling any person to abstract from any such public stream or natural channel any water other than water to which he is entitled in terms of any order, award, decision, permission, authority or apportionment given or made by a competent court.

(6) Any person who contravenes the provisions of sub-paragraph (i) of paragraph (d) of sub-section (5) shall be guilty of an offence.

(7) Whenever the powers referred to in paragraph (g) of sub-section (1) have been assigned to an irrigation board—

- (a) the provisions of sub-section (4) and paragraphs (b), (c) and (d) of sub-section (5) shall apply *mutatis mutandis* in relation to any public stream within the irrigation district of the said board; and
- (b) such board may, with the previous sanction of the Minister, order any person to carry out such work and execute such repairs in relation to water works belonging to him or under his control as may be necessary for the protection of life or the public safety, and, in default of compliance with any such order, itself cause the work to be carried out or the repairs to be executed and recover the cost from such person by action in a competent court.

(8) An irrigation board may levy a rate upon the land served by any water work taken over by it in terms of paragraph (b) of sub-section (5), sufficient to defray the costs of maintenance and control of such work, and such rate shall be additional to and not in substitution of any rate levied by the said board in terms of paragraph (a) of sub-section (1) of section *ninety*.

(9) An irrigation board shall not be liable for the payment of any compensation to any owner of land in respect of the construction by such board on such owner's land of any works referred to in paragraph (c) of sub-section (5).

(10) Nothing in this section contained shall be deemed to authorize an irrigation board to arrange for the distribution and use of water within the area of jurisdiction of a local authority (other than a divisional council) referred to in paragraph (a) of the definition of "local authority" in section *one*, unless such local authority consents thereto, and if any such area is included in an irrigation district, such local authority shall have all the powers as to the distribution and use of water which are conferred in respect thereof by the law regulating the powers of that local authority: Provided that the provisions of this sub-section shall not apply to any irrigation board which is, at the commencement of this Act, distributing water within any such area.

90. (1) (a) For the purpose of defraying any expenditure lawfully incurred or to be incurred by it in the carrying out of the functions, powers and duties assigned to or imposed upon it under this Act, an irrigation board may—

Irrigation board may assess rates and charges.

- (i) assess rates on land scheduled in terms of sub-section (7) of section *sixty-three* or sub-paragraph (ii) of paragraph (b) of sub-section (1) of section *eighty-eight* or, in the case of a preliminary schedule prepared under paragraph (a) of the latter sub-section, on land scheduled in terms of sub-paragraph (v) of that paragraph, or assess charges for water supplied or distributed in respect

of such land or to any person from water works belonging to the said board, or assess both such rates and such charges;

- (ii) assess rates on any land referred to in paragraph (b) of sub-section (1) of section *eighty-three* within its irrigation district,

and may recover the rates and charges so assessed from the owners of the said land or from any person to whom water is so supplied, as the case may be.

- (b) If an irrigation board assesses rates, such rates shall be assessed annually by such board at a uniform sum per morgen of the land affected: Provided that the said board may, under special circumstances and with the consent of the Minister, levy rates upon and in respect of any land at rates different from the rates in respect of any other land or levy a special rate in addition to the rate assessed annually.

(2) Whenever an irrigation board is empowered to supply water in terms of paragraph (j) of sub-section (1) of section *eighty-nine*, it may from time to time assess such charges as the Minister may determine for water so supplied and may recover such charges from the persons to whom such water is so supplied.

(3) Nothing in this section contained shall be construed as preventing an irrigation board from entering into an agreement with one or more owners of land for raising a loan on the security of the rates which it may assess in terms of paragraph (a) of sub-section (1) for the purpose of constructing a water work for the sole benefit of such owner or owners, and from levying on the land affected an additional rate sufficient to cover the interest and other annual charges payable in respect of such loan.

91. (1) Whenever an irrigation board has assessed a rate in terms of sub-section (1) of section *ninety*, such board shall cause to be prepared an assessment roll setting forth—

Irrigation board to prepare assessment rolls.

- (a) the name of each person liable to pay rates;
- (b) a description of the piece of land in respect of which the rate is assessed;
- (c) the number of morgen on each piece of land which is scheduled in terms of sub-section (7) of section *sixty-three* or sub-paragraph (v) of paragraph (a) of sub-section (1) of section *eighty-eight* or sub-paragraph (ii) of paragraph (b) of the last mentioned sub-section;
- (d) the amount of the rate assessed; and
- (e) the date or dates upon which payment is due and the amount due on each such date.

(2) One copy of such assessment roll shall lie in the office of the secretary of the irrigation board concerned and shall be open to inspection at all reasonable times by any interested person, and one copy thereof shall be transmitted by the said board to the department.

92. (1) (a) A rate assessed by an irrigation board under sub-section (1) of section *ninety* shall be due and payable at the office of such board on the date or dates shown on the assessment roll in terms of paragraph (e) of sub-section (1) of section *ninety-one*, and any charge assessed by such a board in terms of sub-section (2) of section *ninety* shall be due and payable on a date to be fixed by the board when the said charge is so assessed.

Payment and recovery of rates or charges assessed by an irrigation board.

- (b) If within one month after the date fixed for payment, the amount due and payable by any owner or other person liable to pay such amount has not been paid the irrigation board concerned may—

- (i) without further demand, recover such amount from such owner or person by action in a competent court, and the whole of the amount of the rate of which such amount due and payable forms a part shall forthwith become due and payable and may be recovered by such board in like manner; and

- (ii) by such means as it deems fit, stop any water flowing from any water work under its control on to the land in respect of which such amount is due and unpaid until the amount is paid, or in the case of an amount due and unpaid in respect

of a charge assessed in terms of sub-section (2) of section *ninety*, suspend the supply of water to the person concerned until the amount has been paid, and the said board shall not be obliged after the amount due has been paid, to supply any water so stopped or to pay compensation for any loss sustained by any person consequent upon the stopping of the said water.

(2) No cessation under sub-paragraph (ii) of paragraph (b) of sub-section (1), of the supply of water to the land or person referred to therein shall relieve any person from any liability in respect of the period of such cessation for any rates or charges assessed by the irrigation board in question in terms of section *ninety*.

(3) (a) Rates assessed by an irrigation board shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the owner of any such land shall be liable for any such rates which remain unpaid at the time when he becomes the owner.

(b) No transfer of any land in respect of which rates may be assessed by such a board shall be passed by the registrar of deeds in charge of the deeds registry in which the title to such land is registered, until a certificate signed by the secretary of such board has been produced to such registrar stating that all rates assessed on such land or charges due to that board by the owner of such land have been paid: Provided that the provisions of this sub-section shall not apply unless the said board has supplied the said registrar with a copy of the schedule of rateable areas of its irrigation district, in accordance with sub-section (4) of section *eighty-eight*, or, where a copy has been so supplied, unless the particulars shown therein relating to the land in question are sufficiently set forth to enable the said registrar readily to identify such land in his registers.

(4) If the owner of any land upon or in respect of which rates have been levied by an irrigation board becomes insolvent, the amount of the rates or charges unpaid at the date upon which such owner becomes insolvent shall, subject to the provisions of sub-section (1) of section *eighty-nine* of the Insolvency Act, 1936 (Act No. 24 of 1936), rank preferent to any registered mortgage.

93. (1) An irrigation board may, in manner prescribed by regulation, raise by way of loan any money required by it for the purpose of carrying out any of the functions, powers or duties assigned to or imposed upon it under sub-section (1) of section *eighty-nine*: Provided that no such loan shall be raised otherwise than in accordance with the provisions of Chapter IX, unless the approval of the Minister has been obtained.

Irrigation board may raise loans.

(2) Whenever an irrigation board proposes to raise a loan notice in writing of its intention to do so, setting forth the details of the proposal, shall be given to every member of such board not less than twenty-one days before the date of the meeting of the board at which such proposal is to be considered, and no loan shall be raised except upon a resolution of the board passed at a meeting at which not less than two-thirds of the members thereof are present.

94. (1) An irrigation board may, with the consent of the Minister, and for the purpose of exercising any function or power or carrying out any duty assigned to or imposed upon it by this Act, expropriate any land or servitude over land or any existing right or appropriate any substance or material on any land or temporarily use any land or any water work within its irrigation district as it may consider necessary: Provided that nothing in this sub-section contained shall apply to land belonging to the Government, including the South African Railways and Harbours Administration or any provincial administration, or the South African Native Trust constituted in terms of sub-section (1) of section *four* of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), or to any works or undertakings conducted by or on behalf of the State or the Electricity Supply Commission constituted in terms of sub-section (1) of section *one* of the Electricity Act, 1922 (Act No. 42 of 1922).

Irrigation board may expropriate land, servitudes, etc.

(2) The provisions of sub-sections (2) to (9) inclusive of section sixty shall *mutatis mutandis* apply in connection with any such expropriation.

95. (1) Any officer of the department nominated thereto by the director shall be entitled to attend, but not to vote at, any meeting of an irrigation board and to assist any such board or a committee thereof with his advice upon any matter relating to any question under discussion or consideration by such board or committee.

Powers of Minister and director to supervise the affairs of an irrigation board

(2) (a) The director may, from time to time, appoint any officer of the department to inspect the lands or water works belonging to or under the control of an irrigation board, including any land in respect of which water is supplied from works controlled by such board, or to investigate the affairs of such board, and if after consideration of a report made by such officer the Minister is satisfied that the said works have not been or are not being executed or maintained in a satisfactory manner, or that the board has failed to carry out any of the functions, powers and duties assigned to or imposed upon it under this Act or the regulations made thereunder or any other law, or has been dilatory or negligent in carrying out such functions, powers and duties, or has not satisfactorily carried out or complied with any order of a water court whereby any duty has been imposed upon the said board, or if at any time the board has for a period of sixty days or more failed to pay any moneys due and payable to the Government in respect of an advance or loan made to it by the Government, the Minister may—

- (i) by notice in writing direct the said board to take within a period specified in the notice such action as is therein set out; or
- (ii) cause such action as he may deem necessary to be taken at the expense of the board, or levy and recover rates and collect any dues payable to the board sufficient to pay any moneys due in respect of any such advance or loan, or sufficient to cover the cost of any action so taken, together with all expenses incidental to the levying, recovery or collection of any rates he may so levy; or
- (iii) by notice in the *Gazette* and notice in writing to the board, declare the period of office of the members of the board to be terminated, and assume the functions of the board for such period as he may deem fit, or upon such termination or at any time thereafter take all such steps as he may consider necessary for the election of new members to the board.

(b) If the board fails to comply with a direction under sub-paragraph (i) of paragraph (a) within the period specified by the Minister or within such further period as he may determine, the Minister may forthwith apply the provisions of sub-paragraph (ii) or (iii) of that paragraph.

(3) The Minister shall, in respect of any period during which he assumes the functions of the board under sub-paragraph (iii) of paragraph (a) or under paragraph (b) of sub-section (2), be vested with all the powers, rights, assets, liabilities and obligations of the board and may delegate the control thereof to any officer of the department, and shall for the purpose of the levy and recovery of rates and the collection of dues under sub-paragraph (ii) of paragraph (a) of that sub-section, have the same powers and rights as are in terms of this Act vested in the board concerned in connection with the levy and recovery of such rates or the collection of such dues by that board.

(4) The Minister may, by action in a competent court or in such other manner as he may deem fit, recover the costs of any action taken by him under sub-paragraph (i), (ii) or (iii) of paragraph (a) of sub-section (2) from the board concerned.

96. (1) An irrigation board shall in manner prescribed by regulation, keep accounts of all moneys received and expended by it, and shall render to the department such statements of

Accounts of irrigation boards.

revenue and expenditure and such accounts or reports as may be prescribed by regulation, duly audited by the auditors of the board.

(2) Any officer of the department authorized thereto by the director may at any time examine the accounts, books and records of any irrigation board.

(3) Every irrigation board shall establish a reserve fund and shall from time to time deposit therein such amounts as may be determined by the Minister, being portion of the rates or charges assessed by it in terms of section *ninety*, and no amount so deposited shall be withdrawn from such fund except with the approval of the Minister.

97. (1) Every person entitled to any servitude or other right entitling him to the use of water within an irrigation district, acquired before the date of the proclamation whereby such district was established, shall within a period specified in a notice served upon him by the irrigation board of that district, not being less than three months after the date of service of such notice, apply to such irrigation board to record that servitude or right, and in default of compliance with the requirements of this section within the period so specified, and as long as the servitude or right remains unrecorded, it shall not be recognized by the irrigation board for the purpose of the distribution of water by it or for any purpose under this Act.

Registration of rights or servitudes with irrigation boards.

(2) (a) In considering whether it shall record any servitude or right referred to in sub-section (1), an irrigation board shall have regard to all servitudes or rights claimed in respect of the use of such water, whether registered against title or otherwise lawfully existing, and where there is no such servitude or right registered against title, the person aforesaid shall set forth the particulars of the servitude or right which he claims to have recorded under this section, and such particulars shall be published in manner prescribed by regulation

(b) If within a period of three months after the date of publication of such particulars, written objection has not been lodged with the secretary of the board to the recording of any servitude or right, such servitude or right shall be recorded by the irrigation board, and if any such objection has been lodged, the servitude or right shall not be recorded except upon the order of a water court or other competent court or upon withdrawal of such objection by the person by whom it has been lodged with such irrigation board.

98. (1) Nothing in this Chapter contained shall be construed as preventing any person aggrieved by an order, act or decision, or a proposed order, act or decision of an irrigation board from making application to a water court for relief: Provided that where such order or act has been carried out or decision has been made by the said irrigation board, a person aggrieved thereby shall forfeit his right to make such application to the said court unless the application is made within a period of three months from the making of the order or decision or the doing of the act by the board, unless such person can prove to the satisfaction of the said court that owing to his absence from the Union or any other reasonable cause he has been unable to make such application within the said period.

Application to a water court against order or act of an irrigation board.

(2) A water court may in making any order arising out of an application made to it under this section, fix such amount of compensation to be paid to the applicant by the irrigation board concerned, as it deems fit.

99. (1) A member of an irrigation board shall not, except in so far as the Minister otherwise directs, receive any salary, allowance, fee or reward for, on account of, or by reason of his being a member of such board, or, without the permission of the Minister, enter into a contract with such board exceeding fifty pounds in value or be directly interested in any such contract.

Allowances to and contracts with members of irrigation boards.

(2) Any person who contravenes any provision of this section shall be guilty of an offence and shall be disqualified from being a member of an irrigation board.

(3) Nothing in this section contained shall be construed as preventing a member of an irrigation board from receiving, in accordance with regulation, an allowance in respect of expenses incurred by him in the performance of his duties as a member.

100. Whenever an irrigation board has, under the provisions of this Act or any prior law, constructed or otherwise acquired a water work, the rights and privileges of ownership therein shall be vested in such board, unless such board has constructed that work under paragraph (c) of sub-section (5) of section *eighty-nine* and has recovered the cost of such work from the owner concerned.

Ownership of water works constructed by irrigation boards.

101. (1) An irrigation board shall, at least once in every year, convene a general meeting of the voters whose names appear on the voters' list of the irrigation district prepared or revised in terms of section *eighty-three* and shall at such meeting lay before the said voters a statement of its accounts in respect of the preceding year and give an account of its activities during such year.

Irrigation board to convene an annual general meeting of voters.

(2) If not less than twenty-five of the voters whose names are shown on the said voters' list or (where there are less than seventy-five such voters) not less than one-third of those voters, consider that it is in the interest of the majority of the persons liable to pay rates or charges to the said board that a special meeting of such persons be held, the board shall at the request of such voters convene such special meeting.

102. The Minister may make regulations relating to—

Regulations as to irrigation boards.

- (a) the nomination of candidates and the election of members of an irrigation board, and the procedure and method of voting thereat;
- (b) the powers and duties of returning officers in connection with such elections and in connection with the first meeting of an irrigation board;
- (c) the quorum for meetings of an irrigation board;
- (d) the appointment of a secretary and other officers or servants of an irrigation board;
- (e) the allowances for expenses which may be made to a member;
- (f) the delegation by an irrigation board of any of its powers to committees and the constitution, quorum, powers and procedure of such committees;
- (g) the manner of summoning and the procedure to be observed at any meeting required to be called under section *one hundred and one*;
- (h) the service of notices under this Chapter;
- (i) the persons by whom, the place at which and the manner in which, anything shall be done for which provision is made in this Chapter;
- (j) the manner in which accounts shall be kept by an irrigation board, and the returns to be rendered in terms of sub-section (1) of section *ninety-six*; and
- (k) generally any other matter which he considers it necessary or expedient to prescribe for the carrying out of the objects of this Chapter.

103. (1) Subject to the provisions of sub-section (2), an irrigation board may make by-laws not inconsistent with this Act, relating to—

Irrigation boards may make by-laws.

- (a) the procedure at its meetings;
- (b) the powers and duties of its officers;
- (c) the method of supervising or controlling the diversion, distribution and use of water under its control, and the closing of any water works belonging to it at certain times and seasons, whether for the purpose of repairs or for the benefit of any adjoining lands or for any other reason;
- (d) generally any other matters which it is deemed necessary to prescribe for the carrying out by the said board of the functions, powers and duties assigned to or imposed upon it under this Act.

(2) No by-law made by an irrigation board shall be valid unless it has been approved by the Minister and published by him in the *Gazette*, and no such by-law shall be approved until

the expiry of one month after a notice has been published by the board in a newspaper circulating in the irrigation district of such board and posted outside the principal door of the office of the board, stating its intention to apply for the approval of such by-law.

(3) An irrigation board shall supply copies of all by-laws in force in its irrigation district to any person applying therefor, upon payment of such sum for each such copy as has been determined by the board, and a copy of all such by-laws shall be kept by the secretary of the said board in the office of the board and shall be open for inspection at all reasonable times by any person free of charge.

(4) Any by-laws made by an irrigation board under any prior law and in existence at the date of commencement of this Act shall, unless inconsistent with the provisions of this Act, be deemed to have been made under this section.

104. The functions, powers and jurisdiction of any irrigation board whose irrigation district is situated within the area of jurisdiction of the Rand Water Board shall be exercised subject to rights lawfully acquired prior to the commencement of this Act by the Rand Water Board under the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950).

Rand Water Board not subject to jurisdiction of irrigation boards.

105. (1) Any river district or irrigation district established under any law and in existence on the date of commencement of this Act, shall be deemed to have been declared to be an irrigation district under section *seventy-four* on that date, and the board established in respect of any such district under that law shall be deemed to be an irrigation board established under this Act, and shall, subject to the provisions of this Act and the directions of the Minister, have all the powers, duties and functions vested in it under the said law or any other law and such other powers, duties and functions as may be assigned to it by the Minister under this Act.

Continuation of existing river and irrigation districts.

(2) All assets, rights, liabilities and obligations vested in any such board on the commencement of this Act shall remain so vested in it, and any by-laws made or decisions given or rates or charges imposed by such board prior to such commencement shall remain of full force and effect until amended or withdrawn under this Act.

(3) The members of any such board holding office at the commencement of this Act shall continue to hold office for such period as the Minister may determine, and upon the expiration of such period new members shall be elected in the same manner as in the case of the first election of members of an irrigation board under this Act, and thereafter all the provisions of this Act shall apply in connection with the constitution and the period of office of members of such board.

106. (1) The Vioolsdrift irrigation district and the irrigation board thereof, constituted by Proclamation No. 264 of 1950, shall be deemed to have been declared an irrigation district under section *seventy-four* as if at the date of promulgation of that proclamation the piece of land situated in the territory of South-West Africa and included in the said district formed part of the Union, and the provisions of this Chapter shall, subject to the provisions of sub-section (2) apply *mutatis mutandis* to the said district and board.

Inclusion in irrigation district of certain land situated in South-West Africa.

(2) The water work constructed by the Government in the said territory for the irrigation of certain land in that territory (in terms of the agreement between the Minister and the Administrator of the said territory, dated the eighth day of September, 1933) being part of the Vioolsdrift Settlement, situated on the Orange River partly in the Division of Namaqualand and partly in the said territory, shall be deemed to be a Government water work constructed in terms of sub-section (1) of section *fifty-six*.

CHAPTER VII.

WATER BOARDS.

107. In this Chapter "consumer" means a person supplied or entitled to be supplied with water by a water board or a local authority.

Definitions.

108. (1) Whenever the Minister deems it expedient or desirable that a combined scheme be established for supplying water for urban, industrial or agricultural purposes within any area to local authorities, any department of State, including the South African Railways and Harbours Administration and any provincial administration, or other persons, or whenever the Minister has constructed or commenced the construction of a Government water work for any such purpose, he may recommend to the Governor-General that a water board be constituted for such area or for the area to be served by such water work.

Establishment of water boards.

(2) The Governor-General may thereupon by proclamation in the *Gazette* establish for the area in question, which shall be defined in the proclamation, a water board and assign a name to such board, and may in like manner at any time alter the boundaries of such area.

(3) A water board shall be a body corporate, capable of suing and being sued in its corporate name, and of purchasing or otherwise acquiring, holding and alienating movable or immovable property, and of performing such acts as are necessary for or incidental to the exercise of its powers or the performance of its functions.

109. (1) (a) A water board shall, subject to the provisions of paragraph (b) of this sub-section and paragraph (b) of sub-section (2), consist of so many members as the Minister may determine, to be appointed by him from amongst persons to be nominated or elected as follows, namely—

Appointment of members of water boards and period of office of members.

(i) one person to be nominated by every local authority to which or in respect of whose area water is or is to be supplied by the board;

(ii) one person to be elected by owners of land in townships within the area of such board, but outside any local authority area, to whom water is or is to be supplied by that board, or, if the Minister so directs, by such owners in each ward into which such townships may be divided by the Minister;

(iii) one person to be nominated by every irrigation board which is or is to be supplied with water by such water board;

(iv) one person to be elected by owners of land (not being land within an irrigation district or a township or local authority area) to whom water is or is to be supplied by such water board, or, if the Minister so directs, by such owners in each ward into which the area of such board may be divided by the Minister;

(v) one person to be elected by persons to whom water is or is to be supplied by such water board for industrial (including mining) purposes, or, if the Minister so directs, by each of such groups of those persons as he may determine.

(b) The Minister may appoint such persons to be members of a water board, in addition to the members referred to in paragraph (a), as he may deem fit.

(c) The election of any person to be appointed as a member of a water board under sub-paragraph (ii), (iv) or (v) of paragraph (a) shall take place in such manner as the Minister may direct.

(2) (a) The persons referred to in paragraph (a) of sub-section (1) shall be nominated or elected not later than a date fixed by the Minister from time to time for the purpose and notified to the local authority, irrigation board, owners or persons concerned in writing, or made known in such other manner as the Minister may determine.

(b) Not more than fifteen of the members of a water board shall be persons nominated or elected under paragraph (a) of sub-section (1), and if more than fifteen persons are nominated or elected under that paragraph for appointment to such a board, the

Minister shall appoint fifteen of those persons, to be selected by him in such manner as he may consider necessary to ensure reasonable representation of the various interests concerned, as members of that board.

- (c) If a local authority or an irrigation board or owners or persons referred to in paragraph (a) of sub-section (1) fail to nominate or elect any person whom such local authority, irrigation board, owners or persons are in terms of that paragraph entitled to nominate or elect, or to advise the Minister of the name and address of any person so nominated or elected within thirty days of the date fixed under paragraph (a) of this sub-section, the Minister may himself nominate any person he deems fit to be a member of the water board concerned in the stead of any person who could have been nominated or elected by such local authority, irrigation board, owners or persons.
- (3) (a) Every appointment of a member of a water board shall be notified in the *Gazette*, and any such member shall, subject to the provisions of paragraph (b) of sub-section (5), hold office for a period of four years from the date upon which his appointment is so notified.
- (b) A member of a water board shall, if qualified, be eligible for re-appointment on termination of any period for which he has held office.
- (4) A person shall be disqualified from being nominated, elected, or appointed to or remaining a member of a water board if he has been convicted of an offence and sentenced to imprisonment without the option of a fine, or if he is insolvent or of unsound mind or has without the consent of the board absented himself from three consecutive meetings thereof.
- (5) (a) Any casual vacancy on a water board occurring by death, resignation, disqualification or otherwise shall be filled by the Minister after such consultation with the local authority, irrigation board, owners or persons concerned as he may deem necessary.
- (b) Any such vacancy shall be filled as soon as practicable after the occurrence of the vacancy, but the member appointed to fill the vacancy shall retain his office only for so long as the vacating member would have retained such office if no vacancy had occurred.
- (6) Any member of a water board may be granted leave of absence from meetings of the board for such period as the board may deem fit, and the Minister may, after such consultation with the local authority, irrigation board, owners or persons concerned as he may deem necessary, appoint another member to act in the place of the absent member during the period for which leave of absence has been granted by the board.
- (7) No act of a water board shall be rendered invalid or illegal by reason only of any vacancy in the board or of any defect or irregularity in the appointment, nomination, election or qualification of any member of the board.
- (8) At the first meeting of a water board and thereafter at a meeting to be held in the month of January of each year, a water board shall elect one of the members thereof to be chairman, and one of such members to be vice-chairman for the ensuing year, and at any meeting of such board the chairman, or in his absence the vice-chairman, or in the absence of both the chairman and the vice-chairman, another member of the board chosen by the members present shall preside, and if the chairman or the vice-chairman so elected dies or resigns or becomes disqualified or is otherwise unable to serve as a member of the said board, the board shall at its next succeeding meeting elect another chairman or vice-chairman, as the case may be, and such chairman or vice-chairman shall serve as such for the remainder of the period for which his predecessor in office was so elected.

110. (1) A water board shall have power—

- (a) to establish, construct, purchase or otherwise acquire and to maintain and control any scheme to provide and supply water for use for urban, industrial or agricultural purposes to local authorities, departments of State, including the South African Railways and Harbours Administration and any provincial administration, or other persons within the area for which such water board has been established;
- (b) to appoint such engineers, technical officers and other officers, workmen and servants as it may deem

Functions, powers and duties of a water board.

requisite at such salaries, wages and allowances as may, with the approval of the Minister given after consultation with the Public Service Commission, be prescribed by by-laws under section *one hundred and thirty-six*;

- (c) to raise money by way of loans;
 - (d) to acquire by purchase, lease or otherwise, land or rights or interests in land, water rights, and rights to property of any description, and to control or otherwise beneficially use any property or rights so acquired;
 - (e) to acquire by purchase, lease or otherwise or to construct, and to maintain, alter or improve offices, buildings, machinery, plant, conduits, water-channels, cisterns, meters, watercocks, culverts, pipe-lines, water works, reservoirs, dams, filter-beds, wells, shafts, railway sidings, embankments, roads, bridges, vehicles and any other apparatus or works required for or in connection with any scheme referred to in paragraph (a);
 - (f) to exchange, let, sell or hypothecate any of the property or plant acquired or constructed under paragraph (d) or (e);
 - (g) to cause surveys, plans, sections, maps, drawings and estimates to be made by or through its officers, servants or agents;
 - (h) to cause entry to be made by or through its officers, servants, or agents duly authorized thereto upon any land for the purpose of making plans and surveys thereof, the investigation of any water supply on or under such land, or investigations as to the suitability of any site for the construction of storage or other works in relation to the supply of water, and any such survey or investigation made may include investigations into the purity and chemical composition of any such water;
 - (i) to enter into contracts with local authorities, the Government, including the South African Railways and Harbours Administration and any provincial administration, companies and other persons for the supply of water within the area for which the board has been established;
 - (j) subject to the provisions hereinafter contained as to prices, to make and recover charges for water supplied;
 - (k) to purchase or otherwise acquire supplies of water;
 - (l) to insure with any company or person against any losses, damage, risks and liabilities which the board may incur;
 - (m) to lay or carry through, over, under or across any land, public or private, or any public road, public place or outspan, either within or without the area in which water is to be supplied, and from time to time to repair and maintain, any pipes for the supply of water with any necessary valves, cocks, meters or other accessories in connection therewith and for that purpose to enter upon any such land, road or place;
 - (n) to establish a pension fund for its employees and to contribute to such a fund in accordance with by-laws made under section *one hundred and thirty-six*.
- (2) A water board shall from time to time on the direction of the Minister enter into such contracts of insurance under paragraph (l) of sub-section (1) as the Minister may require.
- (3) A water board shall in the exercise of the powers conferred by paragraph (h) of sub-section (1), have power—
- (a) to search, dig, excavate, bore or carry out any works or investigations which may be necessary for the discovery, gauging or measurement or the establishment of the chemical composition of any water rising from any spring, well or fountain, or flowing in any river, watercourse or channel;
 - (b) to take any steps necessary to determine the levels, direction of flow or chemical composition of any water contained in or flowing in any underground reservoirs or channels; and
 - (c) to search, dig, excavate, bore and carry out any works necessary to determine the suitability of any site for the construction of storage or other works in relation to the supply of water,
- and may for any such purpose enter upon any land: Provided that no entry shall be made into any building or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof.

(4) In the exercise of the powers conferred upon a water board by paragraphs (h) and (m) of sub-section (1) and sub-section (3), as little damage as possible shall be caused, and such compensation as may be agreed upon, or failing agreement determined by a competent court, shall be paid by the said board for all damage so caused, or otherwise the said board shall repair any such damage.

(5) The provisions of sub-section (7) of section *one hundred and forty-one* shall *mutatis mutandis* apply with reference to the exercise of any of the powers mentioned in paragraph (m) of sub-section (1) of this section in relation to any such road as is referred to in the firstmentioned sub-section.

111. (1) A water board shall, as soon as possible after its constitution, proceed in consultation with the department, to investigate the question of establishing or acquiring a scheme or schemes for the purpose of supplying water within its area, and if it is of opinion that the establishment or acquisition of a scheme or schemes is necessary and feasible, it shall submit a report of its proposals to the Minister.

Establishment or acquisition of scheme by a water board.

(2) If the Minister approves of any proposals submitted to him under sub-section (1), he may authorize the water board to raise by way of loans as hereinafter provided, the capital moneys necessary for financing the establishment or acquisition of such scheme or schemes in accordance with the provisions of this Chapter.

(3) No scheme shall be established or acquired by a water board, nor shall the proposals for the establishment of any scheme approved by the Minister be substantially departed from, nor shall any existing scheme be substantially extended or altered, without the prior approval of the Minister.

112. A water board shall in the exercise of the powers conferred upon it under this Chapter have the same powers as are by section *ninety-four* vested in an irrigation board and the provisions of that section shall *mutatis mutandis* apply in relation to a water board.

Powers of expropriation of a water board.

113. (1) Subject to the provisions of this Act, a water board may—

Supply of water by a water board.

(a) supply water in bulk for urban use to any local authority within the area of the board which makes application therefor and undertakes to accept and distribute such water to consumers within the area of its jurisdiction;

(b) supply water either in bulk or otherwise, to any department of State, including the South African Railways and Harbours Administration and any provincial administration, or to any person engaged in prospecting, mining, industry, agriculture or any other undertaking, or to any other person making application therefor and agreeing to accept the same: Provided that, unless the Minister otherwise directs, no water shall be supplied to any consumer who is within the area of jurisdiction of any local authority which is being supplied by such water board with water in bulk, or if such consumer is being supplied by such local authority with water from another source, except with the consent of that local authority.

(2) No person shall be entitled to a supply of water from a water board for any premises having a separate supply of water unless such person has agreed to pay, or has given security to pay such minimum annual sum as will in the opinion of the Minister give the water board a reasonable return on such expenditure as may be incurred by the board in order to meet the possible maximum demand for those premises.

114. (1) A water board shall not, except as provided in sub-section (2), reduce or discontinue the supply of water to a consumer, as stipulated in the contract of supply, without the prior approval of the Minister and subject to such terms and conditions as he may impose.

Non-payment for water supplied.

(2) If a consumer is insolvent or fails to pay any amount due to a water board in respect of a water rate assessed in terms of sub-section (1) of section *one hundred and twenty* or by way of charges payable in respect of water supplied or to be supplied to him by that board, or by way of any deposit or additional

deposit required of him or other amount due by him to the board in respect of the supply of water or the installation or supply of fittings, apparatus, appliances or other appurtenant works in connection with such supply, the said board may discontinue the supply of water to that consumer until such water rate or such charges together with the charges for disconnection and reconnection of such supply are fully paid.

(3) No cessation under sub-section (2) of the supply of water to a consumer by a water board shall relieve any person from any liability in respect of the period of such cessation for any water rates or charges due by such person, and such board shall not be obliged, after the amount due has been paid, to supply any water so discontinued or to pay compensation for any loss sustained by any person consequent upon the discontinuation of the said water.

(4) The provisions of sub-sections (3) and (4) of section *ninety-two* shall *mutatis mutandis* apply in relation to any water rates or charges due to a water board.

115. (1) A water board shall not supply water to any consumer before it has submitted to the Minister and has obtained his approval of a schedule of standard prices, which may include minimum prices in respect of specified periods, chargeable by such water board for the supply of water to the various classes of consumers. Schedule of standard prices of supply.

(2) A water board may with the approval of the Minister from time to time amend its schedule of standard prices, and if any alteration of the boundaries of the area of a water board is made in terms of sub-section (2) of section *one hundred and eight*, in accordance with which any new area is included in such area, the board may, with the approval of the Minister, issue a schedule of standard prices for the supply of water in such new area different from the schedule of standard prices applicable to the former area of the board, as though such supply were under a separate scheme as provided in section *one hundred and eighteen*.

116. (1) (a) Any charges made by a water board for the supply of water to consumers shall be those specified in the schedule of standard prices approved by the Minister: Provided that a water board may, subject to the provisions of sub-section (2), vary its prices either above or below the standard price with due regard to— Charges for supply of water by a water board.

- (i) the amount of water consumed;
- (ii) the uniformity or regularity of demand;
- (iii) the time when or during which the water is required;
- (iv) the expenditure of the water board in furnishing the supply; or
- (v) any special circumstances which may exist.

(b) If any dispute arises between the water board and any consumer or association of consumers as to any variation of prices for water supplied, the matter shall be referred to the Minister whose decision thereon shall be final.

(2) No arrangement between a water board and any consumer whereby any charge to that consumer will be reduced below the standard price shall be valid unless the reduction has been approved by the Minister.

(3) A water board shall publish in the *Gazette* and in one or more newspapers circulating in its area, a complete list of the prices to be paid by its various classes of consumers and of any amendments to any such list as soon as possible after approval thereof by the Minister.

(4) No advantages, rebates, preferences or privileges shall be granted to any consumer except as provided in this Chapter.

117. (1) The prices to be charged by a water board for water supplied by it shall be such as to cover— Prices to be charged.

- (a) the cost of operation of all schemes undertaken by it, including costs of distribution, maintenance and administration;
- (b) the amount required for interest on moneys raised by way of loan (including advances referred to in sub-

section (5) of section *one hundred and twenty-one*), redemption of such loans or advances and other expenditure incidental thereto; and

(c) the amounts to be set aside annually under section *one hundred and twenty-five*.

(2) The prices to be charged by a water board for water supplied to its various classes of consumers shall be regulated as prescribed in sub-section (1) of section *one hundred and fifteen* and in section *one hundred and sixteen*, and the water board shall increase or decrease its prices for all classes of consumers in equal proportions when making any adjustment of prices in accordance with the provisions of this section.

(3) If there be any surplus or deficit in any financial year of a water board, after providing for the cost and other amounts referred to in sub-section (1), such surplus or deficit shall be carried forward to the next financial year and allowance made therefor in adjusting the charges for water to be supplied during that year.

(4) It shall be a general principle of a water board that its schemes shall, as far as practicable, be carried on neither at a profit nor at a loss, and the charges for water supplied by such board and any rates assessed by it in terms of section *one hundred and twenty* shall be adjusted accordingly from time to time.

118. (1) (a) If a water board carries on more than one water supply scheme, each such scheme shall, subject to the provisions of sub-section (2), be separately taken into account when the prices to be charged as provided in section *one hundred and seventeen* are being assessed or adjusted. Different prices for different schemes.

(b) Separate accounts shall be kept of the expenditure of each scheme showing the actual expenditure by the board relative thereto, and a fair adjustment of the overhead and administration charges, the amount of interest and redemption charges and other allowances for expenditure provided for in this Chapter shall be made between the various schemes.

(2) Whenever in the opinion of the Minister special circumstances exist which render it undesirable or impracticable for a water board to comply with the provisions of sub-section (1), he may authorize such board to take into account all or any of the water supply schemes carried on by it.

119. (1) (a) Payment for water supplied by a water board to any consumer shall be made within thirty days of the rendering of an account therefor by such board. Payment for water supplied and interest on payments in arrear.

(b) Such payment shall be made at such board's office or, as the case may be, to any local authority with whom the said board may have entered into an agreement in terms of which such local authority has undertaken to collect such payment on behalf of the said board.

(2) On all sums which shall have become due in respect of water supplied during any month, and which are not paid as provided in sub-section (1), interest shall be chargeable and recoverable by the water board at such rates for every month or portion of a month during which those sums remain unpaid, as may be prescribed by by-laws made under section *one hundred and thirty-six*.

(3) Such interest shall be recoverable in the same manner as sums due in respect of water supplied.

120. (1) To defray any expenditure incurred or to be incurred by it under this Chapter or the regulations made under section *one hundred and thirty-eight*, a water board may, subject to the approval of the Minister, assess and collect annually a rate, to be called a water rate, on any land within its area, in accordance with regulations made by the Minister. Water rates.

(2) Any rate imposed under sub-section (1) shall be payable by the persons prescribed by regulation at such times as may be so prescribed.

(3) (a) Such rates shall be assessed at a uniform amount per morgen of land or on such other basis as the Minister may determine: Provided that a water board may, with the consent of the Minister, assess rates on and in respect of any area of land in excess of a determined extent at rates different from the rates assessed upon

and in respect of other land, or vary any such rate in respect of any land according to the purposes for which water supplied for use on that land is or is intended to be used.

- (b) If a water rate is imposed upon any land within the area of jurisdiction of a local authority, such local authority shall be required and authorized to collect the same in such manner as may be prescribed by regulation, and to pay the moneys so collected to the water board concerned less such charges, if any, for collection as may be so prescribed.

(4) Any rate assessed in terms of sub-section (1) shall be in addition to and not in substitution for any charges made by a water board for water supplied by it under this Chapter.

(5) A water board shall not, without the consent of the Minister, assess any rate on land under this section in respect of any period after the date on which it commences to supply water for use on the land.

221. (1) A water board may from time to time, after obtaining the approval of the Minister, raise moneys by way of loan in such amounts as the Minister may authorize and on such conditions as he may approve, for the purpose of—

Borrowing powers of a water board and repayments of loans and advances.

- (a) establishing, constructing, acquiring or extending any scheme with all appurtenances thereto;
- (b) acquiring such land, rights or other property as is referred to in sub-section (1) of section *one hundred and ten*;
- (c) repaying any moneys advanced to it under sub-section (5);
- (d) redeeming any security for any part of a loan;
- (e) meeting the administrative and incidental expenses of the said board up to the date on which it commences to supply water, such loan being repayable on or before the last day of the financial year of the board during which it so commences to supply, or, with the approval of the Minister, on or before such later date as may be fixed by him, not being more than five years after the said day;
- (f) paying interest in respect of any loan raised for the purposes of or in connection with the establishment of any water supply scheme and meeting payments of instalments of principal or making other provision for the redemption of such loan, the said loan being repayable on or before the last day of the financial year of the board during which it commences to supply water or, with the approval of the Minister on or before such later date as may be fixed by him, not being more than five years after the said day;
- (g) making loans, not exceeding in any case one hundred pounds, to registered owners of immovable property for the installation thereon of water piping and fittings in connection with the supply of water for domestic purposes, every such loan being a debt due to the water board by the owner and his successors in title, bearing interest at a rate to be fixed by the said board (which rate shall be sufficient to cover the costs incurred by the board in connection with such loan) and shall be repayable in equal monthly instalments together with interest over such period not exceeding five years from the date of the loan as may be determined by the water board.
- (2) (a) Provision shall be made by a water board for the redemption of every loan or advance made to or obtained by it by means of a terminable annuity or by the payment of yearly or half-yearly instalments of principal and interest or by means of a sinking fund.
- (b) A water board shall cause a separate account to be kept of any sinking fund which it may establish.
- (c) If a water board establishes a sinking fund, it shall in every year pay into that fund such an amount as will with accumulations of interest be sufficient to redeem the loan or advance within the period thereof, or within such further period as the Minister may determine.
- (d) The first instalment in respect of moneys actually borrowed in any financial year shall be paid to the sinking fund on the thirty-first day of December of the

financial year next succeeding that in which such moneys were raised, and thereafter an instalment shall be paid on the thirty-first day of December of each year until the moneys so borrowed shall have been repaid, or until the moneys in the sinking fund amount to a sum which with the interest accruing will be sufficient to redeem the loan on due date.

- (e) The amount referred to in paragraph (c) shall be computed on the basis of accumulating interest at the rate of interest payable on the moneys borrowed, and any shortage at the end of a financial year of the board concerned shall be met from its revenue.
- (f) Any surplus of a sinking fund remaining after the redemption of the whole of the moneys for the repayment of which it was formed, shall be applied to such capital purpose as the water board concerned may, with the consent of the Minister, determine.
- (3) A water board shall invest all moneys paid into any sinking fund established by it, as and when received, in one or more of the following securities, namely—
- (a) Treasury bills, debentures or other securities chargeable upon the revenue of the Government; or
- (b) stock, debentures or other securities of any local authority or other statutory body in the Union which are quoted on a licensed stock exchange or have been approved by the Minister; or
- (c) on fixed deposit at interest with any banking institution or building society in the Union: Provided that the total amount so invested at any one time shall not exceed the sum of five annual instalments paid into the said sinking fund, exclusive of interest.
- (4) (a) A water board may also, with the approval of the Minister, borrow moneys by way of overdraft from its bankers, or otherwise, to defray its ordinary expenditure, not exceeding the total income of the board for its preceding financial year or, in the case of a new water work, the estimated income for the current financial year.
- (b) For the purposes of this sub-section "ordinary expenditure" includes expenditure in connection with the purchase of consumable stores for future use, but the cost of such stores shall be recorded against the appropriate account as and when the stores are issued for use.
- (5) The Minister may out of moneys provided by Parliament for the purpose, and subject to such terms and conditions as the Minister may deem fit to prescribe, advance moneys to a water board to enable it to carry out any of its functions, duties or powers, or in anticipation of revenue to be raised under any scheme or schemes which in terms of this Chapter it is authorized to acquire or establish: Provided that no advance shall be made in respect of any water work the total cost of which (as estimated by the Minister) will exceed when completed as an independent scheme thirty thousand pounds, unless a report on the proposed work has been laid on the Tables of both Houses of Parliament and such advance has been approved by resolution of both such Houses.

122. (1) All moneys consisting of water rates, water charges and other charges or sums levied or imposed or recoverable by or payable to a water board in terms of this Chapter or the regulations made thereunder or the by-laws of any water board shall, if not appropriated to any other fund or account of the water board, form a fund to be called the water board revenue account. Water board funds.

(2) All moneys raised by a water board by way of loan, including advances made to it by the Minister in terms of sub-section (5) of section *one hundred and twenty-one* for capital purposes, shall be paid to the fund or account for which the loan was authorized and raised or for which the advance was paid, and if the purpose for which the loan was raised or the advance was paid, is completed or abandoned, any balance remaining unexpended of the moneys so raised or paid, may with the consent of the Minister be applied to any other purpose, whereupon such balance shall be transferred to the capital account concerned.

(3) All moneys received by a water board from the sale of immovable property or other assets acquired out of capital

moneys, shall be paid to the capital account out of which the cost thereof was originally defrayed unless the Minister authorizes such board to utilize such moneys for any other purpose.

(4) All moneys raised or received by a water board for any specific purpose or in respect of any special fund or account shall be paid to the appropriate fund or account, and shall, save as is otherwise provided in this Act, be applied only to the purpose for which they were raised or received.

123. (1) The financial year of a water board shall end on the thirty-first day of December in each year. **Accounts.**

(2) A water board shall cause to be kept such books of account as may be necessary to maintain a proper record of all matters relating to the financial transactions of the water board, including all cash receipts and cash payments, the revenue earned but not received, and expenditure incurred but not paid, clearly distinguishing in each case between capital and revenue, and generally showing the assets and liabilities of the board.

(3) (a) A water board shall not later than three months after the close of each financial year cause the aforesaid books to be closed and balanced as at the end of such year, and shall within one month thereafter cause to be prepared separate income and expenditure accounts and balance sheets of the revenue account and of all other funds or accounts.

(b) Such board shall also cause to be prepared an aggregate balance sheet wherein shall be included in summarized form the whole of the liabilities and assets of the board.

(c) The said accounts and balance sheets shall clearly distinguish between capital and revenue in each case.

124. (1) A water board shall not later than the thirtieth day of April in each year, frame estimates of revenue and expenditure for the current financial year in respect of the water board revenue account, and shall thereafter cause to be published in one or more newspapers circulating in the area of the board a notice containing an abstract of such estimates and a statement that the estimates shall lie for inspection at the office of such board for a period of not less than seven days from the date of first publication, and cause similar notice to be exhibited on the public notice board at the board's office. **Estimates of revenue and expenditure.**

(2) A water board shall, when framing the estimates mentioned in sub-section (1), also frame estimates of revenue and expenditure in respect of all other funds or accounts, distinguishing in each case between revenue and capital accounts.

(3) In no case shall the estimates of expenditure from any particular fund, including any deficit brought forward, exceed the estimate of income on the revenue account of that fund, unless provision is simultaneously made for the excess expenditure to be met: Provided that with the prior approval of the Minister and subject to such terms and conditions as he may prescribe, a water board may up to the end of the second financial year immediately following the financial year in which it commenced to supply water, meet the whole or any part of any annual deficit from loan moneys not exceeding in all five per cent. of the board's expenditure from loan moneys.

(4) The estimate of expenditure on capital account shall in no case exceed the amount of capital moneys available for the particular service, including moneys still to be raised under borrowing powers for that service.

125. (1) A water board shall out of its revenue account set aside annually such sums of money as shall be necessary for the purpose of meeting the cost of charges for renewing its existing assets or works, whether the first cost was paid from loan funds or out of moneys advanced by the Minister for capital purposes: Provided that, with the consent of the Minister, no sum of money shall be required to be so set aside in respect of any asset or work having a certified life not less than the period of any loan raised in connection therewith, and that the Minister may, on the application of any water board, grant exemption from compliance with the provisions of this subsection for a period not exceeding five years from a date on which a water supply scheme initiated by such board is put into operation. **Renewals and reserve funds.**

(2) A water board shall invest the sums so set apart as a renewals fund in the securities and in the manner provided in regard to a sinking fund referred to in sub-sections (2) and (3) of section one hundred and twenty-one.

(3) A water board shall also cause to be maintained a register of all its assets so that the sum payable to the renewals fund can at any time be ascertained.

(4) A water board may establish a reserve fund into which shall be paid such surplus moneys at the disposal of the board as it may from time to time determine, and any moneys in any such fund may be used for such purposes as the Minister may approve.

126. The provisions of sub-sections (1) and (2) of section *Audit.* ninety-six shall *mutatis mutandis* apply in relation to any water board.

127. (1) No local authority in the area of a water board which is being supplied with water by such board shall have the right to supply water to any consumer outside the area of its jurisdiction except with the consent of such water board and at the tariffs and subject to the conditions determined by that board. **Restrictions imposed on local authorities and others in defined areas.**

(2) No local authority and no person who supplies water to any other person within the said area shall, without the prior approval of the Minister, extend or increase the supply of water derived from any scheme under its or his control or enter into an arrangement for acquiring water otherwise than from the water board concerned.

(3) No consumer (other than a local authority within the area of its jurisdiction) shall, without the sanction of a water board, sell or supply any water purchased by him from such board to any person whom the board is for the time being empowered to supply, and if any consumer shall sell or supply water in contravention of this sub-section, the said water board may charge such consumer in addition to the charges made in accordance with this Chapter, at a rate not exceeding three times the standard rate in force from time to time in respect of water supplied to him during the period of such contravention.

128. (1) For the purpose of this section "street" includes any road, square or open or closed public place, the control or care of which is vested in any local authority. **Breaking up of streets, etc., by a water board.**

(2) Subject to the provisions of this section, a water board may break up any street for the purposes of any authorized scheme and lay or construct conduits or pipe-lines along, under or over any street, and from time to time repair, alter or remove any conduits, aqueducts or pipe-lines so laid or constructed: Provided that the local authority having control of any such street may after notice in writing to such board, itself undertake such operations on behalf of that board, if the director is satisfied that the charges to be made for the work involved, as specified in such notice, are reasonable, and that such local authority will complete the work in question within a reasonable period.

(3) A water board shall not less than thirty days before it exercises any power conferred by this section, give to the local authority concerned notice in writing of its intention to do so, except in cases of emergency, and in such cases it shall give such notice as soon as possible after the emergency has arisen.

(4) The powers conferred upon a water board under this section shall, except in cases of emergency, be exercised only under the superintendence of the local authority concerned and according to such plan showing the route and such specifications as may be approved by that local authority or, if any dispute arises respecting such plan, route or specifications, as may be approved by the Minister: Provided that if the said local authority fails to exercise the powers of superintendence herein conferred after notice as aforesaid has been given, the water board may exercise those powers without such superintendence.

(5) Whenever a water board carries out any work authorized by this section, it shall comply with the by-laws or regulations of the local authority concerned and shall complete that work with reasonable despatch and reinstate and make good the street opened or broken up and remove the rubbish occasioned thereby, and shall, while the street is opened or broken up or obstructed, cause the works to be at all times fenced and guarded and, during the night, adequately lighted.

(6) If a water board fails to carry out any duty imposed upon it by sub-section (5), the said local authority may cause any work delayed or omitted to be executed at the expense of the said board.

(7) A water board shall pay to the said local authority the costs reasonably and necessarily incurred by it in exercising any superintendence under this section.

(8) Nothing in this section contained shall be construed as relieving a water board from any liability in respect of any loss or damage caused by its failure to comply with the provisions of this section.

129. (1) The director or any officer of the department authorized thereto in writing by him may—

Entry of water board's premises for inspection, etc.

(a) at all reasonable times enter upon any premises of any water board and inspect any water works, plant, machinery, books and accounts and other documents found thereat;

(b) call upon any water board or any person in its employ to furnish him with periodical or other returns in such form as may from time to time be prescribed by the Minister, and such particulars in respect of any scheme administered by that board as the director or such officer may from time to time demand.

(2) Any person who refuses to allow any such inspection or fails to comply with any such demand, or who wilfully obstructs or hinders the director or such officer in any such inspection shall be guilty of an offence.

(3) If any person divulges information obtained by him upon such inspection, except for the purpose of carrying out his duties under this Chapter or the regulations made thereunder or upon the order of or in answer to questions put to him as a witness in a court of law, he shall be guilty of an offence.

130. Any person authorized thereto in writing by a water board may at all reasonable times enter any premises to which water is or has been supplied by such board in order to inspect the pipelines, meters, fittings, works and apparatus belonging to such board, or for the purpose of ascertaining the quantity of water consumed or, where a supply is no longer required, removing any pipe-lines, meters, fittings, works and apparatus belonging to the said board, and all damage caused by such entry, inspection or removal shall be repaired and made good by the board.

Water board's powers of entry and inspection.

131. (1) Any pipe-lines, meters, fittings, works or apparatus belonging to any water board lawfully placed in or upon any premises not in its lawful possession shall, whether or not fixed to any part of such premises, remain the property of and be removable by such board, and shall not be subject to the landlord's hypothec for rent of such premises nor liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises.

Pipe-lines, meters, fittings, etc., not to be fixtures.

(2) For the purposes of section *one hundred and thirty*, pipe-lines, meters, fittings and apparatus let or rented by a water board or disposed of by it on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to it.

132. (1) Any person who without legal right (the proof of which shall be upon him) abstracts or causes to be abstracted or diverts or causes to be diverted any water from the scheme of any water board, or consumes or uses any such water which has been wrongfully or unlawfully abstracted or diverted knowing the same to have been wrongfully or unlawfully abstracted or diverted shall be guilty of an offence and liable on conviction to the penalties prescribed by sub-section (1) of section *one hundred and seventy* in respect of an offence mentioned in that sub-section.

Unlawful abstraction of water.

(2) Any person who without legal right (the proof of which shall be upon him) cuts or damages or interferes with any works, including conduits, aqueducts or pipe-lines, belonging to any water board and used for the purpose of supplying water, shall be guilty of an offence and liable on conviction to the penalties prescribed by sub-section (2) of section *one hundred and seventy* in respect of an offence mentioned in that sub-section.

133. The provisions of section *ninety-five* shall apply *mutatis mutandis* in relation to water boards.

Application of section 95 to water boards.

134. Every water board shall within one month after the receipt by it of a report in respect of any audit of its accounts submit to the Minister a report upon its operations and activities during the financial year to which the audit relates including *inter alia*—

Annual and other reports.

- (a) a balance sheet and a complete statement of revenue and expenditure, duly audited;
- (b) the report of the auditors;
- (c) a statement of the revenue derived by the board and the expenditure incurred by it in respect of each scheme, and of the water supplied by it to each local authority and each particular class of consumers;
- (d) particulars as to the extent and value of all classes of property owned by the board;
- (e) a statement shewing the amount of securities for loans still outstanding, and the interest thereon, whether paid or unpaid;
- (f) a statement shewing the position of each of the funds required by this Chapter to be established and maintained;
- (g) particulars of the expenses of management and administration and all other expenses;
- (h) details in connection with the erection and construction, repair, improvement or alteration of water works, plant, machinery or buildings and the cost thereof;
- (i) particulars as to the price or rent of any land or rights or interests in or over land or any other property acquired or hired.

135. Nothing in this Chapter contained shall be construed as authorizing a water board to take or use any water to which it is not, in accordance with the provisions of this Act, entitled or in respect of which it has not acquired a lawful right.

Water board to comply with provisions of Act relating to use of water.

136. (1) A water board may make by-laws not inconsistent with this Act, relating to—

By-laws of a water board.

- (a) the proceedings and business of the board;
- (b) the duties of officers, servants and other persons in its employ, including the delegation of powers of appointment and dismissal to any particular officer: Provided that the chief administrative officer of a water board shall not, without his own consent, be removed from his office, nor shall his salary or emoluments be reduced, without the approval of the Minister: Provided further that a water board may suspend any such officer from the duties or emoluments of his office for gross incapacity, neglect or misconduct pending the sanction of the Minister to his dismissal, in which event such officer shall, upon sanction being granted, be deemed to have been removed from office as from the date of such suspension;
- (c) the scales of salaries, wages or other remuneration and the rights and privileges of persons in its employ, and the contributions to be paid by such persons towards any pension fund which may be established by the board;
- (d) the conditions which shall apply in connection with the supply of water to any person by the board;
- (e) the units or standards for the measurement of water supplied, the verification of meters, the fees to be charged therefor and the settlement of disputes as to measurements of water supplied and limits of error;
- (f) the construction, alteration, operation, protection and inspection of works, plant, machinery, apparatus, appliances and equipment required in connection with the conveyance, distribution, connection, installation or use of water supplied by the board;
- (g) the granting of discounts for prompt payment by consumers of water or the making of additional charges or the payment of interest in respect of delayed payments;
- (h) the payment and collection of moneys due for water supplied and rentals of meters and other apparatus;
- (i) the prevention of the waste or unlawful use of water supplied by the board;
- (j) the recovery and enforcement of payment of moneys due for water supplied by the board;
- (k) the fees to be charged by it under this Chapter.

(2) No such by-law shall be of force and effect until approved by the Minister and, except in the case of by-laws made under

- (c) the collection by a local authority, and the payment to a water board, of rates referred to in paragraph (b) of sub-section (3) of section *one hundred and twenty*, and the charges which such local authority may impose for such collections;
- (d) the nomination and election of members of any water board, the number of persons to be elected as members of such board and the number of members which shall constitute a quorum at any meeting thereof and the allowances which may be paid to the chairman or any other member;
- (e) the protection of the public from damage owing to the exercise of rights granted under this Chapter;
- (f) inspections and enquiries into the conduct and operation of schemes;
- (g) the standard of purity of water to be supplied;
- (h) the mode of supplying water;
- (i) the prevention of wastage or pollution in any manner whatsoever of any water supplies irrespective of the uses to which such water supplies are or may be put;
- (j) generally any matter which the Minister considers it necessary or expedient to prescribe for the more efficient administration and carrying into effect of the provisions of this Chapter.

CHAPTER VIII.

SERVITUDES.

139. In this Chapter—

Definition of servitudes.

- (i) "servitude of abutment" means the right to occupy by means of a dam, weir, protecting wall or embankment, pump, turbine or power house and its appurtenances, the bed or banks of a public stream or land adjacent thereto belonging to another; (ii)
- (ii) "servitude of aqueduct" means the right to occupy so much of the land belonging to another as may be necessary for or incidental to the passage of water, and includes a right to use, share in the use of, or construct on such land works, including ancillary diversion works, necessary for the passage of water over, under or alongside another work, or to enlarge and extend an existing work; (iv)
- (iii) "servitude of drainage" means the right to occupy so much of the land belonging to another as may be necessary for or incidental to the drainage of land or disposal of water whether into the nearest public stream or natural channel or otherwise, as may be practicable or desirable in the circumstances; (i)
- (iv) "servitude of storage" means the right to occupy land belonging to another by submerging it with water by means of a dam, weir or other work, whether or not such dam, weir or other work has been constructed on such land. (iii)

- 140. (1) (a) Any person entitled to the use of the water of a public stream may, subject to the provisions of this Act, acquire the right to divert such water at such point on the course of that stream as may be reasonably necessary to enable him to exercise his right to use the said water.
- (b) A local authority shall, with the consent of the Minister, be entitled to construct and maintain any water works on or over any land for drainage purposes or for the purpose of conveying water to the area of jurisdiction of the said local authority for urban use in that area.

Point on a public stream at which water may be taken.

(2) Any such local authority shall in connection with the construction or maintenance of any such water works have the same powers as are by section *ninety-four* vested in an irrigation board, and for that purpose the provisions of that section shall *mutatis mutandis* apply.

141. (1) Any person who, having a right to or to the use of public water or subterranean water (as defined in section *twenty-seven*), or being entitled to supervise or control the use or disposal of public or subterranean water, desires to employ it

Rights of servitudes and of owners of dominant and servient tenements.

or to increase its employment for or in connection with any purpose for which such water may be used in accordance with the provisions of this Act, or to dispose of such water, whether by drainage or in any other manner shall be entitled to claim under this Act, temporarily or in perpetuity, such servitudes of abutment, aqueduct, drainage or storage as may be necessary for or incidental to the said purpose or for the disposal or drainage of such water: Provided that—

- (a) no such person, other than an owner of land or the owner of a mine to whom a permit has been issued in terms of paragraph (a) or (b) of sub-section (5) of section *thirty*, shall be entitled to a servitude of drainage over any land situated within the area of jurisdiction of a local authority (other than a divisional council) referred to in paragraph (a) of the definition of "local authority" in section *one*, except with the consent of such local authority;
- (b) a temporary servitude shall not endure for a longer period than three years;
- (c) no proceedings shall be taken for the acquisition of any servitude while a dispute exists as to the right to the water in respect of which the servitude is claimed and proceedings to determine the dispute are pending in a competent court, but if both such proceedings to acquire any servitude and to determine the said dispute are capable of decision by or are actually pending before the same court, nothing herein contained shall prevent both matters being decided at one and the same time;
- (d) no such servitude shall give the person acquiring it any right or interest in the land on, over or through which the servitude is acquired other than the rights connected with such servitude.

(2) Whenever a servitude of abutment, aqueduct, drainage or storage has been acquired by agreement or an order of a competent court, or has otherwise been lawfully acquired under this Chapter or under any prior law, and the owner of the dominant tenement desires for any reason to alter or extend the water works in respect of which such servitude was acquired, such owner shall, notwithstanding any terms or conditions which may have been imposed in connection with the acquisition of the said servitude, be entitled to claim under this Act such new or additional servitudes as may be necessary for the said purpose.

(3) Any servitude acquired under this Chapter shall include the right of access to the area in respect of which the servitude has been acquired for the purpose of constructing, enlarging, renewing, replacing, fencing, inspecting, maintaining, repairing or cleaning the water work in respect of which the said servitude has been acquired or for any other purpose necessary for the effective enjoyment of the servitude.

(4) The owner of any land which is subject to a servitude of aqueduct or drainage may pass any water to which he is entitled or of which he wishes to dispose along the water work in respect of which such servitude has been acquired, on payment of such proportion of the cost of constructing, enlarging and maintaining the said work, and on such other terms as may be agreed upon or failing agreement as may be determined by a water court: Provided that the said owner shall not be entitled to pass any water along such water work in such a manner as to prevent or hinder the person who has acquired the said servitude from exercising his rights under such servitude.

(5) The owner of land over which a servitude of drainage exists, shall be entitled to use on such land the water contained or flowing in any water work constructed on such land or in any drain or other channel other than a public stream, used for the purpose of disposing of the said water, and the said owner shall be entitled to claim that any water work constructed in the exercise of the said servitude of drainage shall be so constructed as to make available for his use any water flowing therein on his land: Provided that no such water work shall be so constructed as to raise the water level to the detriment of an upper owner and that any additional expense which may be incurred for the purpose of making the said water available for use by the said owner shall be borne by such owner.

- (6) (a) Whenever a person requires a perpetual servitude of storage or a perpetual servitude of abutment, the owner of the land over which such servitude is required

may, before the servitude has been acquired, pay or give security for the payment of a share of the cost of acquiring such servitude and of the cost of construction of the water work in connection with which the said servitude is required, as determined by agreement between such owner and the person acquiring the servitude or in the absence of such agreement, by a water court, and shall thereupon, after completion of the said water work, so far as is consistent with the provisions of Chapter II, be entitled to receive the benefit of such work by using water therefrom to the extent so determined: Provided that no such benefit may be claimed by the owner of the servient tenement if the use of the said water by him would seriously impair the usefulness of the said water work to the person desirous of acquiring the servitude or if the said servitude was acquired by a local authority for the purpose of supplying the inhabitants within the area of its jurisdiction with water: Provided further that any dispute as to the usefulness of the water work in question, or the proportion of the water which the said owner of the servient tenement may use, or the total cost of the water work, or each party's proportionate share of such cost, shall be determined by a water court at the instance of either of the said owners.

- (b) If the owner of a servient tenement has not acquired a right in terms of paragraph (a), he shall not be entitled to abstract or use any water from the water work in respect of which the said servitude of storage or abutment has been acquired, without the permission of the owner of the dominant tenement.

(7) A person who desires to construct a water work for the conveyance or the drainage or disposal of water shall not construct such work across a road for the construction, maintenance, repair or control of which a provincial administration, divisional council or other lawfully constituted body is responsible unless he has obtained the written permission of the said administration, council or body, and the said person shall construct such water works in accordance with such conditions as to construction, maintenance and repair as the said administration, council or body may impose in granting the said permission.

(8) Subject to the provisions of section *one hundred and forty-two*, a servitude of storage shall not, unless it be a condition of any agreement or order of a competent court establishing it, deprive the owner of the land subject to such servitude of the use of that part of the land which is not submerged, so long as such use is not detrimental to the enjoyment of the said servitude by the person in whose favour it has been granted or acquired.

142. (1) Any servitude acquired under this Chapter shall, unless otherwise provided in the deed of servitude or order of a water court, as the case may be, include a right—

Servitude includes the right to take materials for water works.

- (a) to take from the land subject to the servitude, any material or substance which may reasonably be required for the purpose of constructing, enlarging, renewing, replacing, maintaining or repairing any water work or any portion thereof in respect of which such servitude has been acquired, whether such material or substance is used on such land or elsewhere;
- (b) to cut down from the land subject to the servitude or remove and use any tree, bush, vegetation or other obstacle which may be detrimental to the enjoyment of the servitude by the person in whose favour it has been granted or acquired;
- (c) to deposit on the land subject to the servitude, any material or substance excavated or removed from the water work in respect of which the servitude has been acquired in the process of constructing, enlarging, renewing, replacing, repairing, maintaining or cleaning such work;
- (d) to occupy temporarily so much land subject to the servitude as may be reasonably required during the period of construction of the water work in respect of which the servitude has been acquired, for the construction of camps or roads or for the erection on such land of such houses, plant, reservoirs or other buildings or structures as may be necessary in con-

nection with the construction of the work, and to occupy permanently so much land as may be reasonably required for the residence of such persons and for workshops or storage purposes as may be necessary in connection with the control, operation and maintenance of the water works in question.

- (2) (a) The taking of any material or substance in terms of paragraph (a) of sub-section (1), or the removal and use of any tree, bush, vegetation or other obstacle in terms of paragraph (b) of the said sub-section, or the depositing of any material or substance in terms of paragraph (c) of the said sub-section, or the occupation temporarily or permanently of land in terms of paragraph (d) of the said sub-section, shall be subject to an obligation to pay compensation to the owner of the land in question, unless such material or substance is taken or such tree, bush, vegetation or other obstacle is cut down or removed or such material or substance is deposited, within the defined area of the servitude, or such occupation is restricted to the defined area of the servitude.
- (b) Compensation to be paid in terms of paragraph (a) shall in the absence of agreement be determined by a water court.

143. Any person who, by paying a proportionate share of the cost of constructing any water work in terms of sub-section (4), (5) or (6) of section *one-hundred and forty-one*, or by agreement or in any other lawful manner, has acquired a right to use such work, shall be liable to pay a like proportion of the cost of the maintenance and repair of such work, unless such person has by notice in writing to the owner of the dominant tenement surrendered such right.

Right to use a water work subject to obligation to contribute towards repairs.

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

Duty of person acquiring servitude to construct access bridges etc.

145. (1) (a) Any person who proposes to claim a servitude of abutment, aqueduct, drainage or storage, may after notice to the owner of the land in question, enter upon that land and make any investigation and undertake any operations thereon which he may consider necessary for the purpose of determining the extent and nature of the servitude required, and shall in any notice claiming such a servitude set forth, according to the nature of the servitude—

Mode of acquiring servitudes under this Chapter.

- (i) the line of passage along which the water is to be conducted or diverted;
 - (ii) the locality on which the water is to be stored and the approximate area which will be submerged;
 - (iii) the nature and locality of any works, including works, if any, referred to in section *one hundred and forty-four*, which it is proposed to construct;
 - (iv) the quantity and nature of the material required from the said land for the purpose of constructing water works and the place from which it is proposed to take such material;
 - (v) the land required temporarily for construction camps and permanently for the residence of persons and for workshops or storage purposes necessary in connection with the operation and maintenance of the works in question;
 - (vi) the compensation which is offered;
 - (vii) whether a temporary or permanent servitude is claimed and, if temporary, the period of time during which he wishes to enjoy the servitude.
- (b) The provisions of sub-sections (3) and (4) of section *one hundred and ten* shall *mutatis mutandis* apply in connection with any entry, investigation or operations referred to in paragraph (a) of this sub-section.
- (c) There shall be attached to any notice under sub-section (1) in which a servitude is claimed, a plan showing

the position, locality and nature of any proposed works in respect of which that servitude is claimed and, in the case of a servitude of aqueduct or a servitude of drainage, the line of passage of the aqueduct or drain to be constructed.

(2) If the owner does not within one month after the service of a notice claiming a servitude, agree to the claim, or to any particulars stated in the notice, or to any other matter necessary for the servitude, and consent to the embodiment of such particulars and other matters in a deed of agreement and to execute such deed notarially, the claimant may apply to a water court for the settlement of the several matters in dispute.

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

146. (1) A water court may, upon the hearing of a claim to any servitude under this Chapter—

Jurisdiction of water court as to claims for servitudes.

- (a) award the same with or without modifications, and subject to such conditions as it deems just;
- (b) award or refuse to award compensation for the right of servitude granted;
- (c) if the land on which the servitude is claimed is subject to a lease, mortgage, usufruct or other encumbrance, and the lessee, mortgagee, usufructuary or other person in whose favour the land is encumbered claims a share of any compensation awarded, determine the claim of the lessee, mortgagee, usufructuary or such other person and the amount (if any) of his share of the compensation;
- (d) dismiss the claim, but on the following grounds only, namely—
 - (i) that the servitude claimed does not fall within the provisions of this Chapter;
 - (ii) that the object for which the servitude is claimed could be better obtained in another manner;
 - (iii) that the claim is not made in good faith or that the person claiming such servitude has not satisfied the water court that he has taken all reasonable steps to ascertain the whereabouts of every person on whom any copy of a notice referred to in section *one hundred and forty-five* is, in terms of sub-section (3) of that section, required to be served, or to serve such a copy on any such person;
 - (iv) that the works appertaining to the servitude claimed are not of sufficient utility to justify the acquisition of the servitude;
 - (v) that the works appertaining to the servitude will seriously interfere with any Government water work or with any water work of the Rand Water Board or an irrigation board or a water board; or
 - (vi) that the damage likely to be caused by the proposed works would be greater than the benefits that would be derived therefrom.

(2) In fixing the amount of compensation a water court may deduct such amount as it thinks reasonable in consideration of any advantage which the owner, lessee or usufructuary, as the case may be, of the land on which the servitude is acquired may derive by reason of the servitude.

(3) Compensation awarded by a water court for a temporary servitude shall not exceed an annuity equal to the rental value (as nearly as can be ascertained) of the land to be actually occupied by the work contemplated, together with such amount for actual inconvenience or loss likely to be suffered by the exercise of the right of servitude as a water court may in its discretion determine.

(4) Compensation awarded by a water court for a permanent servitude shall not exceed an amount assessed in accordance with the provisions of paragraph (b) of sub-section (3) of section *sixty*.

(5) In fixing the amount of compensation in the case of a servitude of aqueduct in respect of existing works, the water

court shall take into account the cost of such works, including any ancillary diversion works, and the cost of acquiring any servitudes in respect of such works, and such compensation shall include a proportionate share of the cost or the value of such works, as the court deems equitable.

147. (1) A person who has under this Chapter or a prior law acquired a temporary servitude, shall be entitled to have such servitude converted into a permanent servitude on payment to the owner of the land of such compensation as may be agreed upon or failing agreement determined by a water court upon application made thereto.

Conversion of temporary servitude into permanent servitude.

(2) The provisions of section *one hundred and forty-six* shall, as far as possible, be applied in determining the amount of such compensation, but the water court shall in making any award of compensation have due regard to the amount previously paid in respect of the temporary servitude aforesaid.

148. Subject to the provisions of this Chapter, works required for the enjoyment of a servitude acquired under this Chapter or any prior law shall be constructed and properly maintained solely at the cost of the person acquiring the servitude.

Construction and maintenance of works in respect of which servitude has been obtained.

149. A servitude acquired under this Chapter or any prior law in terms of an order of a water court, shall lapse if the work proposed to be executed be not completed and the water be not utilized within three years from the date of the order, or within such further period as the said water court may have fixed, or within any extended period agreed upon between the parties concerned.

Lapse of a servitude.

150. (1) If any canal, furrow or other channel constructed under this Act or any prior law across the land of another person for the purpose of conveying, draining or disposing of water be out of repair or require cleaning, the person having or claiming the right of aqueduct, drainage or disposal in respect of such canal, furrow or other channel shall if required in writing by the owner of the land to repair or clean the said canal, furrow or channel, carry out the necessary operations within a reasonable time, and if he fails to do so, the owner may cause all such work to be done and recover in a competent court the cost thereof from the person having or claiming such right aforesaid.

Repair and cleaning of channels constructed across the land of another person.

(2) Any person having or claiming such a right who knowingly allows or suffers any such canal, furrow or other channel to be out of repair or to be in such a state as to require cleaning, shall be liable for all damage which may arise therefrom.

151. (1) (a) A servitude acquired under this Chapter or any similar servitude acquired under any prior law, other than a servitude acquired by expropriation by the Government, the Rand Water Board, an irrigation board or a water board, shall not be recognized until registered in manner prescribed by regulation against the respective title deeds of the land against and in favour of which it has been so acquired, and the registrar of deeds in charge of the deeds registry in which the title deed to any such land is registered shall, upon production of a duly executed notarial agreement or an order of a water court, register the said servitude against the title deeds of such land.

Registration of servitudes.

(b) The provisions of sub-section (3) of section *fifty-one* shall *mutatis mutandis* apply in respect of the registration of servitudes under this sub-section.

(2) For the purposes of the registration of a servitude acquired under this Chapter, and notwithstanding the provisions of any other law, the registrar of deeds concerned shall, if ordered thereto by a water court, accept such plans showing the position of the servitude on the land subject to such servitude as may be indicated by the said court.

152. Nothing in this Chapter contained shall be construed as affecting servitudes or other rights lawfully acquired by expropriation or otherwise, either before or after the commencement of this Act, by the South African Railways and Harbours Administration.

Saving in favour of the Railways and Harbours Administration.

CHAPTER IX.

IRRIGATION LOANS, LIABILITIES AND SUBSIDIES.

153. (1) An owner of land or an irrigation board desiring to raise money on loan for the construction of a water work may make application to the Minister for an irrigation loan stating the purpose for which the loan is required, the nature of the proposed work, the estimated cost of the construction thereof, the position and extent of the land to be irrigated or drained thereby, the extent to which the value of the land will be enhanced by the work, and—

Applications for irrigation loans.

- (a) if the applicant is an owner of land, the nature and value of the property offered as security for the loan, and the extent to which the land has already been hypothecated, and the name and address of every mortgagee; or
- (b) if the applicant is an irrigation board, the extent to which the rates leviable by the board under this Act or any assets of the board have already been charged or hypothecated and the persons in whose favour the charges or hypothecations exist.

(2) Where the amount of any such loan does not exceed nine hundred pounds, detailed plans and specifications shall not be required, except as provided in sub-section (3), but sufficient information shall be furnished to enable the Minister to test the value of the scheme from a technical, agricultural and financial point of view.

(3) If the amount of the proposed loan exceeds nine hundred pounds or the enhanced value of the land arising from the proposed work forms part of the security offered, the application shall be accompanied by a report, plans, specifications and estimates of the cost of the proposed works and such other documents as may be prescribed by regulation, and, in the case of an application by an irrigation board, by a statement of the existing liabilities of the board and an account of its revenue and expenditure under appropriate heads.

(4) In the case of any such application by an irrigation board, the chairman thereof shall certify that the provisions of sub-section (2) of section *ninety-three* have been complied with in every respect.

154. (1) Where the Government has before or after the commencement of this Act, lent or undertaken to lend any amount not exceeding two hundred and fifty pounds to an owner of land for the construction of a water work, or an owner of land has before or after such commencement, assumed liability for any part of the cost incurred or to be incurred by the Government in sinking a borehole for such owner on such land, the Minister may in writing direct the registrar of deeds in charge of the deeds registry in which the title to that land is registered, to note, free of charge, the loan or liability on the title deed of that land and in the appropriate registers in that registry.

Creation of charge on land for certain loans and for moneys spent on boreholes.

(2) The document conveying that direction shall be accompanied by the owner's title deed to the land in question and shall set forth—

- (a) a description of the land in question and the number and date of its title deed;
- (b) the name of the owner of such land;
- (c) the total amount of the loan or liability to be noted;
- (d) the rate of interest payable on that loan or liability;
- (e) the amount and period of the instalments by which that loan or liability is to be repaid.

(3) The making of such a note on the title deed of land shall create a charge upon the land of the amount noted and any interest due thereon, which shall remain attached to the land on transfer thereof and shall bind every successive owner thereof.

(4) Any such charge shall be redeemed within a period not exceeding twenty years and in such equal instalments as the Minister has determined: Provided that any owner of the land to which the charge attaches, may at any time redeem the charge entirely by the payment of an amount equal to the unredeemed portion of the charge, after deduction therefrom of any interest included therein for the unexpired part of the said period.

(5) No individual portion of any piece of land which is subject to any such charge may be transferred (whether on partition or otherwise) except with the Minister's consent, and

the Minister shall in any such case determine what share of the charge shall be allocated to each portion of the land, and the registrar of deeds concerned shall make the necessary notes in accordance with such allocation, free of charge, on the relevant title deeds and in the appropriate registers, in the manner in which the original charge was noted, and thereupon each such portion shall be charged as if the note had originally been made on its title deed for the amount so allocated.

(6) If any instalment due under the charge is in arrear for more than three months, the Minister may recover from the owner concerned the instalment due or the full amount which the owner would have to pay in terms of sub-section (4) or (5) in order to redeem the charge entirely, and he may in like manner recover that full amount if the owner has failed to comply with any condition of the loan or liability to which the charge relates.

(7) Whenever a charge created under this section has been redeemed in full, the Minister shall in writing notify the registrar of deeds concerned, who shall thereupon cancel the relevant notes.

155. (1) An irrigation loan shall not be granted to an owner of land other than an irrigation board, except—

Security for irrigation loans.

- (a) in the case of any such loan (excluding interest which has accrued or may accrue) exceeding two hundred and fifty pounds, upon the security of a mortgage of immovable property; and
- (b) in the case of any such loan (excluding interest which has accrued or may accrue) exceeding two thousand five hundred pounds, upon the security of a first mortgage of immovable property,

and the Minister may also, in the case of any such loan which does not exceed two hundred and fifty pounds, require security in the form of a mortgage upon such property.

- (2) (a) The Minister shall not accept a mortgage on immovable property as security for an irrigation loan unless the amount of the loan applied for, together with any amount for which the property is already hypothecated, is less than two-thirds of the valuation of the property made for the purpose by a person appointed under sub-section (1) of section *seventy* of the Land Bank Act, 1944 (Act No. 13 of 1944), or, in the discretion of the Minister, by one or more sworn appraisers or by a board nominated by the Governor-General for the purpose of valuing land: Provided that the Minister may in his discretion add to such valuation an amount, not exceeding the amount estimated by the Minister as the cost of the proposed work, by which the said property will be enhanced in value by the said work in respect of which the loan is required, and in such a case the said valuation together with the amount so added shall for the purposes of this sub-section be deemed to be the valuation of the property in question.

- (b) The cost of any valuation made in terms of paragraph (a) shall be paid by the applicant for the loan in question.

(3) The security in respect of an irrigation loan to an irrigation board shall be the rates and charges leviable by such board under this Act or such other security as may be approved by the Minister.

156. If upon receipt of an application for an irrigation loan, the Minister is satisfied as to the security offered, he shall cause an estimate to be made of the probable cost of the work in respect of which such loan is required, and investigations to be made into the question whether the proposed works will effect an improvement in the annual income which may be derived from the land in excess of the amount which would be payable annually in redemption of the loan if it were granted for the greatest number of years for which it should in his opinion be granted, regard being had to the nature and probable durability of the works.

Investigation of applications for loans.

157. (1) Upon completion of the investigations referred to in section *one hundred and fifty-six*, the Minister may submit the application for the loan in question with his recommendation to the Governor-General, who may order that an irrigation loan for such amount and repayable within such period as the

Power to grant irrigation loans.

Governor-General may determine, be made to the applicant out of moneys provided by Parliament for the purpose, and the loan shall be made accordingly: Provided that—

- (a) in fixing the period of the loan regard shall be had to the nature and probable durability of the works as determined by the Minister;
- (b) an irrigation loan—
 - (i) which is repayable within a period exceeding thirty years; or
 - (ii) in respect of any water works the total estimate (as made by the Minister) of the cost of which exceeds, when completed as an independent scheme, thirty thousand pounds,

shall not be granted unless such loan has been approved by resolution of both Houses of Parliament, and, in the case of a loan in respect of a water work referred to in sub-paragraph (ii), a report on the proposed work has been laid on the Tables of both such Houses.

(2) The provisions of sub-section (2) of section *fifty-eight* shall *mutatis mutandis* apply in respect of any report referred to in paragraph (b) of the proviso to sub-section (1).

(3) A certificate by the Minister that an irrigation loan, whether granted before or after the commencement of this Act, was ordered to be made by the Governor-General, shall be conclusive evidence that all requirements in respect of the said loan, whether in respect of the due constitution of an irrigation district or the due form of the application for the loan, or of any other matter whatsoever precedent or incidental to the issue of such order, have been duly complied with.

(4) Where an irrigation loan has before or after the commencement of this Act, been granted to an irrigation board, including any such board referred to in section *one hundred and five*, the schedule of the irrigable and rateable land within the irrigation district of that board existing at the date of the ordering of the loan, shall for all purposes be accepted as a schedule properly and legally framed.

158. When an irrigation loan has been granted, the director may in his discretion and on such conditions as he may deem fit forthwith cause to be paid to the applicant an amount not exceeding one-fifth of the total amount of the loan, and may thereafter from time to time, upon a certificate by an engineer or other competent person as to the quantity and estimated value of the work done, cause to be paid to the applicant such further instalments of the loan as he deems fit: Provided that the director shall not advance any part of an irrigation loan until a note has been made on the title deed to the land in question in accordance with section *one hundred and fifty-four* or, as the case may be, until the applicant has passed before the registrar of deeds concerned a bond duly registered, specially hypothecating in favour of the Government as security for the loan, the property, or rates and charges, as the case may be, which the applicant has agreed to hypothecate.

Payment of irrigation loans to applicants.

159. (1) An irrigation loan made on the security of property shall be a charge upon that property, with priority over every other charge except a pre-existing registered mortgage bond in favour of a person who has not consented to the priority of the said loan.

Charge on property or rates and charges and priority of an irrigation loan.

(2) An irrigation loan made to an irrigation board on the security of the rates and charges leviable by such board under this Act shall be a charge on such rates and charges with priority over all other loans, charges or advances in respect of which the said rates and charges may have been hypothecated to any other person.

160. (1) Subject to the provisions of section *one hundred and sixty-one*—

Redemption of an irrigation loan.

- (a) an irrigation loan shall be redeemed by the payment, on the first day of January and the first day of July in every year, of one-half of the annual payment required to redeem the loan, in accordance with a general scale to be framed by the Minister from time to time and published in the *Gazette*, and such payments shall continue to be made until the whole loan with interest has been paid; and

- (b) the period of redemption of an irrigation loan shall begin from such first day of January or first day of July as the Minister may prescribe, being not later than three years from the date on which in the opinion of the Minister the works in respect of which the loan was granted ought to be completed.
- (2) Interest on an irrigation loan shall be calculated at such rate as the Minister of Finance may fix from time to time by notification in the *Gazette* and the interest at the rate thus fixed shall be payable on any loan or instalment thereof from the date on which it is advanced or paid: Provided that nothing in this section contained shall be construed as preventing the Minister of Finance from applying the provisions of sub-section (1) of section *one* of the Financial Adjustments Act, 1917 (Act No. 42 of 1917), in respect of any such loan.
- (3) Interest payable between the date of the first advance on an irrigation loan and the date prescribed under sub-section (2) for the commencement of the period of redemption shall be added to the amount of the loan, and form part of it for the purposes of redemption but not for interest.
- (4) An irrigation loan may at any time be partially or entirely redeemed by payment of any sum in addition to the half-yearly payments and thereafter, if any balance be left, the half-yearly payments shall be reduced accordingly.
- (5) The period of redemption may, at the request of the borrower, be reduced at any time, provided a corresponding increase be made in the half-yearly payments.

161. Notwithstanding the provisions of section *one hundred and sixty*, the Minister may, whenever special circumstances (such as failure of water supply, damage to crops, depression of markets or excessive costs during development) have made difficult the half-yearly repayment of sums under the said section to redeem an irrigation loan, from time to time reduce, at the request of the debtor, those payments over a period not exceeding fifteen years: Provided that, at the end of the period in respect of which such reduction of payments has been allowed, the aggregate amount of the reductions, together with interest thereon, shall be added to the amount of the said loan and form part of it for the purpose of redemption, and the periodical payments required to redeem the loan within the period for which it was granted shall be raised accordingly until the loan is entirely redeemed: Provided further that interest shall not be payable on that portion of the amount so added to the said loan which represents interest.

Minister may modify redemption provisions for irrigation loans in special circumstances.

162. (1) Subject to the provisions of sub-sections (2) and (3), the Minister may, on application, out of moneys provided by Parliament for the purpose, and on such conditions as he may deem fit to impose, grant to any person a subsidy towards the cost of constructing a water work, whether such work is constructed by such person or by the Minister in terms of section *fifty-seven*.

Subsidies on water works.

(2) Unless the total cost of the said water work and the amount of the subsidy and of any loan under this Chapter to be granted in respect thereof have been separately specified in estimates of expenditure approved by Parliament—

- (a) no subsidy shall be granted in respect of any water work the total cost of which in the opinion of the Minister, is likely to exceed thirty thousand pounds;
- (b) the amount of the subsidy to be granted to any irrigation board or local authority shall not exceed thirty-three and one-third per centum of the cost of the work in respect of which it is granted;
- (c) the amount of the subsidy to be granted to any person or body, other than an irrigation board or a local authority, shall not exceed thirty-three and one third per centum of the cost of the work in respect of which it is granted, or three hundred pounds, whichever amount is the less: Provided that if a group of persons desire to construct a joint water work for the irrigation of land belonging to them and the Minister is of opinion that their purpose may be conveniently and efficiently achieved without the establishment of an

irrigation district and the constitution of an irrigation board to carry out the said work, such group of persons may, subject to the provisions of paragraph (a), be granted a subsidy not exceeding three hundred pounds in respect of each such person, but not exceeding in the aggregate thirty-three and one-third per centum of the cost of such work.

(3) A subsidy shall not be granted under this section to a local authority unless the Administrator of the province within which such local authority has been established, has recommended the grant of such subsidy, and an Administrator shall not so recommend unless he is satisfied that such local authority would not, for financial reasons, be able to construct the water work in respect of which the subsidy is required if such subsidy were not granted to it.

(4) Any board or other body constituted by any special law and empowered and required by such law to exercise such powers and carry out such duties as are or may be conferred and imposed upon irrigation boards and to control and maintain water works used for the irrigation of land within the area of jurisdiction of the board or body aforesaid, and to distribute the water from such works to such land, shall, for the purposes of this Chapter, be deemed to be an irrigation board, and the provisions of paragraphs (a) and (b) of sub-section (8) and sub-sections (9) and (10) of section sixty-three and of sections ninety-three and ninety-five shall *mutatis mutandis* apply in respect of any such board or body, as if such board or body were an irrigation board.

(5) No part of a subsidy granted under this section shall be expended for any purpose other than the carrying out of the water work in respect of which it is granted.

(6) A person to whom a subsidy is granted under this section shall not be required to repay any portion thereof.

163. Any irrigation loan made by the Governor-General and any irrigation subsidy granted by the Minister under any law prior to the commencement of this Act, shall be deemed to have been made under this Chapter and the provisions of this Chapter shall apply in respect of any such loan or subsidy. Application of Act to loans and subsidies previously granted.

164. The Minister may make regulations relating to— Minister may make regulations as to irrigation loans and subsidies.

- (a) the form of application to be used in applying for an irrigation loan or a subsidy;
- (b) the form to be used for the purpose of valuing property offered as security for an irrigation loan;
- (c) the form and nature of the plans, estimates and other documents to accompany an application for an irrigation loan or a subsidy;
- (d) the manner in which an irrigation board may raise loans otherwise than under this Chapter;
- (e) generally any other matters which he considers necessary or expedient to prescribe for the carrying out of the objects of this Chapter.

CHAPTER X.

GENERAL AND MISCELLANEOUS.

165. The Minister may by notice in the *Gazette* delegate to the director or any other officer in the department any of the powers conferred upon him by this Act. Delegation of Minister's powers.

166. (1) Any person authorized thereto in writing by the Minister or by the director may, after reasonable notice to the owner or occupier of any land, enter upon such land with such men, animals, vehicles, appliances and instruments and do all such acts thereon as may be necessary for the purpose of making any enquiries or undertaking any investigations with a view to determining the feasibility of constructing any water work or for the purpose of erecting construction camps or other preliminary works which the Minister may consider necessary in connection with the construction of any contemplated water work, or for the purpose of ascertaining whether any provision of this Act or any regulation made or condition imposed thereunder is being complied with: Provided that— Right of entry upon land.

- (a) no such entry shall be made into any building, or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof;
- (b) as little damage as possible shall be caused in the exercise of the powers granted under this section, and such compensation as may be agreed upon or failing agreement determined by a competent court shall be paid for any damage, loss or inconvenience so caused

(2) The provisions of sub-section (1) shall *mutatis mutandis* apply in relation to any member of an irrigation board or a water board or a person authorized thereto in writing by the chairman of an irrigation board or a water board.

(3) A member of a water court may enter upon any land for the purpose of making any inspection which it may consider necessary in connection with the performance of its functions under this Act.

(4) Any person who prevents any entry or the exercise of any powers authorized by this section or wilfully obstructs or hinders any person so entering in carrying out such person's powers or duties under this Act or the regulations made thereunder, shall be guilty of an offence.

167. (1) A copy of the minutes of the proceedings of any meeting of an irrigation board or a water board or of a committee of any such board, purporting to be signed by the chairman of that meeting, and certified under the hand of the chairman for the time being of the said board or committee as a correct copy of the minutes of that meeting shall be *prima facie* evidence in all courts of the proceedings of that meeting. Evidence.

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

(3) Every contract made by an irrigation board or a water board shall be deemed to be duly executed if signed by the chairman and by one or more members or the secretary of the irrigation board or water board (as the case may be) authorized thereto by resolution passed at a meeting of such board.

(4) A notice, order or other document issued under this Act purporting to be issued on the authority of an irrigation board or a water board shall, until the contrary is proved, be deemed to have been issued on such authority if signed by the secretary of such board.

168. (1) Any notice, order or other document required by this Act or a regulation (other than a regulation made under section *fifty-five*) to be served upon any person, shall be deemed to have been duly served if it has been delivered to such person personally or left at or sent by registered post to his last known ordinary residence or, where such person is absent from the Union, published in the *Gazette*. Service of notices and documents.

(2) A notice, order or other document required by this Act or a regulation (other than a regulation made under section *fifty-five*) to be served upon an irrigation board or a water board, shall be deemed to have been duly served if it has been delivered or left at or sent by registered post to the office of the board or the last known ordinary residence of the chairman or the secretary of the board.

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

169. (1) If the value of a property liable to be assessed in respect of rates leviable by a divisional council or other local authority has been enhanced by a water work constructed and completed on a date not more than ten years prior to the date of commencement of this Act or after such commencement, the amount by which the value of the said property has been so enhanced shall be specified in every valuation roll framed for the assessment of the said rates, and a person liable to pay such rates in respect of any such property shall not, during a period of ten years from the date of completion of such water work, Exemption from local rates of enhanced value of irrigated lands.

be liable to pay such rates on that enhanced value, and the provisions of any law relating to objections to the valuation of property for the purposes of any such rates shall apply to objections to the estimate of the said enhanced value: Provided that the provisions of this sub-section shall not apply in respect of rates levied by a water board in terms of section *one hundred and twenty*.

(2) Notwithstanding the provisions of any law relative to the rating of property, the property of an irrigation board or a water board shall be exempt from rates, save in respect of any property which is occupied for residential or office purposes or which is leased by an irrigation board or a water board to any other person.

170. (1) Any person who, without lawful right or authority, the proof whereof shall lie upon him— Offences and penalties.

- (a) constructs, alters, enlarges or obstructs a water work, or destroys, defaces or moves any level mark, beacon or other structure or appliance erected or made in connection with any such work;
- (b) interferes with, or alters the flow of the water contained in or flowing in or from a water work, or interferes with, or alters the flow of the water of a public stream, or interferes with the distribution of any such water, or takes water in excess of the quantity he is entitled to take or at a time when he is not entitled to do so, or uses water in a manner contrary to this Act or regulations made thereunder;
- (c) while using or being liable for the maintenance of a water work, wastes or does not take due precaution to prevent waste of water from any such work, or fails to maintain the work and keep it in repair;
- (d) being an owner of land in respect of which rates or charges have been assessed in terms of paragraph (a) of sub-section (1) of section *sixty-six*, paragraph (a) of sub-section (1) of section *ninety*, sub-section (2) of section *one hundred and seventeen* or sub-section (1) of section *one hundred and twenty*, takes or uses water from the water works in connection with which such rates or charges have been assessed, after the supply of water from such works to the said land has been stopped by the Minister or, as the case may be, by the irrigation board or water board concerned by reason of a default on the part of the said owner to pay any such rates or charges;
- (e) wastes public water;
- (f) without the written permission of the Minister, alters or in any way interferes with any work referred to in paragraph (a) of sub-section (1) of section *sixty-one*;
- (g) aids or abets or permits any act or default referred to in any of the preceding paragraphs;
- (h) contravenes or permits the contravention of or fails to comply with any provision of paragraph (c) of sub-section (1) of section *sixty-two* or any condition referred to in paragraph (a) of sub-section (3) of section *sixty-one*,

shall be guilty of an offence and liable, in the case of a first conviction, to a fine of not less than ten pounds and not more than one hundred pounds or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of not less than fifty pounds and not more than two hundred pounds or to imprisonment for a period of not less than three months and not exceeding six months, or to both such fine and such imprisonment.

(2) Any person who is convicted of an offence under section *twenty-one*, *twenty-two* or *twenty-three* shall be liable, in the case of a first conviction, to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine of not less than two hundred and fifty pounds or to imprisonment for a period of not less than six months or to both such fine and such imprisonment.

(3) Any person who contravenes or fails to comply with any regulation made under this Act or any by-law made under this

Act by an irrigation board or a water board, or commits any offence against the provisions of this Act for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

(4) Any person who has been convicted of any offence under this Act, and who after such conviction persists in the course of conduct which constituted the said offence, shall be guilty of a continuing offence and liable on conviction, in the case of an offence referred to in sub-section (2), to a fine not exceeding forty pounds, and, in the case of any other offence, to a fine not exceeding ten pounds, in respect of every day that he so persists or has so persisted.

(5) If in any proceedings under paragraph (b) of sub-section (1) in which it is alleged that—

- (a) a person has interfered with the distribution of water contained or flowing in or from a water work or a public stream, or has taken more water than he is entitled to or has taken water at a time when he was not entitled to take it, it is proved that the said distribution was interfered with or that more water was taken than the said person was entitled to, or that the said water was taken at a time when such person was not entitled to take it, the said person shall be presumed, until the contrary is proved, to have interfered with the distribution of the said water or to have taken more water than he was entitled to or to have taken it at a time when he was not entitled to take it;
- (b) a person has taken water at a time when he was not entitled to take such water, it is proved that such water was running on to or found on any land or running into or found in any dam belonging to such person, the onus of proving that the said person was entitled to such water or that it was so taken or used without his knowledge shall be upon that person.

(6) A magistrate's court shall have power to impose any penalty prescribed by this Act.

171. (1) Whenever any person is convicted of an offence under this Act or the regulations thereunder or a by-law made by an irrigation board or a water board and it appears that such person has by that offence caused loss or damage to any irrigation board, water board or owner, the court may in the same proceedings at the written request of the board or owner concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

Award of damages against an accused in criminal proceedings.

(2) Upon proof of such amount, the court shall give judgment therefor in favour of the irrigation board, water board or owner concerned and against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before such court: Provided that judgment shall not be given under this section for a sum exceeding two hundred pounds.

172. (1) Subject to the provisions of sub-sections (2) and (3), nothing in this Act contained shall be construed as derogating from any powers or jurisdiction conferred upon the Minister of Mines or any mining commissioner by any law relating to mining for precious or base metals or precious stones or for natural oil as defined in section one of the Natural Oil Act, 1942 (Act No. 46 of 1942), or for prescribed or restricted materials as defined in section one of the Atomic Energy Act, 1948 (Act No. 35 of 1948), nor shall any land proclaimed under or for the purpose of any such law or held under mining title in terms of such law, be included in an irrigation district save with the consent of the Minister of Mines and under such conditions as he may determine, and if land in an irrigation district be proclaimed under and for the purpose of any such law, so much of any public stream within that irrigation district as is within the area so proclaimed, shall cease to be subject to

Use of water on proclaimed mining land.

the jurisdiction of the irrigation board unless the Minister of Mines otherwise determines: Provided that nothing contained in this section shall be construed as—

- (a) entitling the Minister of Mines to use or permit the use of water of a public stream for agricultural purposes on land so proclaimed which is not riparian to such stream, or to permit any person to use more than a reasonable share of such water for those purposes on land riparian to such stream;
- (b) preventing any person entitled to the use of public water from making application to a water court after notice in writing to the Minister of Mines for the apportionment of such water between proclaimed and unproclaimed land or the granting of any servitude under this Act upon any land so proclaimed for the benefit of any owner of riparian land;
- (c) preventing any owner of proclaimed riparian land from making application to a water court for a re-apportionment of the water of such stream upon deproclamation of such land;
- (d) preventing any owner of deproclaimed riparian land from using a reasonable share of such water for agricultural purposes or entitling such owner to use more than such reasonable share after deproclamation of such land.

(2) Any person affected by any decision given or action taken by the Minister of Mines in terms of sub-section (1) may apply to a water court for relief, and the water court may make such order on the application as it may consider equitable.

(3) Notwithstanding anything contained in any law, no person shall abstract or distribute water within an area which has under section *fifty-nine* been declared to be a Government water control area, except in accordance with the provisions of this Act.

173. Any act performed or right purporting to have been acquired prior to the commencement of the Irrigation Amendment Act, 1934 (Act No. 46 of 1934), by the governing body of any municipal institution in the province of the Orange Free State in accordance with the provisions of any law or ordinance in conflict or inconsistent with any provision of this Act, shall be deemed to have been lawfully performed or acquired and is hereby validated.

Validation of certain acts and rights of municipalities in Orange Free State.

174. (1) The provisions of this Act shall apply in relation to any land in the territory of South-West Africa which if it were within the Union would have been riparian to the Orange River in terms of this Act, and such land shall for the purposes of the application of the provisions of this Act be deemed to form part of the province of the Cape of Good Hope.

Application of Act in relation to certain land in South-West Africa.

(2) For the purposes of sub-section (1) the Orange River shall be deemed to form a boundary of any land in the said territory which is situated on the bank of that River.

175. Nothing in this Act contained shall be construed as derogating from any powers granted under any law regulating expropriation of land for Government railways or harbours, save that before any powers conferred upon the South African Railways and Harbours Administration in respect of expropriation of rights to water are exercised, the consent of the Minister shall be obtained.

Special savings as to expropriation of water, etc., under railway expropriation laws.

176. The provisions of Chapters III, VI, VII and IX shall not apply in respect of any area which is a scheduled native area or a released area in terms of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), and of which the South African Native Trust constituted by section *four* of the said Act or a native is the registered owner in terms of that Act, except in so far as the Governor-General has by proclamation in the *Gazette* declared that those provisions shall apply to any such area.

Exemption of Native areas from certain provisions of this Act.

177. The Minister may by notice in the *Gazette* apply the provisions of paragraphs (a) and (b) of sub-section (8) and sub-sections (9) and (10) of section *sixty-three* to any area defined in the notice which in his opinion is or is likely to be affected by any water work in connection with which any loan or subsidy has at any time either before or after the commencement of this Act been granted out of public funds, and thereupon the said provisions shall *mutatis mutandis* apply as if the said area were a Government water control area and as if the said water work were a Government water work.

Application of certain provisions of section 63 in respect of certain areas.

178. Any member of an irrigation board or water board, or any member of an advisory committee appointed under section *sixty-eight*, shall exercise his vote in respect of any matter which is put to the vote by such irrigation board, water board or advisory committee.

Exercising of votes of members of irrigation and water boards and advisory committees.

179. (1) No approval shall be granted in respect of any of the following matters, except after consultation between the director and the Treasury, namely—

Consultation with Treasury.

- (a) the amount of compensation to be paid to a lower riparian owner referred to in sub-section (3) of section *eighteen*, or to an owner or occupier referred to in sub-section (1) of section *one hundred and sixty-six*;
- (b) the amount to be recovered from any person referred to in paragraph (b) of sub-section (4) of section *sixty-two*;
- (c) the terms and conditions referred to in paragraph (a) of sub-section (1) of section *sixty-nine* or sub-section (5) of section *one hundred and twenty-one*;
- (d) the security, other than the rates or charges leviable by an irrigation board, referred to in sub-section (3) of section *one hundred and fifty-five*; or
- (e) the reduction of payments in respect of an irrigation loan over a period not exceeding fifteen years, referred to in section *one hundred and sixty-one*.

(2) Nothing in sub-section (1) shall be construed as derogating from any regulations made from time to time by the Governor-General in terms of section *sixty-one* of the Exchequer and Audit Act, 1956.

(3) In this section "Treasury" means an officer in the Department of Finance designated for the purpose by the Minister of Finance.

180. The Governor-General may, by proclamation in the *Gazette*, apply the provisions of this Act to the territory of South-West Africa or any area within that territory.

Application of Act to South-West Africa.

181. (1) The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

Repeal of laws and savings.

(2) Any proclamation, notice, rule, regulation or by-law made or issued under any such law and any order or determination made or decision given or other act performed under the provisions of any such law, shall be deemed to have been made, issued, given or performed under the corresponding provisions of this Act.

(3) The following provisions shall apply in connection with any application to a water court under the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), which had not been disposed of at the date of commencement of this Act, namely—

- (a) if at the said date the hearing of the application had already commenced, the application shall be dealt with in all respects as if this Act had not been passed; or
- (b) if at the said date the hearing of the application had not yet commenced, the application shall lapse, but without prejudice to the right of the applicant concerned to make a similar application to the appropriate water court under this Act, and if such an application is made within three months after the commencement of this Act, any costs reasonably incurred by any person in connection with the application which has so lapsed, as determined by such appropriate water court, shall be refunded to that person by the Minister out of moneys appropriated by Parliament for the purpose.

182. This Act shall be called the Water Act, 1956.

Short title.

Schedule.

LAWS REPEALED.

No. and Year of Law.	Short Title.	Extent of Repeal.
Act No. 8 of 1912	The Irrigation and Conservation of Waters Act, 1912.	So much as is unrepealed.
Act No. 32 of 1914	The Hartebeestpoort Irrigation Scheme (Crocodile River) Act, 1914.	Section <i>fourteen</i> .
Act No. 26 of 1916	The Irrigation and Conservation of Waters Act, 1912, Amendment Act, 1916.	The whole.
Act No. 18 of 1917	The Irrigation Works (Special Loans) Act, 1917.	The whole.
Act No. 38 of 1921	The Financial Adjustments Act, 1921.	Section <i>fourteen</i> .
Act No. 38 of 1922	The Financial Adjustments Act, 1922.	Section <i>six</i> .
Act No. 35 of 1923	The Financial Adjustments Act, 1923.	Sections <i>one to five and seven</i> .
Act No. 2 of 1924	The Water Court Judge Act, 1924.	Section <i>two</i> .
Act No. 43 of 1925	The Financial Adjustments Act, 1925.	Section <i>fifteen</i> .
Act No. 44 of 1926	The Financial Adjustments Act, 1926.	Sections <i>twelve and thirteen</i> .
Act No. 27 of 1927	The Financial Adjustments Act, 1927.	Section <i>twenty-three</i> .
Act No. 21 of 1928	The Financial Adjustments Act, 1928.	Section <i>twelve</i> .
Act No. 34 of 1930	The Financial Adjustments Act, 1930.	Section <i>eleven</i> .
Act No. 10 of 1932	The Marico-Bosveld Irrigation Scheme Act, 1932.	Section <i>four</i> .
Act No. 25 of 1932	The Financial Adjustments Act, 1932.	Section <i>eight</i> .
Act No. 46 of 1934	The Irrigation Amendment Act, 1934.	The whole.
Act No. 49 of 1935	The Finance Act, 1935. . . .	Section <i>four</i> .
Act No. 35 of 1936	The Finance Act, 1936. . . .	Section <i>eight</i> .
Act No. 33 of 1939	The Finance Act, 1939. . . .	Section <i>twenty-one</i> .
Act No. 10 of 1943	The Olifants River Irrigation Works Act, 1943.	Section <i>five</i> .
Act No. 30 of 1944	The Irrigation Amendment Act, 1944.	The whole.
Act No. 38 of 1946	The Irrigation Amendment Act, 1946.	The whole.
Act No. 48 of 1947	The Finance Act, 1947. . . .	Section <i>twenty-seven</i> .
Act No. 34 of 1949	The Irrigation Amendment Act, 1949.	The whole, except section <i>eight</i> .