

CHAPTER 34:01 WATER

ARRANGEMENT OF SECTIONS

PART I *Preliminary*

SECTION

1. Short title
2. Interpretation
3. Establishment of Water Apportionment Board

PART II

Ownership of and Inherent Right to the Use of Public Water

4. Use of public water and construction of works
5. Casual use of water in a public stream, etc.
6. Use, etc. of water by owners and occupiers of land
7. Right to water for mining purposes
8. Right to water for forestry purposes
9. Prohibition of use of water except with lawful authority
10. Determination of certain existing rights
11. No prescriptive rights to use of water

PART III

Recording of Existing Rights

12. Application for registration of existing rights
13. Registrar to record existing rights
14. Rights not subject to this Part

PART IV

Grant of Water Rights

15. Grant of water rights
16. Rights may be made appurtenant to land
17. Conditions implied in certain rights
18. Rights conditional on construction of works

PART V

Revision, Variation, Determination and Diminution of Water Rights

19. Inadequacy of water supply for satisfaction of water rights
20. Suspension or variation of rights on account of drought, etc.
21. Where quantity unspecified Water Board may specify quantity
22. Variation of water rights with consent
23. Determination for breach of a condition
24. Determination or diminution for non-use
25. Determination or diminution for public purposes

Part VI
Miscellaneous Powers

- 26. Power to create servitudes
- 27. Right to call for information
- 28. Power to inspect works and require reparation, etc.
- 29. Power to require demolition of unlawful works
- 30. Power to establish hydrological stations and make surveys

Part VII
Appeals

- 31. Appeals to the Minister

PART VIII
Miscellaneous

- 32. Registration
- 33. Delegation of the functions of Water Registrar and Board
- 34. Act to bind the State
- 35. Power to make regulations
- 36. Pollution of public water, etc.
- 37. Penalties

Act 40, 1967.

An Act to define the ownership of any rights to the use of water; to provide for the grant of water rights and servitudes; and to make provision incidental thereto.

[Date of Commencement: 9th February, 1968]

PART I
Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Water Act.

2. Interpretation

In this Act unless the context otherwise requires-

"Board" means the Water Apportionment Board;

"borehole" does not include any borehole constructed in prospecting for minerals;

"domestic purposes" includes the watering, spraying and dipping of stock;

"effluent" does not include water discharged under the provisions of section 7(3) or 17(1)(a) or which has been used for irrigation;

"existing right" means any right to public water-

- (a) which at the commencement of this Act has been lawfully acquired, is possessed by, and is being beneficially exercised by, any person; or
- (b) lawfully acquired by any person before the commencement of this Act for the purpose of supplying water to the public;

"public stream" means a watercourse of natural origin wherein water flows, whether or not such watercourse or any portion thereof is dry for any period or whether or not its conformation has been changed by artificial means;

"public water" means all water flowing over the surface of the ground or contained in or flowing from any river, spring or stream or natural lake or pan or swamp or in or beneath a watercourse and all underground water made available by means of works, but does not include any water which is used solely for the purposes of extracting mineral substances therefrom or water which has been lawfully appropriated for use;

"servitude" means a right to enter on the land of another for the purpose of constructing or maintaining works thereon, or storing the water thereon, or carrying water under, through or over such land, or for all or any of such purposes;

"underground water" means water naturally stored or flowing below the surface of the ground and not apparent on the surface of the ground;

"Water Registrar" means the person appointed by the Minister as the Water Registrar for the purposes of this Act;

"water right" means a water right granted or deemed to have been granted under this Act and, subject to the provisions of section 10, includes an existing right;

"well" does not include a borehole;

"works" includes canals, channels, reservoirs, embankments, weirs, dams, wells, boreholes, pumping installations, pipe-lines, sluice gates, filters, sedimentation tanks or other work constructed for or in connection with the impounding, storage, passage, drainage control or abstraction of public water, or the development of water power, or the filtration or purification of water, or the protection of rivers and streams, against erosion or siltation or flood control, or the protection of any works, or the use of public water for any purpose, or the conservation of rain water.

3. Establishment of Water Apportionment Board

(1) The Minister shall appoint a Board, to be styled the Water Apportionment Board, which shall consist of such number of persons as the Minister may determine, being not less than three nor more than 15 persons.

(2) The Board shall have the functions conferred upon it by this Act, and may perform such

functions notwithstanding any vacancy in its membership.

(3) The Minister shall appoint a Water Registrar who shall be *ex officio* Secretary of the Board.

(4) Neither members of the Water Apportionment Board, nor the Water Registrar shall be personally liable for, or in respect of, any act done or omitted to be done in good faith in the performance or supposed performance of their functions under this Act.

(5) In the performance of its functions under this Act the Board shall have regard to any relevant international agreement regulating the use of water to which Botswana is a party.

PART II

Ownership of and Inherent Right to the Use of Public Water (ss 4-11)

4. Use of public water and construction of works

Notwithstanding anything to the contrary in any other written law there shall be no right of property in public water, and the control and use thereof shall be regulated as provided in this Act or in accordance with the provisions of the Waterworks Act.

5. Casual use of water in a public stream, etc

Any person may, without a water right, while he is at any place where he has lawful access to a public stream or to a natural lake, pan or swamp, take and use public water therein for the immediate purpose of-

- (a) watering stock;
- (b) drinking, washing and cooking; or
- (c) use in a vehicle,

but nothing in this section shall be construed as authorizing the construction of any works.

6. Use, etc., of water by owners and occupiers of land

(1) Subject to the provisions of this Act and of any other written law, the owner or occupier of any land may, without a water right-

- (a) sink or deepen any well or borehole thereon and abstract and use water therefrom for domestic purposes, not exceeding such amount per day as may be prescribed in relation to the area where such well or borehole is situated by the Minister after consultation with an advisory board established in pursuance of section 35 in respect of that area:

Provided that this paragraph shall not authorize the sinking of any borehole within 236 metres of any other borehole (other than a dry borehole) or authorize the

deepening of any borehole which is within this distance of any other borehole;

- (b) construct any works thereon for the conservation of public water, and abstract and use public water so conserved, for domestic purposes:

Provided that this paragraph shall not authorize the construction of any works in a public stream unless-

- (i) the whole of the catchment area of that stream above the works lies within such distance of the works as may be prescribed in relation to the area where the works are situated by the Minister after consultation with an advisory board established in pursuance of section 35 in respect of that area; or if no such distance is prescribed, within four kilometres of such works; or
- (ii) the Minister after consultation with such a board as aforesaid has prescribed that that stream or the portion thereof where the works are construed shall be deemed not to be a public stream for the purposes of this section.

(2) Where any person is authorized under the provisions of subsection (1)(a) to construct or deepen a borehole, he may also construct or deepen stand-by boreholes ancillary thereto:

Provided that the total quantity of water which may be abstracted under this section from a borehole and any stand-by borehole ancillary thereto shall not exceed in aggregate the total quantity which may be abstracted from a single borehole under the provisions of that paragraph.

(3) Nothing in this section shall be deemed to authorize an occupier of tribal land to do any of the things referred to herein except to the extent that he is permitted to do so under any customary law applicable to him or by agreement with the owner of such land.

7. Right to water for mining purposes

(1) The holder of any right under the Mines and Minerals Act to mine any mineral shall have in respect of the land to which his right relates the same rights as are conferred by section 6 on the owner or occupier of any land and may also abstract and use any underground water encountered in any workings and construct any works required for or in connection with the use of such water.

(2) The holder of any right under the Mines and Minerals Act to prospect may, within the area which he may lawfully so prospect and subject to all rights which others may have to the use of water-

- (a) abstract and use for prospecting purposes any public water to which he has lawful access;
- (b) construct or enlarge any well or borehole in any land on which he has a right to explore or prospect, and abstract water therefrom, not exceeding 22,750 litres in any

one day; and

- (c) abstract and use any underground water encountered in any workings and construct any works required for or in connection with the use of such water.

(3) Any person abstracting water under the provisions of this section shall comply with the directions of the Water Registrar regarding the disposal of such water as is not used.

(4) Failure to comply with any direction given under subsection (3) shall be an offence, and the offender shall be liable to the penalties prescribed in section 37.

8. Right to water for forestry purposes

The holder of rights granted under the provisions of the Forest Act to take forest produce may, within the area within which such rights may be exercised and subject to all rights which others may have to the use of water-

- (a) abstract and use any public water to which he has lawful access, not exceeding 22,750 litres in any one day or such other quantity as may be prescribed, for logging and sawmilling operations of a temporary nature:

Provided that no such operation shall be deemed to be of a temporary nature unless no substantial plant is maintained in any one place for more than one year nor is intended to be so maintained;

- (b) construct or enlarge any well or borehole and abstract water therefrom not exceeding 22,750 litres in any one day.

9. Prohibition of use of water except with lawful authority

(1) Subject to the foregoing provisions, no person shall divert, dam, store, abstract, use, or discharge any effluent into, public water or for any such purpose construct any works, except in accordance with a water right granted under this Act:

Provided that nothing in this section shall prevent the continuation of existing rights to abstract and use public water, or the taking of public water for fighting fires.

(2) Any person who diverts, dams, stores, abstracts, uses, or discharges any effluent into, public water or who, for any such purpose constructs any works except under and in accordance with the provisions of this Act or of any other written law shall be guilty of an offence and the offender shall be liable to the penalties prescribed in section 37.

10. Determination of certain existing rights

(1) Every existing right shall determine if the person entitled thereto fails to notify the Water Registrar in accordance with section 12 of the existence of that right before the expiration of the period allowed for notification:

Provided that when the Water Registrar is satisfied that an existing right within the meaning

of this Act exists, he may direct that such right be recorded notwithstanding that the person entitled thereto has failed to notify the Water Registrar of the existence of such right, and upon the recording thereof it shall be deemed not to have determined under the provisions of this section.

(2) Nothing in this section shall apply to an existing right of the nature described in section 14.

11. No prescriptive rights to use of water

No person shall, after the commencement of this Act, acquire or be deemed to have acquired any right to divert, dam, store, abstract, use or discharge any effluent into, any public water by reason of length of use or the elapse of time.

PART III

Recording of Existing Rights (ss 12-14)

12. Application for registration of existing rights

Every person having an existing right may, within one year from the commencement of this Act, notify the Water Registrar of such right:

Provided that the Minister may, in his discretion in respect of any particular case or class of cases or in respect of any particular area, extend the period within which notification is to be made, either before or after the expiration of that period.

13. Registrar to record existing rights

(1) On the receipt by the Water Registrar of a notification under section 12 he shall, after making such investigation as he considers advisable and if he is satisfied that an existing right has been proved to exist, record the same in the register of water rights and issue a certificate under his hand that such a right has been recorded; if the Registrar is not so satisfied, he shall not record the right and the right shall thereupon determine.

(2) On the recording of an existing right in terms of subsection (1) the person who possesses the right shall be deemed to have been granted a water right under this Act.

14. Rights not subject to this Part

Nothing in this Part shall apply to an existing right to abstract and use water in a quantity not exceeding 22,750 litres in any one day.

PART IV

Grant of Water Rights (ss 15-18)

15. Grant of water rights

(1) The Board may grant to any person the right to divert, dam, store, abstract, use, or discharge any effluent into, public water from such source, in such quantity, for such period,

whether definite or indefinite, and for such purpose as may be specified in the water right, subject to such terms and conditions as it may deem fit.

(2) Application for the grant of a water right shall be made to the Board through the Water Registrar who shall give notice of the same in the prescribed manner.

(3) Any interested person may notify the Water Registrar within such period as may be prescribed that he objects to the grant of a water right and shall specify the grounds of such objection, and shall, if he so require, have a right to be heard thereon by the Board.

(4) The Board shall consider every application and any objections made to it in respect thereof and may, after consulting such persons and authorities, if any, in its sole discretion, decide to consult, grant such right as it may consider appropriate or dismiss the application.

(5) Nothing in any such grant shall be deemed to imply any guarantee that the quantity of water therein referred to is or will be available.

(6) The Water Registrar may in consultation with the Director of Geological Survey authorize any public officer to construct or enlarge a borehole for the purposes of the State where he is satisfied that reasonable cause exists for not making application to the Board under the provisions of subsection (2):

Provided that nothing in this subsection shall authorize the abstraction and use of water from any borehole so constructed.

16. Rights may be made appurtenant to land

(1) The Board may, either at the time of the grant of any water right or at any time after the grant of any water right declare that such right shall be appurtenant to the land described in the water right.

(2) Where a water right has been declared to be appurtenant to any land, the benefit of the right shall be enjoyed and the right may be enforced by the person who is for the time being entitled to the possession of the land.

(3) Where in consequence of any transfer, lease, partition or devolution of property, whether by will or on intestacy, or otherwise, any person becomes entitled to the possession of part of or a share in the land to which a water right has been declared appurtenant, he may abstract and use such proportion of the water the abstraction and use of which is permitted by the water right as may be assigned to him in transfer, lease, partition, or will or is by law apportioned to him or as may be agreed between him and the persons entitled to the possession of the remaining parts or shares of or in the land, or in the absence of any such agreement, as may be determined by the Board.

(4) Where any apportionment of water has been made under the provisions of subsection (3) in respect of any partition of land, the several quantities of water so apportioned shall be deemed to be appurtenant to the several parts of such land and the benefit thereof shall be enjoyed and all rights thereof may be enforced, in accordance with such apportionment by the

persons who are for the time being entitled to the possession of such parts, and such rights shall prevail until the parts are again merged with each other.

(5) Any person acquiring a right to abstract and use water by agreement in accordance with the provisions of subsection (3) shall within 30 days give notice thereof in the prescribed form to the Water Registrar failing which such right shall be unenforceable.

17. Conditions implied in certain rights

(1) The following conditions shall be implied in every water right granted for mining, forestry or industrial purposes or for the generation of power-

- (a) that the water used thereunder-
 - (i) shall be returned, if reasonably practicable, to the stream or body of water from which it was taken or to such other stream or body of water as may be authorized by the Water Registrar;
 - (ii) shall, in so far as the use to which it is put allows, be substantially undiminished in quantity;
 - (iii) shall not be polluted with any matter derived from such use to such extent as to be likely to cause injury either directly or indirectly to public health, livestock, animal life, fish, crops, orchards or gardens which are irrigated by such water or to any product in the processing of which such water is used; and
- (b) that precautions shall be taken by the holder of the right to the satisfaction of the Water Registrar to prevent accumulations in any river, stream or water course of silt, sand, gravel, stones, sawdust, refuse, sewage, waste or any other substance likely to affect injuriously the use of such water.

(2) Any holder of a water right who contravenes or who fails to comply with any condition implied in a water right in accordance with the provisions of subsection (1) shall be guilty of an offence and shall be liable to the penalties prescribed in section 37.

18. Rights conditional on construction of works

(1) Where the Board has granted a water right subject to the construction of works within a specified period the Water Registrar may, from time to time and at any time, notwithstanding that the period previously allowed may have expired, extend the period for the construction of such works.

(2) At the expiration of the period allowed for the construction of the works, the Water Registrar shall cause the works to be inspected by an officer designated by him for the purpose who, if they have been constructed to his satisfaction, shall so certify in writing to the Water Registrar.

(3) No certificate issued under this section shall be deemed to imply any guarantee by the

Government that the works are properly designed or constructed nor shall support or justify any claim whatsoever against the State or any public officer in connection with such works.

PART V

Revision, Variation, Determination and Diminution of Water Rights (ss 19-25)

19. Inadequacy of water supply for satisfaction of water rights

If at any time in the opinion of the Minister, in any specified area the quantity of water to which rights of use exist is insufficient to satisfy all such water rights, he may direct the Board to review the use, diversion, control and appropriation of public water in that area and, in so doing, the Board may revise the quantity allowed by any right and the terms and conditions of any right to the use of water in that area:

Provided that the Board shall have regard to the principle that where beneficial use of the whole right has been maintained, no right shall be cancelled or reduced except proportionally with all other rights in the same area.

20. Suspension or variation of rights on account of drought, etc.

Where in the opinion of the Board the supply of public water from any source or in any area is or is likely to become insufficient for the needs of persons using it on account of drought or of an emergency, the Board may authorize the Water Registrar at any time and from time to time to suspend or vary, by notice in writing to the holders of water rights (including any right referred to in Part II) all or any rights to abstract or use water from that source, or in that area, for such period as he may deem necessary, and upon notice being given by the Water Registrar as aforesaid, such rights shall cease for the period of suspension or shall be exercisable only as so varied, as the case may be.

21. Where quantity unspecified Water Board may specify quantity

Where any right to the use of an unspecified quantity of public water subsists, the Board may at any time specify the quantity of water for which such right may be valid, and direct the Water Registrar to record the same in the register of water rights and so inform the holder of the right:

Provided that the Board shall, before so specifying give the holder of the right the opportunity of making representations thereon, and shall take into consideration any such representations.

22. Variation of water rights with consent

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

23. Determination for breach of a condition

Where the holder of a water right has failed to comply with any condition, express or

implied, subject to which the right was granted, or has abstracted or used public water in excess of that authorized or has used public water for a purpose not authorized by the grant, the Board may by notice in writing addressed to the holder declare the right to be determined:

Provided that where the default is one capable of being remedied, the Water Registrar shall first serve on the holder notice in writing specifying the default and requiring the holder to remedy the same within such time as may be specified in the notice.

24. Determination or diminution for non-use

(1) If at any time the Water Registrar has reason to believe that the holder of a water right has not, during the preceding three years, made full beneficial use of that right, he may by notice in writing addressed to such holder call upon him to show cause why such right should not be determined or diminished or modified in such respects as may be specified in the notice.

(2) If within three months of the service of such notice no reply has been received by the Water Registrar, the Board may declare the right determined or diminished or modified as the case may be.

(3) The holder of a water right upon whom a notice has been served under subsection (1) may, within three months of such service, submit to the Board a statement in writing of reasons why the right should not be determined or diminished or modified, as the case may be, and may require to be heard in the matter.

(4) The Board shall consider any statement submitted to it under subsection (3) and shall, if so required, give the holder an opportunity of being heard in person or by his legal representative and may thereafter by notice in writing addressed to the holder-

- (a) declare the right determined;
- (b) declare the right diminished or modified in such respects as may be specified in the declaration; or
- (c) declare the right to be subsisting unchanged.

25. Determination or diminution for public purposes

(1) Where the Board is satisfied that public water is required for public purposes it may, by notice in writing addressed to the holder of any water right, determine or diminish that right to the extent that such water is required for the aforesaid public purpose, and thereupon the right shall lapse or shall be exercisable only as so diminished, as the case may be.

(2) The holder of any right determined or diminished under the provisions of this section shall be entitled to receive compensation from the Government for all loss resulting from the determination or diminution of the right.

(3) The amount of compensation payable shall in the absence of agreement be determined

by the High Court upon the application of the holder or the Minister.

(4) The Minister may by order published in the *Gazette* declare any purpose to be a public purpose within the meaning of this section.

PART VI

Miscellaneous Powers (ss 26-30)

26. Power to create servitudes

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

(2) Upon the receipt of any such application the Water Registrar shall serve notice of the application on the owner and occupier of the land over which a servitude is sought and on any other persons known to be interested in the land.

(3) Any interested person may notify the Water Registrar that he objects to the creation of the servitude under this section or that he desires to be heard on the subject of compensation.

(4) The Board shall consider any objections made to the Water Registrar and shall give an opportunity of being heard to all persons who so require, and may thereafter by a certificate in the prescribed form create such servitude as it may consider appropriate or refuse to create a servitude and may make an ancillary order in connection therewith including provision for the payment of compensation:

Provided that any interested party may appeal to the High Court against any order by the Board under this subsection awarding compensation or against any decision by the Board not to award any compensation except where such order or decision was made with his consent.

(5) Where the water right in respect of which a servitude is created has been made appurtenant to the land of the holder of the water right, then a servitude created by the Board may be made appurtenant to such land as a praedial servitude but not otherwise.

(6) If the person enjoying the benefit of a servitude fails to pay such compensation as directed or to construct any bridges and other works which the Board may require him to construct within such time as is therefor allowed by the Water Registrar, or fails to maintain or repair such bridges or other works after being required to do so by the Water Registrar, the Board may by notice in writing to that person and to the Registrar of Deeds determine the servitude.

(7) Any compensation due under this section which remains unpaid may be sued for as a civil debt.

(8) Any servitude created by agreement between the holder of a water right and any other

person may be made appurtenant to the land of the holder of the water right as a praedial servitude where the water right in respect of which the agreement is made is appurtenant to such land:

Provided that no such agreement shall operate to create a servitude appurtenant to the land unless a copy of the agreement has been forwarded to the Water Registrar by the holder of the water right.

(9) Any servitude created in terms of this section shall be registered in the Deeds Registry within six months of its creation in such manner as may be prescribed, and unless it is so registered shall determine on the expiry of six months from the date of creation.

27. Right to call for information

The Water Registrar, or the Board, may in the exercise of their functions under this Act, call upon any person to give information on such matters and in such manner as may be prescribed.

28. Power to inspect works and require reparation, etc

(1) The Water Registrar and all persons authorized by him in writing may, at all reasonable times, enter upon any land and may inspect any works constructed or under construction thereon and may take measures to ascertain the quantity of water abstracted or capable of being abstracted by means of such works or otherwise.

(2) If in the opinion of the Water Registrar any works are so constructed, maintained or used or are being so constructed, as to constitute a danger to life, health or property, he may require any person for the time being enjoying the benefit of those works to carry out such repairs or to effect such additions or modifications to such works or to carry out such demolitions or to change the use of the works in such manner as he may consider necessary and may by notice in writing suspend any water right until he is satisfied that such requirement has been fulfilled and thereupon the right shall cease for the period of the suspension.

(3) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of subsection (1).

29. Power to require demolition of unlawful works

- (1) The Water Registrar may by notice in writing require any person-
- (a) who has constructed or extended or caused to be constructed or extended any works contrary to the provisions of this Act or to any other provisions not inconsistent with the provisions of this Act, under which such person was required or authorized to construct or extend the same or cause them to be constructed or extended; or
 - (b) whose water right or existing right in respect of which any works are in existence has been determined under the provisions of this Act or has otherwise come to an end,

to modify, demolish or remove such works within such period, not being less than 30 days, as may be specified in the notice.

(2) If any person fails to comply with a notice served on him under subsection (1), it shall be lawful for the Water Registrar to cause such works to be modified, demolished or removed and to recover the cost of the modification, demolition or removal from the person in default by civil suit.

(3) Failure to comply with a notice given under subsection (1) shall be an offence and the offender shall be liable to the penalties prescribed in section 37.

30. Power to establish hydrological stations and make surveys

(1) The Minister and all persons authorized by him may at all reasonable times enter upon any land for the purpose of making such investigations and surveys as the Minister may consider necessary in the interest of the conservation and best use of water in Botswana, and may establish and maintain on any such land, without other authority than this Act, hydrological stations and other works for the purpose of obtaining and recording information and statistics as to the hydrological conditions of Botswana.

(2) No compensation shall be payable to the owner or occupier of any land by reason that entry has been made upon such land in pursuance of the provisions of subsection (1) but compensation shall be payable for all damage done and for any land occupied for the construction of works.

(3) In the absence of agreement such compensation shall be determined by the High Court on the application of the owner or occupier or of the Minister.

PART VII

Appeals (s 31)

31. Appeals to the Minister

(1) Any person who is aggrieved by the refusal of the Water Registrar to record an existing right or by any other decision made under section 13 or by the grant of or the refusal of the Board to grant or renew a water right, or by any conditions imposed when granting or renewing a water right, or by the determination or diminution or modification or suspension of any water right, or by the grant of or refusal to grant any servitude or by the conditions subject to which any servitude is created (other than matters to which the proviso to section 26(4) applies), or by any direction regarding the disposal of underground water abstracted from any workings, or by any requirement that any work should be repaired, added to, altered, demolished or removed, or that the use of any works be changed, may appeal to the Minister whose decision in the matter shall be final.

(2) Notwithstanding the provisions of subsection (1) no person may appeal to the Minister against the grant or renewal of a water right or the grant of any servitude, who did not make objection to such grant or renewal under the provisions of sections 15(3) or 26(3), as the case

may be.

PART VIII
Miscellaneous (ss 32-37)

32. Registration

(1) The Board shall notify the Water Registrar of every grant or renewal of a water right made by it and of the variation, determination, diminution, modification or suspension of a water right or existing right, and of any servitude created or determined by it, and the Water Registrar shall enter the same in the register of water rights.

(2) Any person shall, on application to the Water Registrar, be entitled to receive certified or uncertified extracts from the register of water rights.

(3) Extracts from the register of water rights certified to be under the hand of the Water Registrar shall be admissible in evidence in all legal proceedings, civil or criminal, without proof that they are under the hand of the Water Registrar and be *prima facie* evidence of the facts recorded therein.

33. Delegation of the functions of Water Registrar and Board

(1) The Water Registrar may with the approval of the Minister delegate his functions under this Act, either in whole or in part, and either in respect of the whole of Botswana, or any portion thereof, to such officer or officers in the public service as he may designate by writing under his hand.

(2) The Board may delegate with the approval of the Minister its powers under this Act to authorize the construction and enlargement of, and the abstraction of water from, wells and boreholes to any duly constituted local authority subject to such terms and conditions as it may impose and, in the event of such delegation, any function vested in the Water Registrar in connection therewith shall be deemed to be vested in the appropriate officer of such local authority.

34. Act to bind the State

This Act shall bind the State.

35. Power to make regulations

The Minister may make regulations-

- (a) prescribing anything which is required to be, or which may be, prescribed under this Act;
- (b) prescribing the registers and records to be kept and the manner in which they are to be kept;
- (c) providing for the forms to be used and the fees to be paid in respect of any matter

required or permitted to be done under this Act;

- (d) providing for the advertisement of applications for the use of public water and for the giving of notice to interested persons;
- (e) providing for and regulating the making of objections and the time within which such objections shall be made;
- (f) regulating the procedure of appeals to the Minister under this Act;
- (g) providing for the formation, functions and conduct of local associations of public water users;
- (h) in the case of a water right or existing right enjoyed by an association of persons, regulating the division and distribution of water between those persons;
- (i) prescribing the matters on which and the manner in which persons may be required to give information as provided in section 27;
- (j) providing for the creation of advisory boards to assist the Water Registrar or Board or Minister in the discharge of their functions under this Act;
- (k) prescribing the procedure and conduct of meetings of the Board;
- (l) to provide, subject to the payment of compensation in accordance with the provisions of section 8 of the Constitution, for the taking of material required for the construction of works;
- (m) generally for the better carrying out of the provisions of this Act.

36. Pollution of public water etc

(1) Any person who-

- (a) except under the authority of this Act or any other written law interferes with or alters the flow of or pollutes or fouls any public water; or
- (b) without the permission of the Water Registrar places any poison in any public water or water in any work to which any member of the public or domestic animal may reasonably be expected to obtain access, whether lawfully or unlawfully,

shall be guilty of an offence and shall be liable to the penalties prescribed in section 37.

(2) For the purposes of this section the polluting or fouling of public water shall include the discharge into, or in the vicinity of, any public water, or in a place where public water is likely to flow, of any matter or substance likely to cause injury whether directly or indirectly to public health, livestock, animal life, fish, crops, orchards or gardens which are irrigated by such water or any product in the processing of which such water is used or which occasions, or which is likely to occasion, a nuisance.

37. Penalties

(1) A person who is guilty of an offence under sections 9(2) or 36(1) shall be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding one year, or to both.

(2) A person who is guilty of an offence under sections 7(4), 17(2) or 29(3) shall be liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(3) In addition to the penalties which may be imposed in terms of this section the court may, in the event of a continuing offence, impose a fine not exceeding P10 for each day during which the offence continues.