



THE UNITED REPUBLIC OF TANZANIA

THE WATER RESOURCES MANAGEMENT ACT, 2009

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THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE WATER RESOURCES MANAGEMENT ACT, 2009

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THE UNITED REPUBLIC OF TANZANIA



No. 11 of 2009

I ASSENT,

JAKAYA MRISHO KIKWETE,
President

12th May, 2009

An Act to provide for institutional and legal framework for sustainable management and development of water resources; to outline principles for water resources management; to provide for the prevention and control of water pollution; to provide for participation of stakeholders and the general public in implementation of the National Water Policy, repeal of the Water Utilization (Control and Regulation) Act and to provide for related matters.

ENACTED by Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

Short
title and
com-
mence-
ment

1. This Act may be cited as the Water Resources Management Act, 2009 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Applica-
tion

2. This Act shall apply to Mainland Tanzania.

Interpre-
tation

3. In this Act, unless the context requires otherwise-

"appellate authority" means the authority pursuant to section 107 of this Act;

"aquatic ecosystem" means those physical and biological features, including land, water, the atmosphere, flora and fauna, which are within, under, over, in contact with, or sustained by the water in water bodies;

"authorised officer" means a person authorised as such in accordance with section 17;

"Basin Water Board" means a Basin Water Board established under section 22;

"beneficial use of water" means the use of water for social, economic and environmental purposes including but not limited to domestic water supply, irrigation, generation of electric power, livestock watering and dipping, industrial production, fishing, and the maintenance of the aquatic ecosystem;

"catchment" means the surface area and underground stratum of land that collects water to supply a source of water;

"Catchment Water Committee" means a Committee established under section 29 for purposes of managing a catchment;

"customary water rights" mean the rights and practices in relation to water resources that have been practised by communities or individuals since time immemorial in the belief that they create binding rights and obligations;

"Director" means the Director responsible for water resources as provided for under section 15 ;

"discharge permit" means a permit to discharge effluents from any source registered in the Water Register under the provisions of this Act;

"domestic purposes" includes the use of water solely for the purpose of

meeting household and domestic needs and excludes any commercial activities;

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

"effluent" includes any flowing-out or fluid material discharged from domestic or industrial wastes systems which, by reason of its quality, quantity or characteristics, is likely to impair the beneficial use of receiving water by adversely affecting its natural state;

"effluent standards" means the standard for treatment and discharge of effluent promulgated under the Environmental Management Act;

"effluent treatment plant" means any device or structure designed for the treatment of effluent removing matters in suspension, detoxicating or stabilizing biodegradable organic impurities so as to prevent the occurrence of secondary decomposition upon the effluent mingling with water;

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

"Groundwater Permit" means any permit to construct, sink, enlarge, or deepen a well or borehole, registered in the Water Register under the provisions of this Act;

"Groundwater Controlled Area" means an area declared to be a Groundwater Controlled Area under section 38;

"irrigation" means the use of water for the purpose of improving productivity of agricultural crops per unit of land and per unit of water and thereby contributing to increased food security;

"land drainage" for purposes of this Act means providing for disposal of excess water on land and protection of water against flooding by structural or non-structural means in a manner required by a water resources management plan or directions by the Basin Water Board;

"Minister" means the Minister responsible for water resources;

"Ministry" means a Ministry responsible for water;

"National Water Board" means the National Water Board established by section 20;

"pollution" in relation to water resources, means any direct or indirect alteration of the physical, thermal, chemical or biological properties of the water resource so as to make it-

- (a) less fit for any beneficial purpose for which it is or may reasonably be expected to be used; or

(b) harmful or potentially harmful to-

- (i) the welfare, health or safety of human beings;
- (ii) any aquatic or non-aquatic life or property; or the environment;

"protected area" means an area such as nature reserve, game protected area or reserve, forest reserve, marine park, national park, watershed, or any such areas so *Gazetted* pursuant to any Act;

"protected Zone" means a Protected Zone established under section 37;

"rainwater harvesting" means a technology used for collecting and storing rainwater from land surfaces, rock catchments or roof tops using simple techniques such as jars and pots as well as more complex techniques such as charcos dams;

"recycling" means the re-use of water, with or without treatment, before the water is discharged to surface waters or groundwaters;

"reserve" means the quantity and quality of water required for-

(a) satisfying basic human needs by securing a basic water supply for people who are now or who shall in the reasonably for near future, be-

(i) relying upon

(ii) taking water from; or

(iii) being supplied from the relevant water resources ; and

(b) protecting to protect aquatic ecosystem in order to secure ecologically sustainable development and use of the relevant water resources.

"stream" means the water contained in a watercourse and includes a river;

"Sub-catchment Water Committee" means a Committee established under section 29 for purposes of managing a sub-catchment;

"surface water" means all water flowing over the surface of the ground, or contained in a spring or natural lake or reservoir or swamp and all water contained directly underneath a river bed;

"sustainable management" means managing the use, development and protection of water resources in a manner, or at a rate, which provides for the social, economic, sanitation and cultural well-being of the people, while safeguarding the life-supporting capacity of water for the ecosystem both in the present and the future;

"trans-boundary waters" means the water resources contained within

drainage or river basins which cross the geographical boundaries of and are shared with more than one sovereign country;

"underground strata" means any strata at whatever level or distance below the surface;

"water" means all water flowing over the surface of the ground, or contained in or flowing in or from, a spring or stream or natural lake or reservoir or swamp, or beneath a watercourse and all water from underground strata;

"water authority" means the water supply and sanitation authority established under the Water Supply and Sanitation Act, 2009;

"water basin" means an area of land in relation to any river or other water source as described under this Act;

"water management institution" means the National Water Board, a Basin "Water Board or a Catchment or Sub-catchment Water Committee, as the case may be;

"Water Register" means the register established and maintained pursuant to section 82;

"water resources" means a water course, surface water, ground water and estuary water;

"water resources management plan" means a plan prepared pursuant to Part V of this Act;

"water source" means-

- (a) a river, tributary, estuary, lake, swamp, marsh or other wetland;
- (b) an aquifer or a spring;
- (c) sea waters and interface between sea water and fresh water
- (d) a dam, pond or reservoir;

"water use permits" means any permit to use or divert, dam, store, abstract or use water from surface or underground water source registered in the Water Register under the provisions of this Act, and may also mean a water right issued under the Water Utilization (Control and Regulation) Act.

"Water Users Association" means an entity established by the users of water resources within a specified area pursuant to Part VIII of this Act;

Cap. 331

"works" include canals, channels, reservoirs, embankments, weirs, dams, wells, boreholes and other works constructed for or in connection with the diversion, damming, storage or abstraction of water, or for the protection of rivers, lakes, or any other water sources, or for the conservation of water, or for drainage or for the use of water for any purposes or for the conservation of rainfall.

PART II

OBJECTIVES AND PRINCIPLES OF WATER RESOURCES MANAGEMENT

Objective
of water
resources
manage-
ment

4.-(1) The objective of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account the following fundamental principles, including-

- (a) meeting the basic human needs of present and future generations;
- (b) promoting equitable access to water and the principle that water is essential for life and that safe drinking water is a basic human right;
- (c) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (d) facilitating social economic development;
- (e) promoting stakeholders' involvement in water resources management at all levels especially by ensuring decentralisation to the lowest possible level of government, consistent with available capacity at such level;
- (f) protecting biological diversity especially the aquatic ecosystems;
- (g) providing for systems for managing the growing demand for water use through integrated planning and management of surface and groundwater resources, in ways which incorporate economic, environmental and social dimensions in the planning process;
- (h) preventing and controlling pollution and degradation of water resources;
- (i) providing implementation of international obligations stipulated under international legal instruments to which the United Republic is a party; and
- (j) promoting dam safety security and the management of water related disasters.

(2) For achieving the objective set under subsection (1) of this section, suitable institutions with appropriate stakeholders and gender representation shall be established.

Principles
of
sustainable
water
resources
manage-
ment

5. Any person exercising jurisdiction under this Act shall, in relation to any decision, order, exercise of any power or performance of any function, be guided by the following principles of sustainable integrated water resources management and sustainable development-

- (a) the precautionary principle;
- (b) polluter pays principle;

- (c) the principle of eco-system integrity;
- (d) the principle of public participation in the development policies, plans and processes for the management of the water resources;
- (e) the principle of international co-operation in management of environmental resources shared by two or more states; and
- (f) the principle of common but differentiated responsibilities.

6.-(1) Any person exercising powers under this Act or under any other written law having a bearing on the provision of water resources management shall strive to promote and have regard to the National Water Policy, in respect of water resources management.

Promotion
of
National
Water
Policy,
2002

(2) Subject to subsection (1), the preference for water allocation shall be for—

- (a) domestic purposes;
- (b) environmental reserve; and
- (c) socio economic activities depending on the availability of water resources.

7. Every person residing in Mainland Tanzania shall have a stake and a duty to safeguard and protect water resources and to inform the relevant authority of any activity and phenomenon that may affect the quantity and quality of the water resources significantly.

Duty to
protect
water
resources

8. Where a major water project is planned, the Director of Water Resources shall carry out a Strategic Environmental Assessment in accordance with the procedure and Regulations made under the Environmental Management Act;.

Strategic
environ-
mental
assess-
ment
Cap. 191

9. Any proposed development in a water resource area or watershed to which this Act applies, whether that development is proposed by or is to be implemented by a person or organisation in the public or private sector shall carry out an Environmental Impact Assessment in accordance with the provisions of the Environmental Management Act.

Environ-
mental
Impact
Assess-
ment
Cap. 191

PART III

OWNERSHIP AND CONTROL OF WATER

Owner-
ship and
manage-
ment of
water
resources
vested in
state

10.—(1) All water resources in Mainland Tanzania shall continue to be public water and vested in the President as the trustee for and on behalf of citizens.

(2) Without prejudice to subsection (1) the President shall, through various designated institutions, manage the water resources for the benefit of the people of Mainland Tanzania.

Right to
use of
water for
domestic
purposes

11.—(1) The powers to confer a right to the use of water from any water resource is hereby vested in the Minister save to the extent that it is alienated by any other written or customary law.

(2) Notwithstanding the provision of subsection (1), any person having lawful access to any watercourse may abstract and use the same for domestic purposes without a Water Use Permit issued under this Act:

Provided that nothing in this section shall be construed as authorizing the construction of any works by any person.

(3) Notwithstanding the provision of subsection (1), any person being the legal owner or occupier of any land may construct a shallow hand-dug well and use the water for domestic purposes without a Groundwater Permit issued under this Act subject to any limitation on the depth of such wells in any area as may be prescribed in Regulations by the Minister.

Right to
rainwater
harvesting
or use of
recycled
water

12.—(1) The owner or occupier of any land may construct any works for rainwater harvesting or for recycling of used water other than in a river or stream and abstract and use the water so conserved or recycled for domestic purposes without a Water Use Permit issued under this Act.

(2) Notwithstanding the generality of subsection (1), no works for the purpose of rainwater harvesting shall have the capacity greater than the capacity prescribed in regulations by the Minister.

PART IV

MANAGEMENT OF WATER RESOURCES

(a) Minister

Powers
of the
Minister

13.—(1) The Minister shall be responsible for national policy and strategy formulation and for ensuring the execution by authorities or persons under the control of the Minister of their functions connected with the implementation of the Act.

(2) Without prejudice to subsection (1), the Minister shall-

- (a) oversee policy and legislative aspects of integrated water resources management;
- (b) appoint members of the National Water Board;
- (c) establish basin water boards;
- (d) provide for supervision and coordination of basin water boards;
- (e) facilitate sectoral coordination and coordinated planning on aspects that may impact on water resources;
- (f) ensure and safeguard national interest on trans-boundary water resources;
- (g) formulate regulations, technical standards and guidelines for purposes of implementing the provisions of this Act;
- (h) ensure sustainable development of water resources of national interest; and
- (i) provide for the safe construction of and management of dams.

(3) The Minister shall be assisted in the discharge of his duties under this Act by the Director of Water Resources.

14. The Minister may, by Order published in the *Gazette* and subject to such conditions as may be imposed, delegate the performance of any function stipulated under the Act to-

Delegation
of powers
of the
Minister

- (a) the Director or any official of the Ministry;
- (b) any other Ministry or department of the Government;
- (c) a local government authority;
- (d) an Agency established pursuant to the Executive Agencies Act or any other written law; or
- (e) any institution established under this Act.

Cap 245

(b) *The Director of Water Resources*

15.-(1) There shall be appointed by the Minister the Director of Water Resources from among public servants.

Director of
Water
Resources

(2) The Director shall be the advisor to the Government on all matters pertaining to water resources.

(3) Where the Director is required or empowered by this Act to make a determination affecting or likely to affect the rights of any person or the opportunity for any person to undertake any activity shall give that person reasons for such decision.

(4) There shall be appointed such officers who shall have the duty to ensure the efficient, effective and sustainable economical management and supervision of water resources in accordance with the provisions of this Act.

(5) Officers appointed under subsection (4) shall be allocated or delegated such functions and shall be located in such offices or institutions as the Director shall consider that the Officers contribute to the proper management of water resources.

Functions
of the
Director
of Water
Resources

16. On matters pertaining to the sustainable management of water resources, the Director shall—

- (a) co-ordinate activities of Basin Water Boards;
- (b) conduct national water resources management planning and an implementation strategy;
- (c) oversee water basin planning and management;
- (d) integrate inter-sectoral coordination and planning on aspects that may have impact on water resources;
- (e) evaluate existing and proposed policies and activities of the Government ministries and agencies relating to the allocation, management and protection of water resources and, on the basis of that, formulate policies and programmes aiming at management and development of water resources and control of water pollution;
- (f) ensure that water resource management operates according to the principles of environmental sustainability;
- (g) supervise and co-ordinate the activities of Basin Water Boards and serve as a link channel of communication between these bodies and the Government;
- (h) resolve inter-sectoral and inter-basin conflicts;
- (i) supervise and coordinate data collection and national water resources assessments;
- (j) maintain a National Water Register in accordance with Section 79;
- (k) determine national investment priorities and financing patterns on water resources;
- (l) co-ordinate and harmonise externally funded projects and programmes affecting water resources;
- (m) facilitate the conduct of water audits and provide technical support in terms of information tools, basin models and decision support systems;

- (n) recommend to the Minister legislative measures for the management of water resources and the effective control of water pollution;
- (o) prepare annual reports on the state of water resources in the country; and
- (p) ensure protection of water sources of national interest.

17. The Basin Water Board may, in writing, appoint any suitable person as an authorised officer to perform the functions contemplated in Section 18.

Appoint-
ment of
authori-
sed
officer

18.-(1) An authorised officer may, at any reasonable time and without prior notice, enter or cross property with the necessary persons, vehicles, equipment and materials in order to carry out routine inspections of the use of water or discharge of effluents under any authorisation.

Powers
and
duties
of
authori-
sed
officer

(2) An authorised officer may enter a property with the necessary persons, vehicles, equipment and materials after-

- (a) giving reasonable notice to the owner or occupier of the property, which notice shall state the purpose of the proposed entry; and
- (b) obtaining the consent of the owner or occupier of the property, in order to-
 - (i) clean, repair, maintain remove or demolish works operated by a water resources management institution;
 - (ii) undertake any works necessary for cleaning, clearing, stabilising and repairing the water source and protecting the resource quality;
 - (iii) establish the suitability of any water source or site for constructing a water works;
 - (iv) undertake any work necessary to comply with an obligation imposed on any person under this Act, where that person has failed to fulfil that obligation; and
 - (v) erect any structure and install and operate any equipment on a temporary or permanent basis for monitoring and gathering information on water resources.

(3) An authorised officer may, at any reasonable time and without prior notice, on the authority of a warrant, enter a property with the necessary persons, vehicles, equipment and materials and perform any

action necessary to-

- (a) investigate whether any condition attached to any permit issued in accordance with this Act, or any notice or directive is being contravened;
- (b) investigate whether any information supplied in connection with water use or effluent discharge is accurate; or
- (c) carry out any of the activities referred to in subsection (2) where the consent of the owner or occupier has been withheld.

(4) A warrant referred to in subsection (3) may be issued by a judge or magistrate who has jurisdiction in the area where the property in question is situated.

(5) Where a warrant is likely to be issued and if applied for but the delay involved in obtaining a warrant is likely to defeat the object of an inspection in terms of subsection (3), an authorised officer may enter a property without a warrant.

(6) An authorised officer entering a property in terms of this section shall, at the request of any person on that property, identify himself and present a letter of authorization issued under section 17.

(7) Notwithstanding any provision of this section, an authorised officer may not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorising entry.

Restora-
tion of
orders
Cap. 191

19. For the purpose of environmental management in relation to water resources where need arise for imposition of a restoration order, the Director or the Basin Water officer may request the National Environment Management Council to issue an environmental restoration order in accordance with the Environmental Management Act.

(c) *National Water Board*

Establish-
ment of
the
National
Water
Board

20.—(1) There is established the National Water Board.

(2) The National Water Board shall be an advisory board to the Minister on matters related to multi-sectoral coordination in integrated water resources planning and management as well as resolution of national and international water conflicts.

(3) The National Water Board shall consist of members specified in the First Schedule.

(4) The Minister shall have powers to dissolve the Board.

21. The National Water Board shall have the following powers and functions to-

Functions
of the
National
Water
Board

- (a) examine any matter which may be referred to it by the Minister or any sector Ministry relating to sustainable management of water resources and shall recommend to the Minister or the sector Ministry, as the case may be, such action as is necessary for achieving the objectives of this Act;
- (b) advise on investment priorities and financing patterns and co-ordinate and harmonise externally funded projects and programmes affecting water resources;
- (c) advise on integration of inter - sectoral water resources assessment and planning;
- (d) advise on co-ordination of basin planning and management;
- (e) advise on inter-sectoral or inter-basin conflicts;
- (f) advise on investment priorities and financing patterns;
- (g) advise on inter-basin water transfer;
- (h) advise on trans-boundary water resources management;
- (i) recommend to the Minister legislative measures for the management of water resources and the effective control of water pollution;
- (j) liaise with the Director on technical matters;
- (k) prepare the bi- annual report on the state of the water resources; and
- (l) perform such other water resources advisory functions as the Minister may deem necessary.

(d) *Basin Water Boards*

22.-(1) The Minister shall, by order published in the Gazette, establish a Basin Water Board in respect of each water basin.

Establish-
ment of
the Basin
Water
Board

(2) A Basin Water Board established under subsection (1) of this section shall be a body corporate with perpetual succession and a common seal and shall have power in its corporate name to sue and be sued and, in the exercise of its powers and functions, to do and permit all such

things as may lawfully be done or permitted by a body corporate in furtherance of its objects.

(3) The powers and functions of the Basin Water Board shall be exercised and performed under the direction of the Board.

(4) The Second Schedule shall have effect in respect to the membership and procedure of the Basin Water Board.

Powers
and
functions
of the
Basin
Water
Board

23. The Basin Water Boards shall have the following powers and functions to-

- (a) prepare basin water resources management plans, projects budgets and an implementation strategy;
- (b) integrate district plans into basin water resources management plans;
- (c) provide guidelines and standards for construction and maintenance of water source structures;
- (d) monitor, evaluate and approve construction and maintenance of water source structures;
- (e) collect, process and analyse data for water resources management;
- (f) maintain and update assessments of the availability and potential demand for water resources;
- (g) approve, issue and revoke water use and discharge permits;
- (h) maintain a Water Register in accordance with Section 78;
- (i) monitor and enforce water use and discharge permits and pollution prevention measures;
- (j) resolve intra-basin conflicts;
- (k) implement water resources management projects and programmes;
- (l) co-ordinate the inter-sectoral water resources management at the basin level and serve as a channel of communication between these sectors and water users in general;
- (m) advise the Director on technical aspects of trans-boundary water issues in the basin;
- (n) appointment of Chairman and members of the Catchment and Sub-catchment Committees;
- (o) prepare reports on the state of water resources in a basin.

Staff of
Basin
Water
Boards

24.-(1) There shall be a Basin Water Officer of the Basin Water Board who shall be appointed by the Minister in consultation with Basin

Water Board on such terms and conditions of service as the Board may determine.

(2) The Basin Water Officer shall be the principal officer of the Board and, subject to the directions of the Basin Water Board, shall be responsible for the management of the affairs of the Basin Water Board.

(3) The Basin Water Board may appoint such officers and other staff as may be necessary for the exercise and performance of its powers and functions upon such terms and conditions as it may determine.

25.—(1) The funds and resources of the Basin Water Board shall be—

- (a) fees and charges as may be collected from the issuance and operation of permits under this Act;
- (b) any other payment due to the Basin Water Board in respect of any other matter incidental to its functions;
- (c) such sums as may be approved for the Basin Water Board by the Parliament; and
- (d) such donations, grants, bequests and loans as the Basin Water Board may, from time to time receive from any person or organisation.

Funds of
the Basin
Water
Board

(2) The funds and resources of the Basin Water Board shall be applied in the exercise of the duties and powers of the Basin Water Board.

26.—(1) Not less than two months before the beginning of every financial year, the Basin Water Board shall, at a meeting pass a detailed annual budget of the—

- (a) rates of fees and charges to be levied by the Basin Water Board and Catchments and Sub-catchments Water Committees for the issuance and operation of permits under this Act;
- (b) revenues expected to be received; and
- (c) Annual and supplementary budget
- (d) the Basin Water Board during the forthcoming financial year and, whenever circumstances so require, the Basin Water Board may pass a supplementary budget in any financial year.

Annual
and
supple-
mentary

(2) The Annual Budget shall be endorsed by the Basin Water Board.

(3) Where in any financial year the Basin Water Board requires to make any disbursement not provided for, or of an amount in excess of the amount provided for in the annual budget for any year, the Board shall, at a meeting, pass a supplementary budget detailing such disbursement.

Accounts
and audit

27.-(1) The Basin Water Board shall cause to be provided and kept in accordance with International Accounting Standards and on an accruals basis, proper books of accounts and records with respect to-

- (a) the receipt and expenditure of moneys by, and other financial transactions of the Basin Water Board; and
- (b) the assets and liabilities of the Basin Water Board,

and shall cause to be made out for every financial year a balance sheet showing the details of the income and expenditure of the Basin Water Board and its assets and liabilities.

(2) Within six months of the close of every financial year the accounts including the balance sheet of the Basin Water Board shall be audited by the Controller and Auditor General in accordance with the provisions of the Public Audit Act.

(3) Every audited balance sheet shall be placed before a meeting of the Basin Water Board and, if adopted by the Basin Water Board, be endorsed with a certificate that it has been so adopted.

(4) As soon as the accounts of the Basin Water Board have been audited, and in any case not later than six months after the closure of the financial year, the Board shall submit to the Minister a copy of the audited statement of accounts.

Annual
report

28.-(1) The Basin Water Board shall cause to be prepared within six months after the close of each financial year an annual report detailing generally activities and operations of the Basin Water Board during that year.

(2) The report shall be accompanied by-

- (a) a copy of the audited accounts of the Basin Water Board together with the auditor's report on the accounts; and
- (b) a copy of the annual reports of the Basin Water Boards.

(3) The Basin Water Board shall cause copies of the annual report, the audited accounts and the auditors' report to be placed on each Water Register provided for under Section 78.

(4) The Minister shall, as soon as practicable after receiving the report from the Basin Water Board, lay before the National Assembly the audited accounts of the Basin Water Boards together with the auditor's report, and the annual report.

(e) *Catchment and Sub-catchment Water Committees*

29.-(1) Minister may, by Order in the *Gazette* and upon consultation with Basin Water Board designate and declare such areas as Catchment or Sub-catchments.

Establishment of Catchment and Sub-catchment Water Committees

(2) The general functions of the Catchments or Sub-catchments water committee shall be-

- (a) to coordinate and harmonize catchment or sub-catchment integrated water resources management plan;
- (b) to resolve water resources conflicts in the catchment or sub catchment; and
- (c) to perform other delegated functions by the Basin Water Board.

(3) The Third Schedule shall have effect to the appointment of members and other matters relating to the catchment and Sub-catchment Water Committee.

30. There shall be a Catchment Water Officer of the Catchment or sub-catchment Water Committee who shall be appointed by the Basin Water Board.

Appointment of a Catchment Water Officer

PART V

INTEGRATED WATER RESOURCE MANAGEMENT PLANS

31.-(1) The Minister shall cause a National Integrated Water Resources Management Plan to be prepared based on integrated water resources management plans prepared by the Basin Water Boards and Catchment Water Committees.

Preparation of a Water Resources Management Plan

(2) The Plan shall include, *inter alia*, the following-

- (a) a water balance for each basin of Mainland Tanzania that compares expected water demand with data and information regarding water availability; and

- (b) proposed options for meeting forecasted demand for each basin in which forecasted water demand exceeds available supply, which options may include, without limitation-
 - (i) water demand management programmes;
 - (ii) necessary infrastructure construction;
 - (iii) desirable institutional initiatives;
 - (iv) inter-basin transfers of water;
- (c) classifying water resources in accordance with section 32;
- (d) requirements of the reserve for each water resource in accordance with section 33;
- (e) identifying areas which, in accordance with this Act, shall be designated Protected Zones and Groundwater Controlled Areas;
- (f) any other measure, including appropriate legal reforms, which is deemed necessary to achieve the objectives of the Plan; and
- (g) measures for implementation of the Plan.

(3) The Plan shall be prepared by the Basin Water Boards, Catchment and Sub-catchments Water Committees, in such manner as the Minister shall determine in Regulations adopted under this Act, and shall be subject to consultation with all stakeholders before approval is made.

(4) At least once in each successive five year period following approval of the Water Resources Management Plan, the Minister shall cause it to be reviewed and amended as appropriate, but not earlier than three years after the approval of the plan.

PART VI

PROTECTION OF WATER RESOURCES

(a) *Water Resources Classification and Reserve*

Classifica-
tion of
water
resources
and
resource
quality
objectives

32.-(1) The Minister may, by regulations, prescribe, a system for classifying water resources for the purposes of determining water quality objectives for each class of water resources.

(2) Under the prescribed classification system, water resources may be classified according to type, location, geographical area, use and other factors and the system may-

- (a) establish guidelines and procedures for determining different classes of water resources;
- (b) in respect of each class of water resource-

- (i) establish procedures for determining the reserve;
- (ii) establish procedures which are designed to satisfy the quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the water resource;
- (iii) establish procedures which are designed to take into account seasonal variations of flow and the potential impact of flow variations on water use permits and discharge permits to be issued in accordance with sections 48 and 66;
- (iv) set out water uses for in-stream or land based activities which shall be regulated or prohibited in order to protect the water resource; and
- (v) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources as the Minister, in consultation with the National Water Board, may consider necessary.

(3) The Minister may, by notice in the *Gazette*—

- (a) classify each water resource in accordance with the prescribed classification system;
- (b) specify the resource quality objectives for a water resource of the class to which it belongs; and
- (c) specify the requirements for achieving the objectives and the dates from which the objectives shall apply.

33.—(1) The Minister shall, by notice in the *Gazette*, determine the reserve for the whole or part of each water resource which has been classified under this part.

Deter-
mination
of reserve

(2) A determination of the reserve shall ensure that adequate allowance is made for each aspect of the reserve.

(3) The Minister, Basin Water Boards and all public bodies shall, when exercising any statutory power or performing any statutory duty, take into account and give effect to the requirements of the reserve.

34. Without prejudice to section 57 of the Environmental Management Act, the Minister may, by an order published in the *Gazette*, prohibit human activities to be conducted beyond sixty metres from a water dam or reservoir or a water source.

Prohibi-
tion
of human
activities
near
water
source
Cap. 191

(b) *Restrictions During Drought and Natural Disasters*

Position
when
volume is
inadequate
to satisfy
all permits
granted in
respect
thereof

35.—(1) Where, at any time, in any specified area, the volume of water to which permits of use exist is insufficient to satisfy all such permits, the Minister may direct the appropriate Basin Water Board to review the abstraction, use, diversion, control and appropriation of water in that area and in so doing the Basin Water Board may revise the quantity allowed by any permit and the terms and conditions of any permit to the use of water in that area.

(2) The Basin Water Board shall have regard to the principle that where beneficial use of the whole right has been maintained, no permit shall be cancelled or reduced except in proportion with all other permits in the same area.

Suspension
or variation
of water
use permits
on account
of drought
and natural
disasters

36. Where, in the opinion of the Basin Water Board, account being had of drought and natural disasters the supply of water from any source is insufficient or likely to become insufficient for the needs of the persons using it, the Basin Water Board may at any time suspend or vary all or any water use permits from that source issued in accordance with this Act, for such period as may be deemed necessary, and thereupon such water use permits shall cease to have effect for the period of the suspension or shall be exercisable only as varied, as the case may be.

(c) *Protected Zones*

Establish-
ment of
Protected
Zone

37.—(1) The Minister after consultation with other institutions responsible for land management, may, by notice published in the *Gazette*, for the protection of water sources from pollution, erosion or any other adverse effects establish a Protected Zone on land draining to, or above—

- (a) any water, borehole, treatment or other works forming part of a water supply or from which water supply is drawn;
- (b) any sewer, sewage works or outfall; or
- (c) any catchment, swamp, reservoir, aquifer, wetland spring, or any other source of water.

(2) The Basin Water Board may construct and maintain such works

and may take any such measures in a protected Zone as are considered necessary.

(3) The notice may-

- (a) prohibit or limit any activities within the protected zone as the Basin Water Board sees fit; or
- (b) require any occupier of land within the protected zone to construct and maintain works, or take any measure prescribed by the Basin Water Board in accordance with the Notice.

(4) Compensation shall be payable to the owner or occupier of land in which a Protected Zone has been established.

(5) Where the protected zone is established for purposes of water supply, the Basin Water Board may order the water authority to pay any compensation payable.

(6) No compensation shall be payable to owner or occupier who was not in ownership or occupation of that land at the time when the protected Zone was established.

(d) *Groundwater Controlled Areas*

38.—(1) On the recommendation of the Basin Water Board, the Minister may, by Order published in the *Gazette*, declare any area of Mainland Tanzania to be a Groundwater Controlled Area.

Declaration
of
ground-
water
controlled
areas

(2) In exercising powers under subsection (1), the Minister shall have regard to-

- (a) the availability of groundwater in the area;
- (b) existing uses of groundwater and foreseeable water demands;
- (c) possible adverse impacts by the exploitation of groundwater on the availability of surface water; and
- (d) existing and potential conflicts among water users in the area.

(3) Upon publication of the Order in the *Gazette*, no person shall construct, sink, enlarge or deepen a well or borehole except in accordance with a groundwater permit granted under this Act.

(4) Compensation shall be payable to the owner or occupier of land in which a Groundwater Controlled Area has been established.

(5) Where the Groundwater Controlled Area is established for purposes of water supply or commercial, industrial or agricultural development, the Basin Water Board may order the Water Supply and Sanitation Authority or commercial, industrial, agricultural developer or any other beneficiary to pay any compensation payable.

(e) *Prevention of Pollution*

Prevention of
Pollution

39.-(1) An owner or occupier of land on which any activity or process is or was performed or undertaken, or any other situation exists which causes has caused or is likely to cause pollution of a water source, shall take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.

(2) A Basin Water Board may direct any person who fails to take the measures required under subsection (1) to-

- (a) commence taking measures before a given date;
- (b) diligently continue with those measures; or
- (c) complete the measures before a given date.

Basin
Water
Board may
take
measures
to remedy
effects of
pollution

40.-(1) Where a person fails to comply or complies inadequately with a directive given under Section 39(2), the Basin Water Board may take measures as it considers necessary to remedy the situation.

(2) A Basin Water Board may recover all reasonable and justifiable costs incurred as a result of the Board taking action under subsection (1) jointly and severally from the following persons-

- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;
- (b) the owner and or occupier of the land at the time when the pollution or potential for pollution occurred; and
- (c) any person who negligently failed to prevent the activity or process being performed or undertaken or the pollution or potential for pollution occurring.

(3) Where more than one person is liable in terms of subsection (2), the Basin Water Board shall, at the request of any of those persons, and after giving them the opportunity to be heard, apportion the liability, but such apportionment shall not relieve any of them of their joint and several liabilities for the full amount of the costs.

41.-(1) In this section-

- (a) "incident" includes any incident or accident in which a substance pollutes or has the potential to pollute or have a detrimental effect on a water resources; and
- (b) "responsible person" includes any person who is responsible for the incident or owns the substance or was in control of the substance involved in the incident at the time of the incident.

Control
of
emer-
gency
pollution
incidents

(2) The responsible person, any other person involved in the incident or any person with knowledge of the incident must, as soon as is practicable after obtaining knowledge of the incident, report the incident to the Basin Water Board or any public officer.

(3) A responsible person shall-

- (a) take all reasonable measures to contain and minimise the effects of the incident;
- (b) undertake clean-up procedures; and
- (c) take such measures as the Basin Water Board may verbally or in writing direct, and any verbal directions shall be confirmed in writing within fourteen days to have effect under this subsection.

(4) Where responsible person fails to carries out or carry out inadequately the measures set out in subsection (3), the Basin Water Board may take measures as it considers necessary to remedy the situation and the provisions of section 40(2) and (3) shall apply mutatis mutandis to the recovery of costs incurred by the Basin Water Board.

42. Where an emergency pollution incident arises, a Basin Water Board shall, immediately upon being informed of the incident reported in accordance with the provisions of section 41(2), take all reasonable measures to advise and continue advising water users likely to be affected by the pollution incident of-

Duty
and
emer-
gency
powers
of Basin
Water
Boards

- (a) the nature of the incident;
- (b) the risk to water users in continuing to use water from the water resource; and
- (c) the period during which the risk shall continue,

until the effects of such incident have been mitigated and the risk to water users has ended.

PART VII
WATER ABSTRACTION AND USE

(a) *Water Use Permits*

Uses that
are subject
to water
use permit

43.—(1) Without prejudice to sections 11, 12 and 52, any person who diverts, dams, stores, abstracts or uses water from surface or underground water source, or for any such purpose constructs or maintains any works, shall apply for a Water Use Permit in accordance with this Act.

(2) A Water Use Permit shall be issued taking into account water needed for non-abstraction uses or for maintaining environmental flow requirements.

(3) No permit or licence issued under any other law may apply to a watercourse without a written authorisation of the Basin Water Board.

(4) The application for a Water Use Permit shall be made in accordance with section 75 of this Act and shall be subject to the financial provisions set out in section 96.

Offence for
use of
water in
excess of a
water use
permit

44.—(1) Any person who, contrary to the provisions of this Act, diverts, dams, stores, abstracts or uses water or who, being the holder of a Water Use Permit or the occupier of any land to which a Water Use Permit has been made appurtenant, abstracts or uses water in excess of that authorised or for a purpose other than that authorised, commits an offence.

(2) Any person guilty of an offence under subsection (1) shall be liable to a fine of not less than three hundred thousand shillings and not more than five hundred thousand shillings or to imprisonment for a term of not less than two months and not more than six months or, in the case of a second or subsequent offence, to such fine or imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and, in every case where the offence is a continuing one, to an additional fine of not less than fifty thousand shillings in respect of every day during which the offence continues.

Grant of
water use
permits

45.—(1) A Basin Water Board may grant to any person a permit to divert, dam, store, abstract and use water from such source, in such quantity, and for such purpose and under such conditions and for such period as may be specified in the Water Use Permit.

(2) The Basin Water Board may grant the applicant a temporary Water Use Permit for any purpose under such conditions as may be deemed fit.

(3) A permit holder may use any saved water through improvement of water use efficiency or diversification for any purposes other than those in the permit with the consent of the Basin Water Board.

(4) A water use permit holder may, with the consent of the Basin Water Board, trade his right to use water to any one and for any duration provided that the duration of the permit is not exceeded.

(5) The Minister may make Regulations prescribing the trading of water use permit.

46. Nothing in any Water Use Permit granted under this Part shall be deemed to imply any guarantee that the quality and quantity of water referred to is, or shall be available.

Issuance
of water
use
permits
not to
imply
guaran-
teed
quality
and
quantity

47.—(1) A Basin Water Board may, either at the time of the grant or at any time after the grant of any Water Use Permit, declare that such permit shall be appurtenant to land described in the Water Use Permit and may at any time declare an existing permit to be appurtenant to land affected thereby.

Permit
may be
made
appurte-
nant to
land

(2) Where a Water Use Permit has been declared to be appurtenant to any land, the benefit of the permit shall be enjoyed and 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 or partition, any person becomes entitled to the possession of part of the land to which a Water Use Permit 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 Use Permit as may be agreed between him and the persons entitled to the possession of the remainder of the land or, in the absence of any such agreement, as may be determined by the Basin Water 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 amounts of water so apportioned shall be deemed to be appurtenant to the several parcels 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 parcels, and such rights shall prevail until the parcels shall again become merged with each other.

(5) Any person acquiring a Water Use Permit by agreement in accordance with the provisions of subsection (3) of this section, shall within thirty days give notice thereof in the prescribed form to the Basin Water Board.

Conditions
implied
in all
water use
permits

48. A holder of a Water Use Permit granted under this Part shall-
- (a) not cause or allow any water to be polluted;
 - (b) prevent any damage to the source from which water is taken, or to which water is discharged after use;
 - (c) ensure the proper drainage of the land where the water is used to the satisfaction of the Basin Water Board;
 - (d) submit any data relevant to the grant of any Water User Permit under this Act within such time as the Basin Water Board may prescribe;
 - (e) observe conditions and regulations made under this Act;
 - (f) observe any special conditions that may be attached to the Water Use Permit;
 - (g) ensure efficient use of water ; and
 - (h) comply with section 60 of the Environment Management Act.

Cap 191

Position
when
volume
inadequate
to satisfy
all
permits
granted in
respect
thereof

49.—(1) Where in the opinion of the Basin Water Board, in any specified area, the volume of water to which Water Use Permits exist is insufficient to satisfy all such permits, the Basin Water Board may review the use, diversion, control and allocation of water in that area and in so doing may revise the quantity allowed by any Water Use Permit and the terms and conditions of any Water Use Permit to the use of water in that area.

(2) In revising Water Use Permits under subsection (1) the Basin Water Board shall have regard to-

- (a) the principle that where beneficial use of the whole permit has been maintained, no permit shall be cancelled or reduced except in proportion with all other permits granted for the same purpose, in the same area;
- (b) the minimum water requirements for the health and sanitation of the population; and
- (c) the minimum water requirements in terms of quality and quantity to sustain the aquatic ecosystem on the basis of available information.

50.—(1) The Basin Water Board may at any time, in respect of any Water Use Permit to the use of an unspecified quantity of water, specify the quantity of water for which that Water Use Permit applies and regard shall be given to the beneficial use of such water.

Situations where quantity or duration is unspecified

(2) The Basin Water Board may at any time in respect of any Water Use Permit granted prior to the entry into force of this Act for the use of water for an indefinite period of time, specify the duration of such water use permit.

(3) Any Water Use Permits modified pursuant to subsections (1) and (2) shall be recorded in the Water Register.

(b) *Recording of Unregistered Rights*

51.—(1) Any person who, for an uninterrupted period of more than five years, has abstracted and used water beneficially from such source for any purpose other than domestic purposes, without a permit or right for such use registered in the water register, shall be entitled to a Water Use Permit for such purpose upon application to the Basin Water Board provided that such application shall be made within two years after the commencement of this Act.

Recording of unregistered rights

(2) The Basin Water Board may, in accordance with this Act-

- (a) set any condition as may be deemed fit on the Water Use Permit to be issued under this section;
- (b) specify the amount of water which may be abstracted and used if the claim entails an unspecified amount of water; and
- (c) specify the duration of the Water Use Permit.

(3) Failure to apply for a Water Use Permit within two years after commencement of this Act shall result into the expiry of the entitlement to the permit under this section.

(4) No application fee shall be payable for a Water Use Permit application made under this section.

(5) An application under subsection (1) shall be subject to the procedures specified in section 75.

Incidents
of
custom-
ary
water
rights

52.—(1) Customary rights held by any person or community in a watercourse shall be recognised and is in every respect of equal status and effect to a granted right and shall, subject to the provisions of this Act, be-

- (a) capable of being recorded by a Basin Water Board in favour of an individual, a family, a group of two or more individuals whether or not are associated together under any law;
- (b) capable of being of indefinite duration, provided that the Basin Water Board may set a duration and the amount of water to be abstracted, upon the recording of such rights;
- (c) governed by customary law in respect of any dealings, between persons using the water source within the Basin Water Board having jurisdiction over the water resource or facility; and
- (d) may be subject to a premium or an annual payment, which may be varied from time to time.

(2) The procedure for the acquisition or variation of Water Use Permits under this Act shall apply *mutatis mutandis* to the acquisition or variation of recorded customary water rights.

Applica-
tion for
water use
permits
by
custom-
ary water
users

53.—(1) A person, a family unit, a group of persons recognised as such under customary law or who have formed themselves together as an association, cooperative society or as any other body recognised by any law which permits that body to be formed, may apply to the Basin Water Board for grant of a Water Use Permit.

(2) An application for a grant of a Water Use Permit shall be as prescribed under section 75 of this Act

(c) *Groundwater Permit*

54.-(1) Notwithstanding section 11(3), any person who intends to construct, sink, enlarge, or deepen a well or borehole in an Groundwater Controlled Area declared under section 38 or any other area, shall apply for a Groundwater Permit in accordance with this Act.

Duty to
apply for
a ground-
water
permit to
construct
or enlarge
wells

(2) The application for a Groundwater Permit shall be made in accordance with section 75.

(3) An application for a Groundwater Permit shall be construed as an application for the use of the water abstracted from such well or borehole in accordance with this Part of the Act, subject to inspection of the well or borehole by the Basin Water Board.

55.-(1) Any person who, contrary to the provisions of the Act, constructs, sinks or enlarges a well or borehole without a Groundwater Permit duly granted by the Basin Water Board commits an offence.

Offence
in
respect
of failure
to obtain
a ground-
water
permit

(2) Any person guilty of an offence under subsection (1) shall, on conviction be liable to a fine of not less than five hundred thousand shillings or imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and in every case where the offence is a continuing one to an additional fine of not less than fifty thousand shillings in respect of every case

56.-(1) No person shall be granted a Groundwater Permit for any well or borehole within distances prescribed under subsection (2) of this section.

Distance
limits for
sinking of
wells or
boreholes

(2) The Minister may, for any area of Mainland Tanzania, prescribe in regulations, the minimum distances for the sinking, enlargement or deepening of wells or boreholes.

57. Any person lawfully engaged in drilling or exploring activities shall keep and submit any relevant data on groundwater to the Basin Water Board.

Sub-
mission
of data to
the Basin
Water
Board

58. The holder of a special mining licence or a prospecting licences granted under the Mining Act, or a petroleum prospecting licence who encounters groundwater in any workings carried out under such licence shall-

Ground-
water
encoun-
tered in
mining
operations
Cap. 123

(a) promptly notify the Basin Water Board of any such waters;

- (b) submit any relevant data to the Basin Water Board;
- (c) take all such measures necessary for the protection of groundwater against pollution; and
- (d) comply with any directions of the Basin Water Board regarding the protection or disposal of such water.

Obliga-
tion
to seal a
well no
longer
in use

59. An operator of a well or borehole that has ceased to be in use shall-

- (a) adequately seal the well or borehole to prevent pollution and to prevent injury to any other person; and
- (b) promptly notify the Basin Water Board which upon receipt of such notification shall forthwith cancel the Groundwater Permit

Waste of
ground-
water

60.—(1) Subject to subsection (2) of this section, no person shall cause or allow any groundwater to run to waste from any borehole except for the purpose of testing the quantity or quality of the supply or cleaning, sterilising, examining or repairing the borehole.

(2) Where groundwater interferes or threatens to interfere with the execution or operation of any underground works, it shall be lawful under this subsection to cause or allow the water to run to waste so far as it is necessary for the works to be executed or operated, where no other method of disposing of the water is reasonably practicable.

Powers of
Basin
Water
Board in
relation to
aquifers

61.—(1) The Basin Water Board shall have power to-

- (a) determine the safe yield of any aquifer for the purpose of guiding determinations concerning the abstraction and use of water from the aquifer;
- (b) require that an aquifer be used on a sustainable basis including, but not limited to, restricting abstractions so that they do not individually or collectively exceed the safe yield of the aquifer;
- (c) impose special requirements and restrictions with respect to artesian wells, for the purpose of preventing waste or contamination of water, or loss of artesian pressure; and
- (d) carry out programmes for the recharge of aquifers.

(2) For the purposes of this section, "safe yield" means the amount of water which may be abstracted from an aquifer at a rate that shall not reduce the supply to such an extent as may render such abstraction harmful to the aquifer, to the quality of the water or to the environment.

62. The Minister shall, in consultation with relevant authorities, make regulations that require any person who undertakes works relating to groundwater prospecting, construction or enlargement of a well or borehole to be licensed and carried out in such manner and under such conditions as may be prescribed.

Power to regulate the profession of ground-water drilling

(d) *Discharge Permits*

63.—(1) A person who wishes to discharge effluents from any commercial, industrial or agricultural source or from any sewerage works or trade waste systems or from any other source into surface water or underground strata shall apply to the Basin Water Board for a Discharge Permit in accordance with this Act.

Discharge permit

(2) The application for a Discharge Permit shall be made in accordance with section 75 of this Act.

64.—(1) A person commits an offence who, unless authorised under the conditions of a Discharge Permit issued in accordance with this Part, causes or allows—

Offences in respect to water pollution

- (a) waste or effluent to come into contact with any water;
- (b) waste or effluent to be discharged directly or indirectly into water; or
- (c) water to be polluted by waste or effluent.

(2) The provisions of subsection (1), shall apply to any Discharge Permit containing conditions on the treatment or discharge of effluent.

(3) In any proceedings for an offence under subsection (1), proof of the existence of a pipe, drain, pond, pump or other means whereby waste may be conveyed, retained or deposited as to come into contact, directly or indirectly, with water, shall be *prima facie* evidence of pollution of that water.

(4) A person contravening the provisions of subsection (1), shall be liable on conviction—

- (a) to pay the cost of remedying the damage caused and reinstating the quality of the water, as far as is possible, to the condition that would have existed where the damage was not caused; and
- (b) to a fine of not less than three hundred thousand shillings or to imprisonment for a term not exceeding one year or to both fine and imprisonment and in case of subsequent conviction, to a fine not less than five hundred thousand

shillings or to imprisonment not exceeding two years or to both fine and imprisonment and in case of continuation of the offence, to an additional fine not less than fifty thousand shillings in respect of every day during which the offence has continued.

(5) Where a person fails to comply with the provisions of subsection (4) (a) the Basin Water Board may apply to court for an enforcement of the compliance with the provisions, and may enter any land and take such measures as may be necessary to ensure compliance with the provisions.

(6) In any proceedings under subsection (4) (a) of this section, the court may, on application by the Basin Water Board, require that person to pay into Court a sum not being less than eighty percent of the cost estimated by the Basin Water Board of remedying the damage caused and reinstating the quality of the water.

Water
quality
and
effluent
standards

65.—(1) Without prejudice to subsection (2), the Minister may by order published in the *Gazette* designate water quality laboratories responsible for freshwater resources to be laboratories which may, among other things, be used for analytical and reference for purposes of this Act.

(2) The Designated Water Quality Laboratories shall undertake assessment of water quality and analysis of waste water in accordance with water quality standards prescribed under the Environmental Management Act.

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(3) The water quality and effluent standards to be applied to the Discharge Permits shall be made and published by the Minister responsible for environment as national environmental quality standards under the Environmental Management Act.

(4) The holder of a Discharge Permit shall comply with the water quality and effluent standards formulated under subsection (3).

(5) In granting or renewing a Discharge Permit, the Basin Water Board shall have regard to any classification of any water resource made in accordance with section 32.

Condi-
tions to
be
attached
to a
discharge
permit

66. A Basin Water Board may attach any conditions to a Discharge Permit as it may deem fit and such conditions may determine-

(a) the nature, composition and volume of the effluent or other

- matter to be discharged;
- (b) the receiving water or underground strata into which effluents may be discharged;
- (c) measures to be taken for protecting water contained in other underground strata through which any well, borehole or pipe containing the effluent or other matter shall pass;
- (d) provision of facilities for inspection; and
- (e) provision of any other data related to the grant of the permit as the Basin Water Board may specify.

67.—(1) Where an application for a Discharge Permit relates to an outfall from which pollutants are already being discharged, the Basin Water Board may grant a provisional permit to discharge, authorising the continuation of a discharge subject to such terms and conditions as may be prescribed in the provisional permit.

Provi-
sional
discharge
permit

(2) The provisional permit granted under subsection (1) of this section shall expire upon a final decision with regard to the grant of a permit to discharge by the Basin Water Board.

68. No person to whom a Discharge Permit has been granted under section 66, may discharge into underground strata or groundwater recharge area.

Prohibi-
tion on
discharge
to
ground-
water

(e) *General Provisions Relating to Water Use, Groundwater and Discharge Permits*

69.—(1) Any person who is the holder of a water right or permit to discharge effluent or a permit to construct, sink, enlarge or deepen a well or borehole issued under the Water Utilization (Control and Regulation) Act, shall be entitled to a Water Use Permit, Discharge Permit or Groundwater Permit under this Act for such purpose upon application to the Basin Water Board provided that such application shall be made within two years after the commencement of this Act.

Entitle-
ment to
an
existing
right or
permit

Cap. 331

(2) The Basin Water Board may, in accordance with this Act-

- (a) set any condition as may be deemed fit on the Permit to be issued under this section;
- (b) specify the amount of water which may be abstracted and used or the volume of effluent discharged if the claim entails an unspecified amount of water; and
- (c) specify the duration of the Water Use Permit.

Cap. 331

(3) Failure to apply for a Water Use Permit, Discharge Permit or Groundwater Permit within two years after commencement of this Act shall result in the expiry of such rights as were granted under the Water Utilization (Control and Regulation) Act.

(4) A nominal application fee shall be payable for a permit application made under this section.

(5) An application under subsection (1) shall be subject to the procedures specified in section 75.

Duration
of a water
use
permit or
a
discharge
permit

70. In granting a Water Use Permit or a Discharge Permit, the Basin Water Board shall define a reasonable duration for such Permit, while considering-

- (a) the purpose for which the water is to be used or effluent is discharged; and
- (b) the amount of monetary investment related to the use of water or effluent discharge and a reasonable period of time normally required to recover such investment.

Variation
of a
permit
with
consent

71.—(1) A Basin Water Board may, at any time on the application or with the consent of the holder of a Water Use Permit or a Discharge Permit, determine or diminish such Water Use Permit, or vary any of its conditions in the event that-

- (a) the source does not satisfy the demands;
- (b) the grantee has not used the permit in three consecutive years; or
- (c) the discharge of effluents may be injurious to the public.

(2) The consent under subsection (1) shall not be unreasonable withheld.

Declara-
tion for
public
purpose

72.—(1) In the general interest of the public, the Minister may declare water to be required for a public purpose for any river basin or sub-basin.

(2) Water shall be deemed to be required for a public purpose where it is required for any of the following uses-

- (a) the supply of water to any city, municipality, township, minor settlement or rural area;
- (b) fire fighting;
- (c) the protection of ecosystems within protected areas of Mainland Tanzania; or
- (d) providing for disasters.

(3) Where a Basin Water Board is satisfied that it is required for a public purpose to determine or diminish a Water Use Permit or a Discharge Permit, the Board may, by notice in writing addressed to the holder of such permit, determine or diminish that permit to the extent that such determination or diminution is required for the aforesaid public purpose, and thereupon the permit shall cease or shall be exercisable only as so varied, as the case may be.

(4) The holder of any permit determined or diminished under the provisions of this section shall be entitled to compensation pursuant to section 107.

73.-(1) The Minister may make regulations that allow persons who hold a Water Use Permit or a Discharge Permit or a Groundwater Permit to transfer such permit to another person, provided that-

Transfer
of
permits

(a) such transfer shall be subject to approval of the Basin Water Board;

(b) all terms and conditions under which a transfer of a permit has been agreed shall be submitted to the Basin Water Board with the application for approval;

(c) in case a transfer is approved by the Basin Water Board, the conditions subject to which the permit was granted may be modified; and

(d) water shall be used for the same purpose as prescribed in the permit after the transfer of a permit to the use of such water.

(2) No transfer shall be approved if it is in contravention of a Water Resources Management Plan made under section 31.

(3) The Minister may, by Order published in the *Gazette*, decide to apply the regulations made under subsection (1) to a limited area within Mainland Tanzania.

(4) The power provided under subsection (1) shall not be exercised until after the terms and deadlines for the registration of non-registered rights have expired.

(5) The Basin Water Board may approve the temporary or permanent transfer of a Water Use Permit that has been made appurtenant to land, provided that the application for such approval is made by the holder of the Right of Occupancy granted under the Land Act, or the Villages Land Act.

Caps. 113
and 114

(6) The transfer, for a limited period of time, of a Water Use Permit that has been made appurtenant to land, shall not affect the appurtenance of the Water Use Permit to that land.

(7) A Water Use Permit granted for agricultural purposes may be transferred temporarily for a period not exceeding one year.

(8) Permits issued pursuant to this Part shall pass on to a successor-in-title to the named permit holder, provided that passage of the permit to a successor-in-title shall not extend the term of duration of the permit.

Condi-
tions to
be
attached
on water
use and
discharge
permits

74. Without prejudice to the provisions of sections 48 and 66, a Basin Water Board may attach any condition to a Water Use Permit or a Discharge Permit as may be deemed fit, and such conditions may require-

- (a) the conduct of an Environmental Impact Assessment;
- (b) the membership of a water users association as provided for in Part VIII of this Act;
- (c) the payment of compensation to any other person;
- (d) the construction of works, including technical specifications thereof;
- (e) the variation of volumes of water taken or effluents discharged depending on the seasonal variation of flows in the water resources;
- (f) the payment of fees for the use of water in the amount prescribed by the Basin Water Board,; and
- (g) the payment of fees for the discharge of effluents in the amount prescribed by the Basin Water Board.

Applica-
tion
procedure

75.-(1) Application for a Water Use Permit or a Groundwater Permit or a Discharge Permit shall be made in the form and in accordance with the procedure prescribed by the Minister in the *Gazette*.

(2) An interested person may notify the Water Officer that he objects to the grant of a water right and may specify the grounds for such objection and shall, if so required, have a right to be heard by the Basin Water Board.

Determi-
nation for
breach of
condi-
tions of a
permit

76.-(1) The Basin Water Board may by notice in writing addressed to the holder declare any permit to be in breach of the conditions of a permit where the holder of a permit has-

- (a) failed to comply with any condition, express or implied, subject to which the permit was granted;

- (b) abstracted or used water in excess of that authorised or has used water for a purpose not authorised by the permit;
- (c) discharged effluents in excess of the levels authorised under a Discharge Permit; and
- (d) constructed any well or borehole, or enlarged or deepened any well or borehole in breach of any conditions or specifications in a Groundwater Permit.

(2) Where the default is one capable of being remedied, the Basin Water Board shall first serve on the holder notice in writing specifying the default and requiring the holder to remedy the same within such reasonable time as may be specified in the notice.

77.—(1) Where at any time a Basin Water Board has reason to believe that the holder of a permit under this Act has not, during the preceding three years, made full beneficial use of that permit, the Basin Water Board may by notice in writing addressed to such holder call upon him to show cause why such permit shall not be determined or diminished or modified in such respects as may be specified in the notice.

Notice to
show
cause for
misuse of
a permit

(2) Where within three months of the service of such notice no reply has been received by the Basin Water Board, the permit may be declared determined or diminished or modified, as the case may be.

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

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

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

(f) *Water Register*

Keeping
of a
Water
Register
by Basin
Water
Boards

78.—(1) Every Basin Water Board shall keep a Water Register for the registration of—

- (a) every grant or renewal of a Water Use Permit and of the variation, determination or modification or suspension of such Water Use Permit;
- (b) every grant or renewal of a Discharge Permit made by the Board and of the variation, determination or modification or suspension of such Discharge Permit;
- (c) every grant or renewal of a Groundwater Permit made by the Basin Water Board and of the variation, determination or modification or suspension of such Groundwater Permit;
- (d) any easement created or determined by the Board; and
- (e) any Water Users Association established under Part VIII.

(2) Any person shall, on application to a Basin Water Board, be entitled to receive certified extracts from the Water Register maintained by such Basin Water Board under subsection (1), upon payment of prescribed fees.

(3) Extracts from any Water Register under subsection (1) certified to be under the hand of a Basin Water Board shall be admissible in evidence in all legal proceedings, civil or criminal, without proof that they are under the hand of the Basin Water Board purported to have certified the same and shall also be conclusive prima facie evidence of recorded facts.

(4) The entry of any easement in a Water Register under subsection (1) shall not affect any requirements as to registration contained in, or be construed as being an effective registration for the purposes of, or in lieu of registration under the provisions of the Registration of Documents Act and Land Registration Act.

(5) Notwithstanding the specific provisions of subsection (1), the Water Register shall also contain copies of—

- (a) any rules or regulations made under this Act; and
- (b) annual reports, audited accounts and auditors' statements of the Basin Water Board.

79.—(1) The Director of Water Resources shall establish a National Water Register of Water Use Permits, Discharge Permits, Groundwater Permits, easements granted under this Act, and Water Users Associations established under this Act.

Keeping
of a
National
Water
Register

Caps. 117
and 334

(2) Every Basin Water Board shall supply without delay to the National Water Board a copy of every entry made in the Water Register and shall, upon application being made to the Director of Water Resources by any Basin Water Board or public officer, forthwith provide without fee a copy of any entry in the National Water Register.

(3) Notwithstanding the specific provisions of subsection (1), the National Water Register shall also contain copies of-

- (a) any rules or regulations made under this Act;
- (b) annual reports, audited accounts and auditors' statements of the Basin Water Boards; and
- (c) such other records or information as may be required by the Minister.

PART VIII

WATER USERS ASSOCIATIONS

80.—(1) A Water Users Association may be formed by the agreement of the majority of a group of water users for one or a combination of the following purposes to-

- (a) manage, distribute and conserve water from a source used jointly by the members of the water users association;
- (b) acquire and operate any Permit under the provisions of this Act;
- (c) resolve conflicts between members of the association related to the joint use of a water resource;
- (d) collect water user fees on behalf of the Basin Water Board; and
- (e) represent the special interests and values arising from water used for a public purpose, such as in an environmental or conservation area, or for the purpose of managing a Groundwater Controlled Area.

(2) The Association of water users for the purpose of subsection (1) shall comprise of any user of water from a common stream irrespective of the purpose of that use.

81.—(1) Water users intending to form an association shall prepare a Constitution in the form set out in the Fourth Schedule and submit such Constitution to the Basin Water Board for approval in accordance with the procedure as the Minister may prescribe in regulations made under this Act.

(2) Upon request of a group of water users intending to establish an

Establishment and purposes of a water users association

Approval and registration of water users associations

Association, the Basin Water Board shall provide assistance in formulating the Constitution.

(3) Members of the water users Association shall elect a Management Committee for each association which shall be the executive organ of the Association and shall be elected and have the powers as set out in the Constitution prepared under subsection (1).

Registration of water users associa-

82.-(1) Upon approval of the Constitution by the Basin Water Board, the Association shall be registered in the Water Register maintained by the Basin Water Board.

(2) With effect from the date of registration in the Water Register, all water users within the area of an association as defined in the Constitution shall be required to become members of the association and shall be bound by the Constitution.

(3) The Basin Water Board shall cause membership of an association to be recorded on the Water Use Permit of each member issued in accordance with Part VII of this Act and in the Water Register maintained by the Basin Water Board.

Power of Basin Water Board to give directions

83.-(1) In any case where the Basin Water Board is satisfied that the Association does not perform its functions satisfactorily, it may give directions to the Association relating to the performance of its functions.

- (2) The directions referred to under subsection (1) may relate to-
- (a) the division and distribution of water amongst the members of an association;
 - (b) the management and protection of any water source;
 - (c) the drainage of the land where water is used; and
 - (d) any other matter which the Basin Water Board considers necessary or desirable.

PART IX

PROVISIONS RELATED TO WATER RESOURCES MANAGEMENT WORKS

Powers of Basin Water Boards to undertake works

84.-(1) Subject to the provisions of this Act and the Water Resources Management Plan, a Basin Water Board may for purposes of sustainable development of water resources or the performance of any of its functions under this Act-

- (a) construct, use or operate any works; and
- (b) divert, extract and impound the water from any water course or borehole or alter the course of any water course.

(2) Any land need for purposes of subsection (1) may be acquired in accordance with the procedures stipulated under the Land Acquisition Act and the Land Act.

Cap
Nos. 118
and 113

85. Where a Basin Water Board has granted a Water Use Permit or a Discharge Permit subject to the construction or alteration of works, the Basin Water Board shall have powers to monitor and enforce the requirement for such construction or alteration of works in accordance with regulations made by the Minister.

Powers of
basin
water
boards in
respect of
permits
conditional
on
construc-
tion of
works

PART X DAM SAFETY AND FLOOD MANAGEMENT

86. In this Part—

"approved professional person" means a person capable of undertaking dam safety and risk analysis and is registered in terms of Engineers Registration Act, and the Construction Registration Act and approved by the Director after consultation with Engineers Registration Board and the Contractors Registration Board and appropriate statutory bodies;

Interpre-
tation

Caps. 63
and 235

"dam" includes any existing or proposed structure which is capable of containing, storing or impounding water, including temporary impoundment or storage, whether that water contains any substance or not;

"dam with a safety risk" means any dam—

- (a) which can contain, store or dam more than 50,000 cubic metres of water, whether that water contains any substance or not, and which has a wall of a vertical height of more than five metres, measured as the vertical difference between the lowest downstream ground elevation on the outside of the dam wall and the non-overspill crest level or the general top level of the dam wall;
- (b) tailings dam which impounds a mine whose principal use is for storage of mine tailings, but may have secondary use for the storage of mine process water; or
- (c) belonging to a category of dams declared under section 91 to be dams with a safety risk.

"owner of a dam" includes the person in control of that dam;

"tailings" means fine materials in suspension which are discharged from an ore concentrator or coal washing plant;

"tailings dam" means a structure constructed to create a tailings pond for storing mining tailings and process water; and

"task" includes a task relating to designing, constructing, altering, repairing, impounding water in, operating, evaluating the safety of, maintaining, monitoring or abandoning a dam with a safety risk.

Blockage
of water-
courses

87.—(1) No person shall engage in any construction activity that blocks or otherwise impedes the flow of water in a watercourse unless a permit authorizing the activity has been obtained in accordance with the provisions of Part VII.

(2) The Director or Basin Water Officer may take all reasonable measures to remove or to mitigate the effects of an unauthorised blockage of a watercourse and may recover the cost of such measures from the person or persons responsible for the blockage.

(3) Any person responsible for causing unauthorised blockage of a watercourse shall be responsible for any damage to persons, property, or the environment caused by the unauthorised blockage, which damage shall be determined and assessed by a court of law.

(4) The Director or Basin Water Officer may bring an action for damage against any person or persons responsible for the blockage of a watercourse, for the purpose of compensation for any damage to the environment and other uses down stream caused by the blockage.

Control
measures
for dams
with
safety
risk

88.—(1) The owner of a dam shall-

(a) before submitting an application for a Water Use Permit in accordance with the provisions of Part VII or within the period specified, provide the Basin Water Officer and the Director with-

- (i) any information, drawings, specifications, design assumptions, calculations, documents and test results requested by the Director or the Basin Water Officer;
- (ii) a copy of the statement and certificate issued in accordance with the provisions of Part V of the Environmental Management Act; and

(b) give any person authorised by the Director access to that dam, to enable that authorized officer to determine whether-

- (i) that dam has safety risk;

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- (ii) that dam shall be declared to be a dam with a safety risk;
 - (iii) a directive shall be issued for specific repairs or alterations to that dam; or
 - (iv) the owner has complied with any provisions of this Act applicable to that dam.
- (2) The Director may by notice in the *Gazette* declare a category of dams to be dams with a safety risk.
- (3) The Director may direct the owner of a dam with a safety risk to—
- (a) submit, at the owner's cost, and within a period specified by the Director, a report by an approved professional person regarding the safety of that dam; and
 - (b) undertake, at the owner's cost, and within a period specified by the Director, any specific repairs or alterations to that dam which are necessary to protect the public, property or the resource quality from a risk of failure of the dam.
- (4) The Director shall afford affected persons the opportunity to petition for the review and evaluation of any dam reasonably believed to be a dam with a safety risk and shall provide the owner of any dam that is the subject of such a petition, a right to respond.
- (5) Where the owner of the dam fails to comply with the directive contemplated in subsection (3)(b), within the period specified, the Director may undertake the repairs or alterations and recover the costs from the owner.
- (6) Before issuing a directive, the Director shall—
- (a) be satisfied that the repairs or alterations directed are necessary, adequate, effective and appropriate to reduce the risk to an acceptable level; and
 - (b) consider the impact on public safety, property, the resource quality and socio-economic aspects if the dam fails.
- 89.—(1) When carrying out a task in terms of this Part, an approved professional person shall equally assume the duty of care towards the Government and the general public.

Responsi-
bilities of
approved
profes-
sional
persons

(2) An approved professional person appointed to carry out a task on a dam shall-

- (a) ensure that the task is carried out according to acceptable dam engineering practices;
- (b) keep the prescribed records;
- (c) compile the prescribed reports; and
- (d) where the task includes constructing, altering or repairing a dam, issue a completion certificate to the owner of the dam to the effect that the task on that dam has been carried out according to the applicable design, drawings and specifications.

(3) An approved professional person appointed to carry out a dam safety evaluation shall-

- (a) consider whether the safety norms pertaining to the design, construction, monitoring, operation, performance and maintenance of the dam satisfy acceptable dam engineering practices; and
- (b) compile a report on the matters contemplated in subsection (3) (a) according to the prescribed requirements and submit the signed and dated report to the owner of the dam within the prescribed period.

Registra-
tion of
dams with
safety
risk

90.—(1) The owner of a dam with or without a safety risk shall be required to register the dam.

(2) An application for registration of a dam shall be made within one hundred and twenty days-

- (a) after the date on which the dam becomes capable of containing, storing or impounding water;
- (b) after the date on which an already completed dam is declared to be a dam; or
- (c) after publication of a notice declaring a category of dams to be dams with a safety risk as the case may be.

(3) A successor-in-title to the owner of a dam with or without safety risk shall promptly inform the Director of the succession for the substitution of the name of the owner.

91.—(1) In declaring a category of dams or a dam to be a category of dam or a dams with a safety risk, the Director shall consider-

- (a) the need to protect the public, property and the resource quality against the potential-hazard posed by the dam or category of dams;
- (b) the extent of potential loss or harm involved;
- (c) the cost of any prescribed measures and whether they are reasonably achievable;
- (d) the socio-economic impact if such a dam fails;
- (e) in the case of a particular dam the Director shall also consider-

- (i) the manner in which that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned;
- (ii) the person by whom that dam is designed, constructed, altered, repaired, operated, inspected, maintained or abandoned; and
- (iii) the manner in which the water is contained, stored or impounded in that dam.

Factors
to be
considered
in
declaring
dams with
safety
risk

92.—(1) The Minister may, on the recommendation of the Director, exempt a dam belonging to a certain category, by notice in the *Gazette*, from compliance with any provision of this Part or any regulation made under this Act, on conditions determined by the Minister.

Exemptions

(2) The Minister may withdraw the exemption or impose further or new conditions in respect of the exemption.

(3) Before deciding on an exemption, the Director shall consider-

- (a) the degree of risk or potential risk posed by the dam or category of dams to public safety, property and the resource quality;
- (b) the manner of design, construction, alteration, repair, impoundment of water in, operation or abandonment of the dam or category of dams;
- (c) the supervision involved in the dam or category of dams;
- (d) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water in, inspection or abandonment of the dam or category of dams and the effectiveness of these measures;

- (e) the knowledge and expertise of the persons involved in any task relating to the dam or category of dams;
- (f) comments solicited from the surrounding communities;
- (g) the costs relating to the dam or category of dams;
- (h) any security provided or intended to be provided for any damage which could be caused by the dam or category of dams;
- (i) recommendations made in an environmental impact assessment or an environmental audit report; and
- (j) whether the dam or category of dams are permitted in terms of a license or any other authorization issued by or under any other law.

Review
of Dam
facilities

93.—(1) The owner of the dam with or without safety risk shall carry out the comprehensive facility review after every five years.

(2) Where an earthquake or a land slide has occurred proximate to a dam, the owner of the dam shall carry out a periodic review of the dam.

(3) After carrying out a comprehensive facility review or a periodic facility review, the owner of the dam shall submit a report to the Director.

(4) The Director shall review the report and issue directives to owner of the dam on remedial measures to be taken to remedy any risk.

Regula-
tions
regarding
dam safety
and
prevention
of flood
risk

94.—(1) The Minister may, in relation to dam security and safety make regulations in respect of—

- (a) the establishment of a register of approved professional persons to inspect and monitor dams with a safety risk;
- (b) the provision for technical audit of the work of approved professional persons;
- (c) classifying dams into categories;
- (d) providing for the construction, maintenance and repair of dams;
- (e) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and in the manner prescribed;
- (f) requiring the registration of a specific dam with a safety risk,

and setting out the procedure and the processing fee payable for registration;

- (g) requiring an approved professional person appointed for a specific purpose for a specific dam to submit information, drawings, reports and manuals;
- (h) requiring the owner of a dam with a safety risk to accomplish regular monitoring of the dam, to the extent and manner prescribed; and
- (i) specifying time periods that shall be complied with.

(2) In making Regulations under subsection (1), the Minister shall consider-

- (a) the expertise required for the effective design, construction, alteration, repair, operation, maintenance and abandonment of a dam in the category concerned; and
- (b) the qualifications and experience needed to provide the expertise for a particular category of tasks.

(3) Before making Regulations under subsection (1), the Minister shall consult the Contractors Registration Board, established under the Contractors Registration Act, the Engineers Registration Board established under the Engineers Registration Act, and any other appropriate statutory bodies.

Cap.
Nos. 63
and 235

95. For the purpose of preventing or minimising the risk of flooding, flood damage and water pollution, the Minister may-

Measures
for flood
mitigation
and
control

- (a) prohibit the construction on submersible lands of dikes, levees or other structures likely to hinder the runoff of floodwater; provided that authorisation may be granted for the development of such structures if they are determined to be necessary for the protection of already existing residences or other private structures;
- (b) alter or demolish dikes, embankments, levees, structures or other works, irrespective of their legal status, if they are determined by the Minister to hinder water runoff or to extend the flood plain with harmful results;

- (c) prohibit the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protective dikes, embankments or levees;
- (d) cooperate with local government authorities in determining the geographic extent of floodplain areas and assist such authorities in regulating the development and use of lands within such areas; and
- (e) in consultation with the Minister responsible for local government, develop regulations providing for the control and management of storm water within municipal areas.

PART XI

FINANCIAL PROVISIONS

Water
abstraction
charges

96.—(1) The Basin Water Boards may, by notice in the *Gazette*, announce charges to be levied in respect of—

- (a) water abstraction;
- (b) effluent discharge;
- (c) payment for environmental services;
- (d) granting of permits required under this Act; and
- (e) any other matter for which the Basin Water Board considers charges shall be made pursuant to this Act.

(2) The water abstraction charges that may be announced by the Basin water Boards shall, among other things be based on a pricing strategy that take into consideration of—

- (a) the need to differentiate among geographical areas, categories of water uses and water users;
- (b) the need to achieve an equitable and efficient allocation of water and water conservation;
- (c) the compliance with prescribed standards and water management practices based on the user pays and polluter pays principles;
- (d) the need to provide for incentives for timely payment of the charges and disincentives for non-payment; and
- (e) the value of water by using economic parameters such as inflation rate, market values and opportunity costs of water.

(4) The Minister shall make Regulations and guidelines on charges to be levied under this section.

97. The charges collected shall be used for-

Use of
water
charges

- (a) financing water resources management, including costs of
 - (i) gathering information;
 - (ii) monitoring water resources and their use;
 - (iii) controlling water resources;
 - (iv) water resources protection, including controlling the discharges of waste water; and
 - (v) the protection of the water sources and water conservation;
- (b) funding of water resources development and construction of waterworks, including-
 - (i) the costs of investigation, designing, planning and construction;
 - (ii) the pre-financing of development; the costs of operation and maintenance of waterworks; and
 - (iii) the costs of water distribution and ensuring equitable and efficient allocation of water; and
 - (iv) carrying out any other activities or measures for purposes of improving water resources management and catchment conservation by the local government authorities, the Basin Water Boards, the Catchment Water Committees, and the Water Users Associations.

PART XII

TRANS-BOUNDARY WATERS

98.— (1). The Minister may develop policies and strategies for the purpose of ensuring sustainable, equitable utilisation and management of trans-boundary waters.

Policies,
strategies
and
legislation
in respect
to trans-
boundary
waters

(2) Where, the United Republic is a party to international or regional agreement concerning the management of trans-boundary waters the Minister shall—

- (a) initiate and prepare legislative proposals for purposes of implementing those agreements; and

- (b) identify appropriate measures necessary for the implementation of those agreements.

(3) The Director of Water Resources shall keep a register of all international and regional agreements concerning the utilisation and management of trans-boundary waters to which the United Republic is a party.

Minister
and
manage-
ment of
trans-
boundary
waters

99. The Minister may, in relation to trans-boundary waters-

- (a) participate with neighbouring riparian states in the establishment and continuing development of a common database regarding the use of trans-boundary waters;
- (b) engage in the joint management planning and development of joint projects including but not limited to inter-basin transfers with other riparian states within the trans-boundary waters for the purpose of promoting economic growth, equitable utilisation of water resources, environmental integrity and common understanding;
- (c) establish and promote cooperation and institutional relationships between river basin organisations within Mainland Tanzania and international river basin organisations;
- (d) ensure stakeholder participation as part of the development of the Government's position concerning trans-boundary waters;
- (e) develop and improve capacity of Mainland Tanzania for participation in shared water resource consultations and international river basin organizations;
- (f) establish or participate in the establishment of mechanisms for the prevention, management and resolution of disputes relating to trans-boundary waters; and
- (g) undertake any other activity in relation to trans-boundary beneficial to Mainland Tanzania.

Collection
of data and
informa-
tion on
trans-
boundary
waters

100. The Minister, in performing his functions in respect to trans-boundary waters, shall cause to be collected and analysed all the relevant data and information including, inter alia:-

- (a) the water balance for each trans-boundary water that compares forecasted water demand with data and information regarding water availability;

- (b) the volume of water abstracted and beneficially used within Mainland Tanzania and other riparian states from each trans-boundary waters;
- (c) the nature of the beneficial uses within Mainland Tanzania supported by each trans-boundary waters, including the economic value of the uses;
- (d) the number of persons within Mainland Tanzania who rely upon each trans-boundary waters for domestic, agricultural, commercial or industrial purposes;
- (e) the relevant date or dates upon which the abstraction of water from each trans-boundary waters for beneficial use within Tanzania commenced;
- (f) the availability and reliability of alternative sources of water to support existing beneficial uses within Mainland Tanzania in the event abstractions from a trans-boundary waters are curtailed;
- (g) anticipated increases in demand for water from each trans-boundary waters reasonably expected to occur within Mainland Tanzania in the foreseeable future;
- (h) the volume and composition of waste discharged from within Mainland Tanzania into each trans-boundary waters;
- (i) the relevant date or dates upon which the discharge into each trans-boundary waters commenced;
- (j) the environmental integrity of trans-boundary waters and likely environmental threats including water pollution in the foreseeable future; and
- (k) the availability and reliability of alternative means of waste disposal within Mainland Tanzania in the event discharges into trans-boundary waters are curtailed.

PART XIII

OFFENCES, PENALTIES AND JUDICIAL PROCEEDINGS

101. Any person who assaults, threatens, resists, obstructs, hinders, delays or allows any person so to do to an authorised officer or person in the performance of his powers, functions or duties under this Act, commits an offence, and on conviction, shall be liable to a fine of not less than five hundred thousand shillings and not more than ten million shillings or imprisonment for a term of not less than one year but not more than two years or to both and shall in addition, be liable to pay compensation sufficient to cover any damage which the authorised officer or other person may have suffered as a result of the offence.

Offence
to
assault,
threaten,
resist,
hinder or
delay an
authorised
officer

Miscellaneous
offences
and
penalties

102.—(1) Any person who in order to procure the grant of a Permit under this Act wilfully makes any statement knowing the same to be false in any material particular or not having reason to believe the same to be true commits an offence and shall be liable upon conviction to a fine of not less than five hundred thousand shillings and not more than five million shillings or to imprisonment for a term not less than one and not more than two years or to both.

(2) Any person who constructs or extends any works contrary to this Act or fails, without reasonable excuse, to comply with a requirement made under Sections 48 and 66 or wilfully obstructs, damages or destroys any works or destroys, defaces or moves any level mark, beacon or other structure or appliance or obstructs, molests or hinders any authorized officer in the lawful exercise of his powers or duties under this Act, commits an offence and shall be liable upon conviction to a fine of not less than five hundred thousand shillings and not more than one million shillings or to imprisonment for a term of not less than three months and not more one year, or to both, in the case of a second or subsequent conviction, to a fine of not less than one million shillings or to imprisonment for a term not exceeding three years, or to both and in every case where the offence is a continuing one, to an additional fine of not less than fifty thousand shillings in respect of every day during which the offence continues.

(3) Any person who, on being required to give information under any provision of this Act, or under any regulation made under this Act, refuses without reasonable excuse to give such information or gives information knowing the same to be false, or having reason to believe the same not to be true, commits an offence and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding two years or to both.

Water
pollution

103. Any person who pollutes the water in any river, stream or water course or in any body of surface water to such extent as to be likely to cause injury directly or indirectly to public health, to livestock or fish, to crops, orchards or gardens which are irrigated by such water or to any products in the processing of which such water is used commits an offence and shall be liable on conviction to a fine of not less than one million shillings and not more than ten million shillings or to imprisonment for a term of not less than six months but not more than two years or to both and in case of subsequent conviction, to a fine not exceeding five

million shillings or to imprisonment for a term not exceeding two years or to both and in case of continuation of the offence, to an additional fine not exceeding fifty thousand shillings in respect of every day during which the offence continues.

104.-(1) Where the Basin Water Board is satisfied that evidence is available that may reasonably support the bringing of charges against a person for an offence with a fine not exceeding five hundred thousand under this Act, and if that person admits in writing to the offence, the Basin Water officer may compound the offence by accepting from that person-

Com-
pounding
of
offences

- (a) a sum of money as fine specified for the offence, together with all reasonable expenses the Basin Water Board may have incurred in the inspection, taking and analysis of samples and measurements in connection with the offence; and
- (b) payment of all fees and charges which may have been due if the action had been authorized under this Act.

(2) The compounding of an offence by any party under this section shall be a bar to any further criminal proceedings in respect of the offence.

105.-(1) Where any person is convicted of an offence under this Act and another person has suffered harm or loss as a result of the act or omission constituting the offence, or damage has been caused to a water source or works, the court may, in the same proceedings-

Compe-
nsation
for
harm, loss
or damage
suffered

- (a) at the written request of the person who suffered the harm or loss;
- (b) at the written request of the Minister or a water management institution in respect of the damage caused to a water source or works; or
- (c) in the presence of the convicted person, enquire without pleadings into the harm, loss or damage and determine the extent thereof.

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

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

- (c) order the remedial measures to be implemented, be undertaken either by the accused or the relevant water management institution.

PART XIV
APPEALS

Appeals'
regula-
tions

106.-(1) The Minister may, by regulations published in the *Gazette*, prescribe the procedure of making and hearing appeals arising from decisions of the Basin Water Boards and may, for that purpose, establish an Appeals Committee or committees to be known as the "appellate authority" and provide for the exercise of the powers and the regulation of the procedure, of the Appeals Committee or committees, as the case may be.

(2) Any person may appeal to the appellate authority who is aggrieved by-

- (a) the refusal of a Basin Water Board to grant or renew any Permit under this Act;
- (b) the determination, diminution, modification, suspension of such Permit or by the duration for which the Permit was granted;
- (c) the grant of or refusal to grant any easement or by the conditions subject to which any easement is created;
- (d) any requirement that any work is to be constructed, repaired, added to, altered, demolished or destroyed, or that the use of any works be changed;
- (e) a direction regarding the protection or disposal of groundwater;
- (f) a refusal of a Basin Water Board to approve and register the Constitution of a Water Users' Association;
- (g) a direction of the Basin Water Board issued under Section 83;
- (h) any conditions imposed by the Basin Water Board when granting or renewing any permit under this Act; and
- (i) any such matters as the Minister may subject to this Act, prescribe in the regulations.

(3) The decision of the appellate authority in the matter shall be

final, except that any person submitting an appeal to the appellate authority may appeal against the decision of the appellate authority to the Resident Magistrates' Court or a District Court-

- (a) on a question of law; or
- (b) on the amount of any compensation or costs awarded.

(4) Notwithstanding the provisions of subsection (1), no person may appeal against the grant or renewal of a permit or the grant of any easement, who did not make objection to such grant or renewal to the Basin Water Board in accordance with the procedures prescribed by the Minister.

PART XV

MISCELLANEOUS PROVISIONS

107.—(1) Compensation shall not be payable under any section of this Act unless a written claim has been lodged with the responsible Basin Water Board within one year of either the claimant learning of the action giving rise to the claim, or the completion of any works in respect of which compensation is sought, whichever is the later. Compe-
nsation

- (2) A claim for compensation shall contain the following particulars-
- (a) the claimant's name and address;
 - (b) a description of the land in respect of which the claim is made;
 - (c) a statement of the claimant's interest in the land;
 - (d) the nature and extent of the interest of any other person in the land;
 - (e) the damage alleged to have been caused to the land or loss of economic benefit;
 - (f) the particulars of any damage; and
 - (g) the total amount of claim.

(3) Upon consideration of the application for compensation the Basin Water Board, may award compensation in the form of-

- (a) payment of money;
- (b) the remission of rates, charges or fees payable to the Basin Water Board; Cap. 331
- (c) the diminution of any outstanding debt arising out of this Act or the Water Utilization (Control and Regulation) Act, and

(d) any other type of award which the Basin Water Board may consider appropriate.

(4) The Basin Water Board shall within three months notify the claimant of its decision on a claim made under subsection (3) and any person aggrieved by the decision of the Basin Water Board may appeal in accordance with the provisions of Section 106.

(5) Any compensation due under this section which remains unpaid may be recovered in a civil debt.

Service of
notice

108. A notice under this Act shall be deemed to have been served on, or given to, any person if-

- (a) served on him personally, and the recipient has signed for the receipt of the notice;
- (b) left for him at his last known address; or
- (c) sent by registered post addressed to his last known address.

Civil
liability
not to be
affected

109. Subject to any express provisions in this Act, nothing contained in this Act shall affect the civil liability of any person for any damage resulting from the-

- (a) construction, alteration or destruction of any works or the failure to maintain the same in proper repair;
- (b) obstruction, storage or diversion of any water; and
- (c) discharge of any effluent authorized by the Basin Water Board by a permit to discharge.

Indemnity
and
liability
Cap Nos.
16 and 76

110.-(1) Without prejudice to the provisions of section 284A of the Penal Code, the Public Officers (Recovery of Debts) Act and the relevant provisions of this Act, no member of the Basin Water Board or a Catchment or Sub-catchment Water Committee, or an officer of these Boards and Committees or any authorized officer shall be personally liable for any act or default which is done or omitted to be done in good faith in the exercise or purported exercise of the powers conferred by this Act.

(2) Notwithstanding the provisions of subsection (1) a member of the Basin Water Board or a Catchment or Sub-catchment Water Committee, or an officer of the Board and Committee or any authorized officer may be held liable for acts done contrary to this Act or for omission

in implementing the provisions of this Act.

111.-(1) The Minister may make regulations prescribing anything which may be prescribed under this Act.

Power to
make
regulations
Caps.
334, 117
and 281

(2) Without prejudice to the generality of subsection (1), the regulations may-

- (a) prescribe the registers and records to be kept and the manner in which they are to be kept;
- (b) provide 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;
- (c) provide for the advertisement of applications for the use of water and for the giving of notice to interested persons;
- (d) provide for and regulate the making of objections to a Basin Water Board and the time within which such objections shall be made;
- (e) prescribe the quorum of, and the procedure to be adopted by a Basin Water Board, the manner in which and the extent to which it shall receive evidence and hear arguments by objectors and others, and the manner in which they shall record their findings;
- (f) provide for the transfer, to the land register under the Land Registration or to a register maintained under the Registration of Documents Act particulars of easements which were registered in the Water Right record maintained under the Water Utilization (Control and Regulation) Act, and which subsist on the date upon which this Act comes into operation;
- (g) provide for regulating the procedure for making applications for the grant of Permits, the making of objections to any such application, the making of appeals against refused applications or conditions imposed on any Permits granted, and any other matters related to the grant of any Permit under this Act;
- (h) provide for regulating the procedure for the preparation of water resources management plans and the involvement of persons with a clear interest in integrated water resources therein;
- (i) provide for the procedure for trading of water permits, application of economic incentives and pricing of water use; or
- (j) provide for the implementation of any provision of this Act.

Cap.
Nos.
334, 117
and 281

PART XVI
TRANSITIONAL PROVISIONSRepeal
and
Savings
Provi-
sions
Cap. 331

112.—(1) The Water Utilization (Control and Regulation) Act is hereby repealed.

(2) Notwithstanding the repeal of the Water Utilization (Control and Regulation) Act—

- (a) all proceedings commenced under the repealed Act and pending before any court immediately before the commencement of this Act shall be continued and concluded as if this Act had not been enacted;
- (b) proceedings which are pending before any court otherwise than an appeal from a decision of another court and such proceedings are for assessment of compensation, the compensation shall, if the same has not been assessed, be assessed in accordance with the provisions of this Act and no compensation shall in any proceedings be awarded in any case in which no compensation may otherwise be awarded under this Act;
- (c) all orders, notices, directions, appointments and other acts and things lawfully made, issued or done under any of the provisions of the repealed Act and made, issued or done before the commencement of this Act, shall be deemed to have been made, issued or done under the corresponding provision of this Act, and shall continue to have effect accordingly; and
- (d) any decree or order of the court passed or made before the commencement of this Act may be enforced as if this Act had not been enacted.

(3) Without prejudice to the generality of subsection (c) of this section all entries in the Water Register made pursuant to the provisions of the repealed Act shall remain in force until such time as they may be cancelled pursuant to the provisions of this Act.

Transfer
of respon-
sibilities
to boards
and com-
mittees

113. As soon as reasonably practicable after the commencement of this Act, and upon public consultation, the Minister shall publish by notice in the *Gazette* a plan for the transfer of the management of water resources to the Basin Water Boards and Catchment and Sub-catchment Water Committees established under this Act.

(2) The plan shall-

- (a) provide details of the institutional, organisational and financial arrangements, and capacity building and other measures to ensure an orderly transfer of water resources management responsibilities;
- (b) prescribe appropriate arrangements for transferring to the Basin Water Boards ownership of plant, equipment or other assets used by the government in connection with water resources management; and
- (c) specify measures to give effect to the plan within a specified time.

114.—(1) Until the transfer of responsibilities from Government to the Basin Water Boards, Catchment and Sub-catchment Water Committees by means of the measures specified in the plan under Section 113 have come into effect, the functions, responsibilities and powers of the Basin Water or Catchment or Sub-catchment Water Committee established under this Act shall be exercised by the following persons respectively-

Transi-
tional
provi-
sions

- (a) in respect of the Basin Water Boards, by the Basin Water Officers in the Ministry responsible for water; and
- (b) in respect of Catchment or Sub-catchment Water Committees, by the Catchment Water Officers.

(2) Where the Basin Water Board or Catchment Sub-catchment Water Committee has been constituted in accordance with the provisions of this Act but has no staff, the Minister may direct that necessary staff be seconded to the Basin Water Board, Catchment or Sub-catchment Water Committee such staff shall be employed by the Basin Water Board, Catchment or Sub-catchment Water Committee, as the case may be.

FIRST SCHEDULE

(Made under section 20(3))

MEMBERSHIP AND PROCEDURE OF THE NATIONAL WATER BOARD

1.—(1) The National Water Board shall consist of the Chairman and other ten members to be appointed by the Minister from the following sectors -

Membership
of the
National
Water Board

- (i) agriculture;

- (ii) energy;
- (iii) industry;
- (iv) forestry;
- (v) environment;
- (vi) livestock;
- (vii) wildlife;
- (viii) lands;
- (ix) mining;
- (x) irrigation;
- (xi) fisheries; and
- (xii) infrastructure;
- (c) one representative from local government administration.
- (d) three representatives from Basin Water Boards.
- (e) one representatives of the private sector.
- (f) one representative from Non-Government Organisations

(2) At least one third of the members of the National Water Board shall be women.

(3) The Director of Water Resources shall be a member of the Board and the Secretary thereto.

(4) The Minister shall, by regulations published in the Gazette, prescribe the procedures for the nomination of the representatives set out in subsection (1).

Term of office
and
eligibility
of appoint-
ment of
members

2.-(1) Every member shall hold office for a term of three years and shall be eligible for re-appointment unless-

- (a) in the case of a member appointed in his own name, until such time as the appointing authority revokes his appointment and appoints another person in his place;
- (b) in the case of a member who is appointed by virtue of his holding some other office, until such time as he ceases to hold that other office; and
- (c) until a member resigns or has been removed by the Minister in accordance with subsection (4) of this section.

(2) Where any member is, by reason of illness, infirmity or absence from Mainland Tanzania, unable to attend any meeting of the National Water Board the appointing authority may appoint a temporary member in his place and the temporary member shall cease to hold office on the resumption of office of the substantive member.

(3) The National Water board may co-opt any person for a specified meeting for the performance of any of its functions, but such a person shall have the right to vote.

(4) The Minister may only remove a member from the National Water Board if he is reasonably satisfied that such member-

- (a) has been absent from Formal Meetings of the National Water Board for a period of more than three consecutive meeting without due cause and without permission from the Chairman;
- (b) has been declared bankrupt, or has committed, or is reasonably suspected of committing financial irregularities, or has abused his position to his financial or other advantage;

- (c) ceased to be a member or employee of the institution he is representing;
- (d) incompetent and unwilling to carry out the functions as a member of the National Water Board; and
- (e) is of unsound mind.

3.—(1) The National Water Board shall elect one of its members to be the Vice-Chairman who shall, subject to his continuing to be a member, hold the office of Vice-Chairman for a term of three years from the date of his election and shall be eligible for re-election.

Proceedings
of the
National
Water
Board

(2) The National Water Board shall ordinarily meet for the transaction of its business four times a year and may hold two extra ordinary meeting to be convened by the Secretary.

(3) The business of the National Water Board shall be conducted in such manner as the Minister may, by order published in the *Gazette*, prescribe; but where no procedure, is prescribed the National Water Board shall conduct its business in such manner as it shall determine.

4. The Minister may dissolve the National Water Board.

Minister
may
dissolve
board

SECOND SCHEDULE

(Made under section 22(4))

MEMBERSHIP AND PROCEDURE OF BASIN WATER BOARDS

1.—(1) The membership of the Basin Water Board shall be composed of the following:

Membership
of the
Basin Water
Boards

- (a) Chairman, to be appointed by the Minister responsible for water;
- (b) one representative from private sector water users in the basin from-
 - (i) industries; or
 - (ii) mining; or
 - (iii) agriculture; or
 - (iv) power,
- (c) up to three representatives from the Catchment Water Committees;
- (d) up to two representatives from key water related sectors which are of importance in the Basin, which may include-
 - (i) agriculture,
 - (ii) energy,
 - (iii) minerals,
 - (iv) trade and industry,
 - (v) forestry,

- (vi) environment,
- (vii) natural resources,
- (viii) lands,
- (ix) livestock;
- (x) fisheries;
- (xi) infrastructure.
- (e) one representative from local government authorities;
- (f) one representative from water supply and sanitation authorities; and
- (g) one representative from the Ministry responsible for water;

(2) Members of the Boards under subparagraph (1) shall be appointed by the Minister from three names of candidates as nominated or elected by the relevant sector or organization.

(3) The Basin Water Officer shall be the Secretary to the Board.

(4) At least one third of members of the Basin Water Board shall be women.

(5) The members of the Basin Water Board shall be involved in and have adequate knowledge and experience in water resources affairs in the area of the respective Basin Water Board.

(6) The Minister shall, by regulations published in the Gazette, prescribe the procedures for the nomination of the representatives in subparagraph (1).

Proceedings
of a Basin
Water
Board

2.—(1) Every member shall hold office for a term of three years and shall be eligible for re-appointment unless-

- (a) in the case of a member appointed in his own name, until such time as the appointing authority revokes his appointment and appoints another person in his place;
- (b) in the case of a member who is appointed by virtue of his holding some other office, until such time as he ceases to hold that other office; and
- (c) until a member resigns or has been removed by the Minister in accordance with subparagraph (4) of this section.

(2) Where any member is, by reason of illness, infirmity or absence from Mainland Tanzania, unable to attend any meeting of the Basin Water Board the appointing authority may appoint a temporary member in his place and the temporary member shall cease to hold office on the resumption of office of the substantive member.

(3) The Basin Water board may co-opt any additional members for a specified meeting for the performance of any of its functions, but no co-opted member shall have the right to vote.

(4) The Minister may only remove a member from the Basin Water Board if he is reasonably satisfied that such member-

- (a) has been absent from Formal Meetings of the Basin Water Board for a period of more than three consecutive meeting without due cause and without permission from the Chairman;

- (b) has been declared bankrupt, or has committed, or is reasonably suspected of committing financial irregularities, or has abused his position to his financial or other advantage;
- (c) ceased to be a member or employee of the institution he is representing;
- (d) incompetent and unwilling to carry out the functions as a member of the Basin Water Board; and
- (e) is of unsound mind.

3.—(1) The Basin Water Board shall elect one of its members to be the Vice-Chairman who shall, subject to his continuing to be a member, hold the office of Vice-Chairman for a term of three years from the date of his election and shall be eligible for re-election.

Proceedings
of a Basin
Water
Board

(2) The Basin Water Board shall ordinarily meet for the transaction of its business four times a year and may hold two extra ordinary meetings.

(3) The business of the Basin Water Board shall be conducted in such manner as the Minister may, by order published in the *Gazette*, prescribe; but where no procedure, is prescribed the Basin Water Board shall conduct its business in such manner as it shall determine.

4. The Members of the Board shall be paid such allowance as the Minister may determine.

Remunera-
tion
of members

THIRD SCHEDULE

(Made under section 29(3)(b))

MEMBERSHIP AND PROCEDURE OF CATCHMENT AND SUB-CATCHMENT WATER COMMITTEES

1.—(1) The Catchment Water Committee shall be composed of not less than three and not more than five members which shall comprise the following—

- (a) a Chairman to be appointed by the Basin Water Board;
- (b) one representative from major private sector water users in the catchment area, for example industries, mining, agriculture, power producers;
- (c) up to two representative from the Water Users Associations in the catchment area;
- (d) one representative from the local government authorities in the catchment area;

Member-
ship of
Catchment
Water
Committees

(2) All members under items (a), (b) and (c) shall be appointed by the Board.

(3) At least one-third of the members of the Catchment Water Committee shall be women.

(4) The members of the Catchment Water Committee shall be involved in and have adequate knowledge and experience in water resources affairs in the catchment area.

(5) The Catchment Water Officer shall be the ex-officio Secretary of the Catchment Committee;

(6) The Minister shall, by regulations published in the Gazette, prescribe the procedures for the nomination of the representatives in subparagraph (1).

Term of
office and
eligibility
of
appointment
of members

2.—(1) Every member shall hold office for a term of three years and shall be eligible for re-appointment unless-

- (a) in the case of a member appointed in his own name, until such time as the appointing authority revokes his appointment and appoints another person in his place;
- (b) in the case of a member who is appointed by virtue of his holding some other office, until such time as he ceases to hold that other office; and
- (c) until a member resigns or has been removed by the Minister in accordance with subsection (4) of this section.

(2) Where any member is, by reason of illness, infirmity or absence from Mainland Tanzania, unable to attend any meeting of the Catchment Water Committee the appointing authority may appoint a temporary member in his place and the temporary member shall cease to hold office on the resumption of office of the substantive member.

(3) The Catchment Water Committee may co-opt any additional members for a specified meeting for the performance of any of its functions, but no co-opted member shall have the right to vote.

(4) The Minister may only remove a member from the Catchment Water Committee if he is reasonably satisfied that such member-

- (a) has been absent from Formal Meetings of the Catchment Water Committee for a period of more than three consecutive meeting without due cause and without permission from the Chairman;
- (b) has been declared bankrupt, or has committed, or is reasonably suspected of committing financial irregularities, or has abused his position to his financial or other advantage;
- (c) ceased to be a member or employee of the institution he is representing;
- (d) incompetent and unwilling to carry out the functions as a member of the Catchment Water Committee; and
- (e) is of unsound mind.

Proceedings
and business
of the
Catchment
Water
Committee

3. The proceedings and business of the Catchment Water Committee shall be conducted in such manner as the Basin Water Board may determine.

Application
to Sub-
Catchment
Water
committees

4. Where a Sub-catchment Water Committee is established by a Basin Water Board, Sections 1, 2 and 3 of this Schedule shall apply *mutatis mutandis* to such Sub-catchment Water Committees.

FOURTH SCHEDULE

(Made under section 81(1))

CONSTITUTION OF A WATER USERS ASSOCIATION

1. The Constitution of the Water Users Association.

There is hereby formed the Water Users Association (hereinafter referred to as the "Association").

The Association, including its Management Committee, shall have the status of a legal person and in that capacity it shall be capable of suing and being sued.

The liability of any venture of the Association shall be limited.

The members of the Association shall be villagers, institutions, companies, committees and authorities or any person natural or legal, as may be users of water from sources located within the area of responsibility of the Association.

2. The objects of the Association shall be to:- (delete those not applicable)

- (a) manage, distribute and conserve water from a source used jointly by the members of the Association;
- (b) to construct, rehabilitate operate and maintain any works for the purposes of management of the water resource in its area of responsibility;
- (c) arbitrate in the resolution of conflicts between holders of Water Use Permits with its area of responsibility;
- (d) agree by consensus of its members equitable reductions in the quantities of water abstracted from the source under its responsibility in times of drought or other restrictions on resource availability;
- (e) acquire and operate any Water Use Permit under the provisions of the Water Resources Management Act, 2009;
- (f) do such other things as may be considered necessary by a majority of its members in order to manage the water resources in its area in a fair and equitable manner in accordance with the intent and provisions of the Water Resources Management Act, 2009.

3. The area of responsibility of the Association shall be, as shown on the attached map.

4.-(1) An Annual General Meeting shall be held once each year. An Extra-ordinary General Meeting of the Association may be called by five per centum of members giving two weeks notice to the Secretary in writing.

(2) One third of the full number of members containing no fewer than four from each of the upper and the lower area of the catchment or from each village present shall constitute a quorum.

(3) Voting can be exercised by a member or proxy in favour of another member provided the proxy form is in the hands of the Secretary prior to the meeting.

(4) A majority of votes at the Annual General Meeting shall decide the principles governing conservation, maintenance of works in the river in question and shall decide the assessments to be levied thereof and for expenses of the Association.

5. A Management Committee shall be elected at the Annual General Meeting of the Entity and shall consist of six elected members.

(2) The Committee so elected may sue and be sued in the name of the Association for moneys or otherwise, and shall have the powers to bind the Entity by contract.

(3) The Committee shall collect and receive any moneys due to the Association and pay moneys owing to the Association from time to time and open and maintain a bank account through its authorised officers and submit such annual audited accounts to the Association at the Annual General Meeting.

(4) The Management Committee shall meet not less than once in each quarter of the year and all elected members must be present.

(5) The Management Committee shall meet once in each quarter of the year and the quorum of the Committee shall be two thirds of all members.

(6) The Management Committee shall also decide the extent, manner and time of levying the assessments laid down by the Annual General Meeting of the Association.

(7) The Management Committee shall appoint and employ such employees as may be necessary to fulfil the purposes of the Association.

6. Any member of the Association making default in payment of any fees or moneys so assessed and after receiving notice from the Committee shall, if such amount be correct, be personally liable to the Association.

7. The Entity shall not be liable for any indebtedness other than that contracted by its Committee duly authorised in writing.

8. Each member hereby undertakes with other members and each of them as follows:

- (a) to pay entrance fees as being elected to the Association, the amount set by General Meeting;
- (b) to pay all assessments levied against him by the Association.
- (c) that he will not draw from the source more water than the amount specified, save as authorised by the Committee and will observe rules or regulations made by the Association.

Passed in the National Assembly on the 28th April, 2009.

DR. THOMAS D. KASHILILAH,
Clerk of the National Assembly