

Lesotho

Water Act, 2008

Act 15 of 2008

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Lesotho

Water Act, 2008

Act 15 of 2008

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Commenced on 30 December 2008

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An Act to provide for the management, protection, conservation development and sustainable utilisation of water resources.

Enacted by the Parliament of Lesotho.

1. Short title and commencement

This Act may be cited as the Water Act, 2008 and comes into operation on the date of publication in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“**authorised person**” means a person authorised to exercise duties under this Act;

“**aquifer**” means a geological formation which has structures or textures that hold water or permit appreciable water movement through them;

“**borehole**” includes a well, excavation or any artificially constructed or improved underground cavity which can be used for the purpose of intercepting, collecting or storing water in or removing water from an aquifer, observing and collecting data and information on water in an aquifer or recharging an aquifer;

“**conservation**” in relation to a water resource means the efficient and productive use of water and water demand management;

“**commercial water use**” means usage of water in the pursuit of a commercial activity;

“**commissioner**” means the Commissioner of Water established in terms of [section 8](#);

“**consumptive use of water**” means water used and no longer available for further use;

“**controlled activities**” means activities which have a potential to cause adverse effect on the quality and quantity of water;

“**dam**” means an embankment constructed for the purpose of retaining water;

“**Director**” means the Director of the Department of Water Affairs;

“**domestic water use**” means water use for personal and household needs;

“**effluent**” means the outflow after use of water from any building or works and includes the discharge from industrial and commercial processes as well as sewage;

“**Lesotho Water and Sanitation Policy**” means the water and sanitation policy of the Government of Lesotho;

“**line Ministry**” means a Ministry of the Government directly or indirectly involved in water resources management and development;

“**local authorities**” means local authorities established in accordance with the Local Government Act, 1997¹;

“**Ministry**” means the Ministry responsible for water resources;

“**natural spring**” means water emerging from beneath the surface of the ground not as a result of drilling or excavation operations;

“**non consumptive**” means water used and still available for further use;

“**protection**” in relation to water resource means maintenance of the quality of water resource to the extent that the water resource may be used in an ecological sustainable manner, prevention of the degradation of the water resource and the rehabilitation of the water resource;

“**pollution**” means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it less fit for any beneficial purpose for which it may reasonably be expected to be used or harmful or potentially harmful to the welfare, health or safety of human beings, to any aquatic or non-aquatic organisms, to the resource quality, or to property;

“**person**” includes a natural person and a juristic person;

“**prescribe**” means prescribe by regulations or in a schedule to this Act;

“**regulated activities**” means activities regulated in terms of the Lesotho Electricity and Water Authority Act 2008

“**reserve**” means the quality and quantity of water required to satisfy basic human needs for domestic use by securing a basic water supply and for protection of aquatic ecosystems in order to secure ecologically sustainable development and use of the relevant water resource;

“**servitude**” means a right, restriction or obligation attached to a specific piece of property or land that entitles another person, other than the owner of the land, to a specific use of such property or land;

“**sewage**” means the discharge from sanitary appliances attached to domestic, commercial, industrial or other buildings;

“**sewerage**” means a planned system of sewers through which sewage is conveyed to treatment and disposal works;

“**stakeholder**” means a person with an interest in the management or use of a water resource;

“**waste**” includes any solid material or material that is suspended, dissolved or transported in water including sediment and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause, or to be likely to cause the water resource to be polluted;

“**wastewater**” means water disposed of after use;

“**water**” means the surface water flowing in channel and ground water, percolating ground water, flood, sewage and drainage water, pluvial water and diffused surface water, which means water occurring generally upon the surface of the earth and not flowing in channels, springs and mineral water including thermal water, atmospheric water, snowfall and glaciers, and water artificially contained in reservoirs, canals, pipelines, tanks, wells and boreholes, as well as the artificial recharge of underground aquifers;

“**watercourse**” means a river or spring, pond, swamp, marsh, stream, estuary, aquifer, artisan basin, a natural channel in which water flows regularly or intermittently, a wetland, lake, dam or any other body on which water flows and any collection of water which the Minister may, by notice in the *Gazette*, declare to be a watercourse;

“**water management institutions**” means government and non-government agencies having responsibility over water resources management at national or international level;

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Act No. 6 of 1997

“**Water resources**” means sources of water useful or potentially useful to humans;

“**Water Tribunal**” means the tribunal established in terms of [section 9](#);

“**waterworks**” includes any borehole, structure, earthwork or equipment installed or used for or in connection with water use;

“**well**” means a hole sunk into the ground for abstraction of water or for observation purposes, more specifically an excavated unlined hole that encounters a shallow aquifer;

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

3. Principles

In carrying out duties and functions under this Act, the Minister, line Ministries and water management institutions shall take account of and, as far as practicable, give effect to the following general principles applicable to the effective management, conservation and protection of water resources—

- (a) sustainable utilisation of water resources;
- (b) intergenerational equity;
- (c) integrated water resources management;
- (d) equitable distribution of water and sanitation services;
- (e) public participatory approach;
- (f) precautionary principle;
- (g) polluter pays principle;
- (h) integration of environmental and social issues into water resources management, among them, HIV/AIDS and gender mainstreaming; and
- (i) sector wide approach to water resources management.

4. Ownership of water resources

The ownership of all water resources in Lesotho is vested in the Basotho Nation and held in trust by the King on behalf of the Basotho Nation.

5. Use of water

- (1) The right to use water shall be in accordance with the provisions of this Act.
- (2) In the case of conflicting water use and if water is insufficient to cater for other uses, domestic use shall prevail and be given first preference over other uses.
- (3) For purposes of this section, water use shall include—
 - (a) taking of water from a watercourse;
 - (b) storing water;
 - (c) impounding or diverting the flow of water in a water course;
 - (d) engaging in a stream flow reduction activity identified as such;
 - (e) discharging waste or water containing waste into a water resource through a pipeline, canal, sewer, sea, outfall or other conduit;

- (f) using water for irrigation, industrial and or mining purposes and disposing in any manner water which has been heated in any industrial activity, mining or power generation process;
- (g) altering the bed, banks, course or characteristics of a watercourse;
- (h) removing, discharging or disposing of water found underground if necessary for the efficient continuation of an activity or safety of people;
- (i) using water for recreational purposes; and
- (j) bottling of water for commercial purposes.

6. Restrictions on the use of water in cases of emergency

- (1) Where a serious shortage of water for domestic purposes exists or is threatened in any area, due to drought, pollution or other causes, the Minister may, by notice in the *Gazette*, and to users of water, declare that a water emergency exists in that area and restrict the use of water in that area for any period he may deem necessary.
- (2) For purposes of managing water in cases of emergency as declared under this section, the Minister may direct that any person who has a supply of water in excess of his domestic purposes make available such quantity to other users as the Minister may specify.
- (3) For purposes of this section, emergency means a disaster or hazard caused by climatic hydrologic tectonic, accidental, natural or man made events which may have adverse effect or affect a large population and which require extraordinary measures to be undertaken to safeguard public interest.

7. Powers and duties of the Minister

- (1) The power and duty to control and regulate the use of water resources shall be vested in the Minister.
- (2) In exercising his powers under this Act, the Minister may give directions to water management institutions on the discharge of their functions.

8. Commissioner of Water

- (1) There shall be a Commissioner of Water who shall be a public officer within the Ministry.
- (2) The functions of the Commissioner shall be to—
 - (a) provide policy direction to the departments within the Ministry and water management institutions dealing with water resources;
 - (b) implement the water and sanitation policy;
 - (c) develop water and sanitation strategies and plans and ensure their implementation and periodical review;
 - (d) be a custodian of the national water resources data on behalf of the Minister;
 - (e) coordinate all water management activities including activities relating to international waters;
 - (f) produce state of water resources reports once every year;
 - (g) carry out such regulatory activities in respect to water resources as are provided for under this Act; and
 - (h) advise the Minister concerning the management and utilization of water resources.

9. Water Tribunal

- (1) There is established a Water Tribunal whose function shall be to adjudicate over disputes arising under this Act or any other law in relation to or in connection with the management of water resources.
- (2) The Tribunal shall comprise three members, one of whom shall be a Judge nominated by the Chief Justice, who shall be the chairperson.
- (3) The two other members shall be persons with expertise in water resources management or Natural Resources Accounting and shall be appointed by the Minister.
- (4) The Minister shall, in consultation with the Minister responsible for Finance, determine allowances payable and reimbursable for expenses and other incidentals incurred by members of the Tribunal while fulfilling their functions in terms of this section.
- (5) Members of the Tribunal shall serve for a period of three years and may be reappointed for a further period of three years.
- (6) The Tribunal shall determine its own rules of procedure.

10. Formulation of water and sanitation strategy

- (1) The Commissioner shall develop, in consultation with relevant stakeholders, a Water and Sanitation Strategy.
- (2) The water and sanitation strategy developed pursuant to subsection (1) shall be published by notice in the *Gazette*.
- (3) The strategy developed pursuant to this section shall be in relation to the use, development, conservation, management and control of water resources within the country and in respect to each designated catchment area.
- (4) The strategy developed pursuant to this section shall be reviewed whenever necessary.
- (5) Every water management institution exercising powers and responsibilities under this Act shall be bound by the strategy.

11. Publication of water and sanitation strategy

- (1) Following the development of a draft water and sanitation strategy, the Commissioner shall publish, in a newspaper with widest circulation, a notice—
 - (a) setting out a summary of the proposed strategy;
 - (b) stating the address where the proposed strategy can be inspected;
 - (c) inviting written comments on the proposed strategy within a specified period, which period may not be later than 60 days after publication;
- (2) Upon receipt of the comments, the Commissioner shall consider the comments and incorporate them where appropriate.

12. Contents of the Water and Sanitation Strategy

The Water and Sanitation Strategy developed under this Act shall set out the strategies, objectives, plans, guidelines, procedures and institutional arrangements in relation to the protection, conservation, development, management and control of water resources within the framework of the existing Government water and sanitation policy in order to achieve—

- (a) the effective implementation of this Act; and

- (b) such water and sanitation quality standards as may be prescribed.

13. Determination of a reserve

- (1) The Commissioner shall determine a reserve for all or part of the water resources within the country.
- (2) A reserve shall comprise—
 - (a) the basic human needs reserve representing the quantity and quality of water resources required to satisfy the basic human needs of those dependent on the concerned water resource; and
 - (b) the ecological reserve representing the quantity and quality of water required to protect aquatic ecosystems in order to secure ecologically sustainable development and use of the water resource.
- (3) Every person or water management institution having responsibility under this Act shall, when carrying out their roles and responsibilities, give effect to a reserve as determined pursuant to this section.
- (4) A reserve so determined shall be published in the *Gazette*.
- (5) The Commissioner shall monitor a reserve and update the information on the reserve regularly.

14. Classification of water resources

- (1) The Commissioner shall classify water resources within the Country and stipulate the quantity and quality parameters to be achieved in relation to different classes of water resources and a time frame for achieving them.
- (2) Water resources may be classified according to use, type, location or geographical function.
- (3) Classes of water resources and the quantity and quality parameters applicable shall be published in the *Gazette*.

15. Catchment management

- (1) A Minister may, by notice in the *Gazette*, designate, in consultation with the Minister responsible for land, catchment areas for the management and protection of water resources.
- (2) A local authority shall be responsible for the management of catchment areas in its area of jurisdiction.
- (3) A local authority has the following functions:
 - (a) elaboration of catchment management plans for the protection and use of water resources in the catchment area, which shall be in line with the water and sanitation strategies and plans developed by the Commissioner,
 - (b) promotion of community participation in its catchment area through education and other appropriate activities;
 - (c) promotion of community self-reliance, including the recovery of costs for the operation and maintenance of waterworks;
 - (d) collection, management and sharing of data that is necessary for proper management of its catchment; and
 - (e) resolving conflicts relating to water resources within its catchment area.

16. Contents of a catchment management plan

A catchment management plan shall—

- (a) follow the principles given in the Lesotho Water and Sanitation Policy and shall not be in conflict with such water and sanitation strategies as may be published;
- (b) be reviewed at regular intervals;
- (c) take into account the natural resources, demography, land use, climate and waterworks within the catchment area;
- (d) contain plans for water allocation within the catchment area;
- (e) take national water use priorities into consideration;
- (f) take into account the needs and expectations of existing and potential water users;
- (g) identify opportunities and mechanisms for enabling the public and the private sector to participate in the water resources management and in the provision of water and sanitation services; and
- (h) identify the water resources management needs of the catchment area and for environmental protection, including those for wetlands conservation, riparian buffer zones and the prevention of erosion.

17. Provision of water and sanitation services in the urban and rural areas

- (1) Where a permit is obtained by a water and sanitation service provider for use in connection with a regulated activity, the service provider and his services shall be regulated under the Lesotho Electricity and Water Authority Act, 2008 taking into consideration Water and Sanitation Policy and Strategies formulated under this Act.
- (2) Provision of water and sanitation services in the rural areas as well as operations and maintenance of the systems shall be the responsibility of a local authority established in terms of the Local Government Act, 1997, with the technical assistance from the Commissioner, where necessary.

18. Wetlands protection and rehabilitation

- (1) The Minister may, in consultation with the Minister responsible for land, declare, by notice in the *Gazette*, certain wetlands areas as protected areas and prohibit entry or use unless authorised.
- (2) Use of or entry into wetlands areas may be authorised if it is necessary for implementing measures for protection and conservation of such areas, or carrying out functions necessary for implementing the provisions of this Act.
- (3) The Commissioner shall put sign boards or any markings showing or stating no trespass or entry into or through the protected area.
- (4) The Commissioner shall, in collaboration with relevant water management institutions, take all relevant and necessary steps to—
 - (a) put in place measures to minimise damage to wetlands through channel erosion, compaction, drying out or overgrazing; and
 - (b) rehabilitate already damaged wetlands.
- (5) No person shall damage, destroy or cause any harm to wetlands.
- (6) A person who contravenes subsection (5) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.

19. Natural spring

- (1) The Minister may, by notice in the *Gazette*, in consultation with the Minister responsible for land, declare certain natural springs as protected springs and prohibit or regulate use unless authorised.
- (2) Use of or entry into natural springs, without a permit, may be authorised if necessary for implementing measures for protection and conservation of such springs.
- (3) A person who wishes to engage in a commercial activity in respect of abstracting and using water from a natural spring for purposes of bottling water shall make an application for a water use permit to the Director, in accordance with [section 20](#).
- (4) No person shall damage, destroy or cause any harm to a natural spring.
- (5) A person who contravenes subsection (4) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.

20. Water use permit

- (1) No person shall engage in an activity of using or abstracting water without a water use permit
- (2) A person who wishes to use water shall make an application to the Director in form A prescribed in Schedule 1.
- (3) An application made pursuant to this section shall be accompanied by a non-refundable fee prescribed in Schedule 2(a).
- (4) The Director shall, where he is satisfied that an application made under this section complies with the requirements of the Act, issue to the applicant a water use permit with conditions in Form A1 prescribed in schedule 1.
- (5) Where two or more applications are made for one and the same water use and the resources are insufficient to justify the issue of a permit, the applications shall be considered on merit and on the basis of the respective needs of the applicants.
- (6) The Director may, where an application made under this section does not comply with the requirements of the Act, refuse to issue a water use permit.
- (7) Where the Director refuses to issue a water use permit pursuant to subsection (6), he shall notify an applicant, in writing, of his reasons for refusing to issue a water use permit within thirty days of receipt of the application.
- (8) A water use permit shall be valid for a period of five years from the date of issue.
- (9) A water use permit is transferable with a written consent of the Director.
- (10) The Director may determine the volume of water which may be used or abstracted.
- (11) The Director shall supervise and monitor abstraction or use of water and ensure that a permit holder complies with the conditions of his permit.
- (12) The Director shall keep a register of the quantity and quality of water abstracted and make it available to the public and relevant authorities.
- (13) A permit issued under this section does not guarantee a permit holder availability of a water resource.
- (14) The Director shall, where he has issued a permit under this section, not be liable for any loss or damage sustained as a result of non-availability of water.

21. Construction permit

- (1) No person shall engage in waterworks activities without a construction permit.
- (2) A person who wishes to construct waterworks shall apply, in writing, to the Director.
- (3) The Director shall, where an application made pursuant to subsection (2) complies with the requirements of this Act, issue to the applicant a construction permit with conditions in form B prescribed in Schedule 1, upon payment of a non-refundable fee prescribed in Schedule 2(b).
- (4) The Director may, where an application made pursuant to this section does not comply with the requirements of the Act, refuse to issue a construction permit to the applicant.
- (5) Where the Director refuses to issue a permit under subsection (4), he shall notify the applicant, in writing, of his decision for refusing to issue the permit, within thirty days of receipt of the application.
- (6) A construction permit shall not be issued where the construction or use of waterworks interferes substantially with the use of other waterworks.
- (7) The Director shall supervise and monitor construction of waterworks and ensure that a permit holder complies with the conditions of a permit.
- (8) The Director shall keep a register of waterworks and make it available to the public.
- (9) A construction permit issued pursuant to subsection (4) is valid for a period of five years from the date of issue.
- (10) A construction permit is transferable with a written permission of the Director.
- (11) A person who contravenes subsection 1 of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.

22. Wells and boreholes

- (1) A person who is engaged in an activity of drilling boreholes or digging wells shall register with the Director.
- (2) The Director shall, where a person has registered pursuant to subsection (1), issue to the person a drilling contractors certificate in form C prescribed in Schedule 1.
- (3) A person who wishes to abstract and use water from wells and boreholes shall make an application in terms of [section 20](#).
- (4) The Director shall keep a register of boreholes and wells and make it available to the public.
- (5) A user of a borehole or well shall use it in accordance with this Act.

23. Suspension, cancellation and variation of water use and construction permits

- (1) The Director may suspend, vary or cancel a water use permit, or construction permit where a permit holder—
 - (a) has made a material statement in an application or in any report or statement of fact required to be furnished in terms of this Act which is false;
 - (b) violates or contravenes any of the conditions to the permit;
 - (c) contravenes any of the provisions of this Act;
 - (d) does not use the permit within six months of the issuance of the permit without good cause; or

- (e) has abandoned or surrendered the permit.
- (2) Where the Director suspends, cancels or varies a water use permit, or construction permit, he shall serve a notice, on a permit holder, setting out the facts or the conduct alleged and shall afford him an opportunity to be heard.

24. Protection of wells, natural springs or boreholes

A local authority shall install well covers or other pollution control devices to wells, natural springs or boreholes falling within its area of jurisdiction.

25. Controlled activities

- (1) The Minister may, by notice in the *Gazette*, declare certain activities as controlled activities.
- (2) The Minister may issue directives controlling, regulating, or prohibiting the carrying out of controlled activities. Such activities may include:
 - (a) irrigation of any land with waste or water containing waste;
 - (b) alteration of the flow regime of a water resource; or
 - (c) intentional recharging of an aquifer with any waste or water containing waste.
- (3) Institutions or organs dealing with controlled activities shall submit to the Commissioner their plans showing how they intend to prevent, minimise or mitigate against the adverse impact on water resources arising from the carrying out of controlled activities.
- (4) The Commissioner shall, where satisfied that an institution has put in place a satisfactory plan for preventing, minimising or mitigating against the adverse impact on water resources arising from the carrying out of the controlled activities, issue an authorisation for the carrying out of planned activities subject to compliance with an approved plan.
- (5) The Commissioner shall keep a register of an approved plan for controlled activities and update it regularly.
- (6) A register kept under this section shall be made accessible to the public and may be inspected at the offices of the Commissioner and shall be public information.

26. Pollution control

- (1) Every person has an obligation to prevent pollution of water resources from occurring.
- (2) Where pollution occurs or is likely to occur as a result of activities on land, the person who owns, controls occupies or uses the land in question shall be responsible for taking measures to prevent such pollution from occurring or continuing.
- (3) Where appropriate measures were not taken, the relevant authority shall put in place measures intended to prevent pollution from occurring or continuing and remedy the negative effects.
- (4) Measures to be put in place in terms of this section shall include measures to—
 - (a) cease or modify or control any process causing the pollution;
 - (b) control or prevent movement of pollutants;
 - (c) comply with any prescribed waste standard or management of waste;
 - (d) eliminate any source or potential source of pollution; and
 - (e) remedy the negative effects and disturbances to the bed and banks of a watercourse.

- (5) A person putting in place measures to remedy negative effects of pollution or potential pollution shall be entitled to recover costs of remedying the negative effects of such pollution from the person who directly or indirectly contributed to pollution or potential pollution.
- (6) Where there is one or more polluters and all have failed to put in place measures to remedy the negative effects, a person entitled to recover costs in terms of this section shall apportion the costs amongst the polluters.
- (7) The apportionment made pursuant to subsection (6) does not relieve any of the polluters of their joint and several liability for the full amount in relation to costs.
- (8) Apportionment of costs shall only be done after having afforded all parties an opportunity to be heard.
- (9) A person who pollutes or discharges any substance which renders the water harmful to human health or the environment commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.
- (10) This section does not apply in relation to—
 - (a) a substance discharged into water by an authorised person for purposes of treating water or aquatic life; or
 - (b) a substance that is used for the purpose of measuring pollution.

27. Effluent discharge permits

- (1) A person who wishes to discharge effluent into water courses shall obtain a permit in accordance with the Environment Act, 2007².
- (2) In issuing a permit pursuant to this section, the Director shall issue the permit taking into consideration provisions of this Act in relation to protection and conservation of water resources and industrial waste water management policy.
- (3) The Director shall—
 - (a) consult with the Commissioner of Water before such a permit is issued; and
 - (b) obtain comments from the Commissioner in relation to such a permit and act accordingly.
- (4) For purposes of this section, “Director” means the Director responsible for environment.

28. Acquisition and declaration of land for water resources development

- (1) Where land is required for water resources development, acquisition of the land shall be done in accordance with the Land Act, 1979.
- (2) The Minister shall, in consultation with the Minister responsible for land, declare any land to be a selected development area for water resources development.
- (3) Declared areas in terms of this section shall be published in the *Gazette*.

29. Servitude

- (1) A person who applies for a permit which, if granted, would require the use of land occupied by another, shall apply to the Minister for a servitude over that land.

- (2) An occupier of land over which a servitude is sought shall be notified of the application for a permit in terms of subsection (1) and shall be entitled to a hearing on the terms and conditions of the proposed servitude.
- (3) Any permit to which this section applies shall state terms and conditions of the proposed servitude.
- (4) A holder of a servitude shall be liable for damage to the land over which the servitude is held and shall take the necessary measures to remedy adverse effects and avoid occurrence of damage.
- (5) Where consent of the Minister responsible for land is required for obtaining a servitude over land, no servitude shall be granted unless such consent has been obtained.
- (6) A servitude cannot be claimed unless the claimant is authorised to use water and if authorisation is withdrawn or otherwise terminated, the servitude will lapse.
- (7) A servitude under this Act may also be claimed in relation to waterworks.
- (8) Where there may be need for compensation under this section, compensation shall first be determined by agreement between the parties failing which shall be referred to the Tribunal.

30. Compensation

- (1) Where compulsory acquisition of land is required in terms of this Act, compensation may be paid in accordance with the Land Act, 1979⁵.
- (2) Where an intended acquisition of land will lead to loss of a right to use water, the Minister and the person holding the right to use water shall negotiate the terms of such acquisition, including the provision for compensation.
- (3) In the case of failure to reach an agreement, the matter shall be referred to arbitration.
- (4) Parties shall agree to the composition of an arbitration panel.

31. Public access to information

A water management institution shall, at its own expense, make information at its disposal available to the public in an appropriate manner in respect of—

- (a) a reserve in relation to quality and quantity of water resources in the country and allocations so far made;
- (b) the register of permits issued;
- (c) the register of borehole drilling contractors; and
- (d) any other information that the public needs to know under this Act subject to such limitations relating to public security or commercial confidentiality as may be appropriate.

32. Government waterworks

- (1) The Minister shall have power to acquire, establish, control, manage and operate Government waterworks.
- (2) Before work done pursuant to subsection (1), the Minister shall obtain an approved environmental clearance from a department responsible for environment.
- (3) The Minister may control or prohibit access and use of Government waterworks.

- (4) For purposes of this section, Government waterworks includes water storage dams, water transfer schemes and flood attenuation works.

33. Control measures for dam safety

- (1) The Minister may, on the advice of the Commissioner, declare a dam to be a dam with a safety risk.
- (2) The Commissioner shall put in place control measures for dam safety which shall be evaluated on regular basis by an authorised person.
- (3) An owner of a dam shall—
 - (a) provide any information, drawings, specifications, design assumptions, calculations, documents and test results for the dam; and
 - (b) give access to the dam to an authorised person to inspect the dam to determine the safety of the dam and a possible need for repairs or alterations.
- (4) The Commissioner may direct an owner, at the owner's cost, to undertake repairs or alterations to a dam which are necessary to protect the public, property and the resource quality from any risk of structural failure of the dam.
- (5) If an owner of a dam with a safety risk fails to comply with directives from the Commissioner, the Commissioner may undertake the repairs or alterations and recover the cost from the owner.
- (6) The Commissioner shall develop safety guidelines for users in relation to safety gear and time when use is restricted.

34. Registration of dams with safety risk

- (1) The Commissioner shall keep a register of dams with a safety risk.
- (2) For the purpose of flood risk prevention and flood management and control, an owner of a dam with a safety risk shall register that dam with the Commissioner.

35. Considerations in declaring dam as a dam with a safety risk

In declaring a dam as a dam with a safety risk or a category of dams as a category of dams with a safety risk, the following considerations shall be taken into account:

- (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) the likelihood of the dam failing; and
- (f) in the case of a particular dam, the following shall be considered:
 - (i) the manner in which such a dam is designed, constructed, altered, repaired, operated, inspected or maintained;
 - (ii) a person by whom such a dam is designed, constructed, altered, repaired, operated, inspected or maintained;
 - (iii) the manner in which the water is contained, stored or impounded in such a dam; and
 - (iv) the volume of water stored in such a dam.

36. Exemption of owners of certain categories of dams

- (1) The Minister may, on the advice of the Commissioner, exempt an owner of a dam belonging to a certain category of dams from complying with the dam safety provisions.
- (2) The Minister may withdraw or impose further or new conditions in respect of an exemption.
- (3) Before an exemption is granted in terms of subsection (2), the following shall be considered:
 - (i) the degree of risk or potential risk posed by a dam or category of dams to public safety, property and the resource quality;
 - (ii) the manner of design, construction, alteration, repair, impoundment of water in operation of a dam or category of dams;
 - (iii) the supervision involved in relation to a dam or category of dams;
 - (iv) alternative measures proposed for regulating the design, construction, alteration, repair, operation, maintenance, impoundment of water, inspection of such a dam or category of dams and the effectiveness of the measures;
 - (v) the knowledge and expertise of the persons involved in any risk relating to a dam or category of dams;
 - (vi) the cost relating to a dam or category of dams;
 - (vii) any security provided or intended to be provided for any damage which could be caused by a dam or a category of dams; and
 - (viii) whether a dam or category of dams is permitted in terms of a license or any other authorisation issued under this Act or any other law.

37. Prevention of flood risk

For the purpose of preventing or minimising the risk of flooding, or flood damage, the Commissioner may —

- (a) regulate construction of submersible land dykes, levees or other structures likely to hinder the runoff of floodwater, including authorising construction of such structures if they are necessary for the protection of already existing residences or other private structures;
- (b) alter or demolish dykes, embankments, levees, structures or other works if, in the Commissioner's opinion, they hinder water runoff or extend the flood plain with harmful results;
- (c) regulate the growing of crops, the building of structures or the placing of deposits on land located between a watercourse and any protection dykes, embankments or levees;
- (d) consult with regional and local authorities in determining the geographic extent of floodplain areas and assist such authorities in regulating the development and use of lands within such areas; or
- (e) prescribe measures for the control and management of storm and floods.

38. Powers of entry

- (1) An authorised person has power to enter any land or premises for the purpose of enforcing the provisions of this Act.
- (2) Users of wells or boreholes or natural springs shall allow an authorised person at all reasonable times, access to the wells, natural springs or boreholes in order to—
 - (a) inspect such wells, natural springs or boreholes; or
 - (b) measure or obtain information in relation to the quality and quantity of water used.

- (3) An authorised person who enters any land or premises for purposes of exercising his duties under this section shall identify himself to an owner or occupier of land or premises by producing an identification document, or in the case of a non-public servant acting pursuant to delegated powers, a certificate of authorisation signed by or on behalf of the Minister.
- (4) A document produced pursuant to subsection (3) shall have the name and surname of a person, institution or department, a photo and a stamp of the institution and department and indicate the purpose of entry.
- (5) An authorised person who enters any land or premises pursuant to this section—
 - (a) shall inform an owner or occupant of the land or premises about the purpose of his entry;
 - (b) shall, where precautionary measures are required, take reasonable steps to ensure the safety of persons and property on the land or premises;
 - (c) may, where necessary, enter with another person, vehicle, equipment or material; or
 - (d) may take samples or remove any material or substance from the land or premises if necessary.
- (6) An authorised person shall, before entering any land or premises pursuant to this section, give notice where possible, but may still enter at any reasonable time without prior notice.
- (7) A person who obstructs an authorised person in performing his functions under this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.
- (8) Notwithstanding any provision of this section, an authorised person may not, under any circumstances, enter a private dwelling without a written consent of the occupier or without a warrant obtained from the courts of law authorising entry.

39. Immunity from liability

- (1) No action lies against an authorised person for a commission or an omission of an act done in good faith in the exercise of his functions under this Act.
- (2) Notwithstanding the provisions of this section, in the event that a commission or omission of an act was unlawful, negligent and in bad faith, liability shall apply.

40. Offences in relation to employer and employee relationships

Where a commission or an omission of an act by an employee or agent constitutes an offence in terms of this Act and takes place with the express or implied permission of the employer or principal, as the case may be, the employer or principal is, in addition to the employee or agent, liable to conviction for that offence.

41. General provision on offences and penalties

- (1) No person shall—
 - (a) use water otherwise than as permitted under this Act;
 - (b) fail to comply with the conditions of permits issued under this Act;
 - (c) fail to produce or allow access to books of accounts, documents or assets when required to do so under this Act;
 - (d) unlawfully tamper or interfere with any waterworks or seal or measuring device attached to waterworks;

- (e) fail or refuse to give data or information, give false information or misleading data or information when required to give such information under this Act;
 - (f) refuse to perform duties or obstruct any other person in the exercise of his power or duty under this Act;
 - (g) unlawfully commit any act which detrimentally affects or is likely to affect a water resource;
 - (h) fail to comply with a temporary restriction on the use of water in terms of this Act; or
 - (i) commit any other breach against the provisions of this Act.
- (2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Maloti or to imprisonment for a period not exceeding two years or both.

42. Regulations

- (1) The Minister may make regulations for carrying into effect the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may—
 - (a) prescribe a procedure for determining a reserve;
 - (b) provide procedure for allocating water; or
 - (c) prescribe a procedure for determining a reserve for purpose of giving effect to the provisions of this Act;
 - (d) prescribe a procedure for the protection of Government waterworks and the safety of and security of the people; or
 - (e) provide for a procedure for classifying dams with a safety risk or a category of dams with a safety risk.

43. Repeals and Savings

- (1) The Water Resources Act, 1978⁴ is repealed.
- (2) The regulations made pursuant to the repealed Act shall remain in force and considered to have been made under this Act to the extent that they are not in conflict with this Act, and shall remain in force until repealed.
- (3) A permit or authorisation issued prior to the commencement of this Act shall be valid to the extent that it is not inconsistent with this Act and shall be regarded as issued under this Act.

Schedule 1:

Application forms

Form A – Application for water use permit (Section 20(2))

I Owner Name _____ Address _____

II Location _____ District _____

Town/Village _____ Chief _____

Latitude _____ S Longitude _____ E

Altitude _____ m

Date of coming into operation of use _____

Catchment _____

III Type of use _____ Volume of Water requested _____ m³/day

Consumptive _____ Non Consumptive _____ Treatment _____

Nature _____

IV Surface water _____ By Diversion _____ By Pumping _____ Head _____ m _____

on channel Storage _____ off Channel Storage _____

Elevation of the crest above River Bed _____ m

Length of Dam Crest _____ m

Ground water:

1. spring _____ yield _____ m³/day

2. borehole/well _____ diameter _____ m

depth _____ m _____ static water level _____, m _____ static water level _____ m

I, _____ certify that all particulars of the use described above are correct and undertake to notify the Director of Water Affairs of any future changes in use.

Signature _____

Date Stamp:

Application received on _____

by: _____

Signature _____

Form A1 – Water use permit (Section 20(4))

No. _____

I Owner Name _____

Address _____

II Location

District _____ Town/Village _____

Chief _____

Latitude _____ S Longitude _____ E

Altitude _____ m

Date of coming into operation of use _____

Catchment _____

III Type of use _____

Volume of Water Authorised _____ m³/day

Consumptive _____ Non Consumptive _____

Treatment _____

Nature _____

IV Surface water _____ By Diversion _____ By Pumping _____

Head _____ m _____ on channel Storage _____ off Channel Storage _____

Elevation of the crest above River Bed _____ m _____ Length of Dam Crest _____ m _____

Ground water:

1. spring _____ yield _____ m³/day
2. borehole/well _____ diameter _____ m
depth _____ m _____ static water level _____ water level _____ m

The permit entitles the holder to utilize _____ m³/day under the conditions set out under parts II, III and IV of the permit. It does not guarantee that such quantities are or will be available, and it may be varied in the public interest in accordance with the relevant sections of the Water Act of 2008. This permit is not transferable and must be renewed on or before _____

Permit sought on _____

Permit issued on _____

by; Signature _____

Date Stamp _____

Form B – Construction permit No. (Section 21(3))

In accordance with the provisions of Section 21(3) of the Water Act 2008, Messrs _____ is granted permission to construct waterworks at _____ and has undertaken to start on _____ and complete on _____ subject to the provisions of paragraph 3 of this undertaking.

The applicant further undertakes to comply and abide by the rules and regulations governing the drilling specifications and use of water, and further acquainted with the relevant provisions of Water Act 2008.

The applicant further undertakes to provide that any time specified for the completion of the construction of waterworks which may be extended by the Director of Water Affairs.

Singed _____ Applicant Date _____

Authorized by Name _____ Signature _____

Designation _____

Date Stamp _____

Form C – Drilling contractors certificate (Section 22(2))

This is to certify that _____

Operating from _____

Address _____

Telephone _____

Has registered as a drilling contractor with the Department of Water Affairs in terms of Section 22(1) of the Water Act 2008 on the _____ has been acquainted with the contents of the Act and has undertaken to comply with relevant provisions of this Act.

The Drilling Contractor Signature _____ Date _____

Registering Officer: Name _____

Signature _____

Designation _____

Date Stamp

Schedule 2 (Section 20 (2))**Fees for water use permit**

Type of use	Fee (M per 5 years)	
(i)	Consumptive uses	
	a. Domestic	0-400litres/day Free
	b. irrigation	M10/hectare
	c. Industry	
(1)	small scale	M100
(2)	medium scale	M500
(3)	large scale	M2000
	d. Water bottling	M500
	e. Mining	M5,000
(ii) Non-consumptive uses		
1. hydropower	M 100	
2. recreation	M 100	
3. navigation	M100	
(iii) Fees for construction permit	M 200	