

Zambia

Water Act, 1948

Chapter 198

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Water Act, 1948

Contents

Part I – General	1
1. Short title	1
2. Interpretation	1
3. Exclusion of Western Province, Zambezi and Luapula Rivers and portion of Luangwa River	2
4. Administration of this Act	3
5. Ownership of all water vested in President	3
6. ***	3
Part II – Use of water for purposes other than mining, railway or urban	3
7. Provisions of sections 8 to 13 apply to use of water for purposes other than mining, railway or urban	3
8. Primary use	3
9. Application by owner of land for public water for primary, secondary or tertiary use	3
10. Application by owner of land for private water for secondary use	4
11. Acquisition of special rights in respect of public water for secondary use	4
12. Acquisition of special rights in respect of public water for tertiary use	4
13. Safeguarding of special rights	4
Part III – Use of water for mining, railway and urban purposes	5
14. Provisions of sections 15 to 22 apply to use of water for mining, railway and urban purposes	5
15. Application to use public water for mining purposes	5
16. Conditions governing acquisition of use of water for mining purposes	5
17. Application to use public water for railway purposes	5
18. Conditions governing acquisition of use of water for railway purposes	6
19. Railway prior rights reserved	6
20. Power of entry on land to implement rights	6
21. Application to use public water for urban purposes	6
22. Conditions governing acquisition of use of water for urban purposes	6
Part IV – Hearing and determination of applications	6
23. Establishment of Water Board	6
24. Procedure on applications	7
25. Consideration by Water Board	7
26. Public inquiries	8
27. Order by Water Board	8
28. Survey or investigation of rights affected	8
29. Appeals	8
30. Arbitration to assess compensation	9

31. Order of Water Board	9
32. Renewal of water rights	9
33. Revision of order on subdivision of land	9
34. Registration of order	9
35. Publication of water rights	10
36. Water right not to include easements	10
Part V – Easements	10
37. Acquisition of right of storage, passage or abutment	10
38. Right of entry	10
39. Right of storage	10
40. Right of passage	11
41. Right of abutment	11
42. Right to take materials	11
43. Liability of persons having interest in works	11
44. Liability of persons constructing works	11
45. Registration of water rights	12
Part VI – General powers of the Minister	12
46. Regulations	12
47. Power of entry upon property	13
Part VII – Miscellaneous	13
48. Preservation of existing rights	13
49. Registration of existing rights to secondary or tertiary use	13
50. Rights to be void for want of registration	14
51. Forfeiture of rights	14
52. Service of notices, orders, etc.	14
53. Offences and penalties	15
54. Wilful or malicious acts	15
55. Pollution	15
56. Failure to prevent pollution	16
57. Breach of condition	16
58. Penalty where none expressly provided	16
59. Inquiry into damage sustained	16

Zambia

Water Act, 1948

Chapter 198

Commenced on 1 October 1949

[This is the version of this document at 31 December 1996.]

[Repealed by [Water Resources Management Act, 2011 \(Act 21 of 2011\)](#) on 1 October 2012]

An Act to consolidate and amend the law in respect of the ownership, control and use of water; and to provide for matters incidental thereto or connected therewith

Part I – General

1. Short title

This Act may be cited as the Water Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"arbitration" means arbitration in accordance with the terms and provisions of the Arbitration Act;

[Cap. 40]

"local authority" means—

- (a) in the area of a municipal council, township council or mine township board, such council or board;
- (b) in any other area, the District Secretary for the District in which such area is situate;

"owner", in relation to land, includes the President and a mortgagee or lessee;

"primary use" means the use of water for domestic purposes and the support of animal life (including the dipping of cattle);

"private water" means—

- (a) the water in a swamp, the boundaries of which are wholly within the boundaries of the land owned by any one landowner and which do not cross or abut against the boundaries of the said land and to or from which no stream extending beyond the boundaries of the said land flows, either continuously or intermittently;
- (b) the water in a spring which is situated wholly within the boundaries of the land owned by any one owner and which does not naturally discharge water into a water-course beyond the boundaries of the aforesaid land or abutting on its boundaries;
- (c) the water brought to the surface of such aforesaid land by artificial means;
- (d) flood waters which are impounded on the aforesaid land by artificial means and would otherwise have run to waste;

"public stream" means either—

- (a) a water-course; or
- (b) a drainage depression; or

- (c) a dambo of natural origin;

forming part of a natural drainage system, wherein water flows in ordinary seasons where such water is not private water and whether or not—

- (i) such water flows visibly on the surface;
- (ii) such water-course, drainage depression or dambo is dry during any portion of the year; and
- (iii) the conformation thereof has been changed by artificial means;

"public water" means all water flowing or found in or above the bed of a public stream, whether visible or not, including lakes, swamps or marshes forming the source of such a stream or found along its course;

"right of abutment" means the right to occupy by means of a dam or weir the bed or banks of a public stream or land adjacent thereto owned by another;

"right of passage" means the right to occupy so much land belonging to another as may be necessary for or incidental to the passage of water, and shall include a right to construct works necessary for such passage on such land, and over, under and alongside other work, or to enlarge or extend any existing works;

"right of storage" means the right to occupy land belonging to another by submerging it with water by means of a dam or weir or by other works, and shall include the right of passage over the land and along the boundary of and through the particular area subject to the right for the purpose of maintaining and cleansing such works, or for any other purpose necessary for the effective enjoyment of the right;

"secondary use" means the use of water for the irrigation of land and pisciculture;

"secretary" means the secretary of the Water Board;

"tertiary use" means the use of water for mechanical and industrial purposes or for the generation of power;

"water" includes public and private water;

"Water Board" means the Board established by the Minister under section twenty-three;

"Water Officer" means the officer appointed for the prescribed purposes;

"Water Registrar" means the officer appointed for the prescribed purposes;

"works" means a canal, channel, reservoir, embankment, weir, dam, well, borehole or other work constructed for or in connection with the impounding, storage, passage, drainage or abstraction of water, or for the development of water power or the use of water for industrial, mechanical or any other purpose or for the conservation of rainfall, and shall include any land occupied for or in connection with the impounding, storage, passage, drainage, power development or any other use of water, or any area occupied or acquired or held for the purpose of irrigation or drainage; and any gauge posts, measuring weirs and other appliances erected or used for undertakings or services authorised by this Act.

[As amended by Nos. 5 and 39 of 1950, S.I. No. 55 of 1964 and No. 69 of 1965]

3. Exclusion of Western Province, Zambezi and Luapula Rivers and portion of Luangwa River

This Act shall not apply to—

- (a) the Western Province;
- (b) the Zambezi River;
- (c) the Luapula River;

- (d) that portion of the Luangwa River which constitutes the boundary between Zambia and Mozambique.

[As amended by S.I. No. 55 of 1964]

4. Administration of this Act

There shall be—

- (a) a Water Officer who shall be a public officer, and who shall be the technical adviser to the Water Board;
- (b) a Water Registrar who shall be a public officer, and who shall be responsible for the registering and recording of all water rights acquired prior to the commencement of this Act and of all water rights acquired under this Act;
- (c) such other public officers as may be necessary for the proper carrying out of the provisions of this Act, and such officers shall be subject to the direction and control of the Minister.

[As amended by No. 5 of 1950 and S.I. No. 55 of 1964]

5. Ownership of all water vested in President

The ownership of all water is vested in the President. The use, diversion and apportionment of all water shall be made in terms of this Act:

Provided that a landowner shall have the right to take free of charge such private water occurring on his land as he may need for his own primary, secondary or tertiary use.

[As amended by S.I. No. 55 of 1964]

6. ***

[Obsolete]

[As amended by G.N. No. 277 of 1964]

Part II – Use of water for purposes other than mining, railway or urban

7. Provisions of sections 8 to 13 apply to use of water for purposes other than mining, railway or urban

Subject to the general provisions of this Act, the following sections, numbered eight to thirteen inclusive, shall apply especially to the use of water for purposes other than mining, railway or urban.

8. Primary use

Any person shall have right to the primary use of public water which is found in its natural channel or bed at such places to which access may be lawfully had.

9. Application by owner of land for public water for primary, secondary or tertiary use

Any person may make application to the secretary for permission to impound and store or divert water from a public stream for primary, secondary or tertiary use, and the Water Board may grant such application on such terms and conditions as it may think fit:

Provided that any such grant is made with reasonable regard to the primary use of water and any existing rights lawfully granted for any other purpose.

[As amended by Nos. 5 and 39 of 1950]

10. Application by owner of land for private water for secondary use

Any owner of land may make application to the secretary for the use of private water surplus to the needs of the owner of the land upon which such water occurs, and the Water Board may grant such application on conditions which will secure to the owner of the land upon which the water occurs his existing rights and a reasonable return for any capital expense incurred or work performed by him in making such water available:

Provided that no such right to the use of private water shall be granted unless the Water Board is satisfied that the applicant cannot obtain by reasonable means on his own property water adequate for his requirements.

[As amended by No. 5 of 1950]

11. Acquisition of special rights in respect of public water for secondary use

- (1) The Water Board may, under such conditions as it may deem fit, by special written authority, authorise any applicant to construct or acquire any irrigation works of public importance or general utility which the Water Board may deem necessary or desirable for the purpose of draining into or conserving or utilising in any manner whatsoever any public stream, or for abstracting, storing or preventing the waste of subterranean water, and the applicant may supply or distribute water from such works in such manner and subject to such conditions as the Water Board shall direct, and may assess, levy and recover rates from the owners or occupiers of areas irrigated or benefiting directly or indirectly by water derived from works constructed or acquired under this section, and may enter into agreements with the owners for the transfer or exchange of any right to land or the use thereof in commutation of the rates payable by such owners under this section.
- (2) Any authorisation made under subsection (1) shall be subject to the payment of compensation by the person so authorised to any holders of existing secondary or tertiary water rights which may be prejudiced thereby. The amount of such compensation, if not settled by mutual agreement, shall be submitted to arbitration.
- (3) Every application for special rights to be granted under this section shall be made to the secretary. The applicant when submitting such application shall describe fully the details of the proposed scheme and any other details desired by the secretary.

[As amended by No. 5 of 1950]

12. Acquisition of special rights in respect of public water for tertiary use

The Water Board may, under such conditions as it may deem fit, by special written authority, authorise any person who has made application according to the provisions of section nine to use public water for tertiary use in respect of any undertaking of public importance or general utility, the carrying out of which would, in its opinion, result in public advantages outweighing the disadvantages, subject to the payment of compensation to any holders of existing secondary or tertiary water rights which may be prejudiced thereby of such amount as may be mutually agreed upon or, failing agreement, as may be determined by arbitration.

[As amended by No. 14 of 1955]

13. Safeguarding of special rights

- (1) Any special right granted under section eleven or twelve shall be secured against all encroachment, diminution or interference by water rights subsequently granted to any other person, and it shall

not be competent for the Water Board to grant any such subsequent rights subject to payment of compensation to the holder of such special right.

- (2) In the event of disagreement as to whether any such special right is encroached on, diminished or interfered with or not, or as to the extent to which it is encroached on, diminished or interfered with, the holder of a special right granted under section eleven or twelve shall have the right to make application to the Water Board and the Water Board shall have jurisdiction to hear and determine such application.

Part III – Use of water for mining, railway and urban purposes

14. Provisions of sections 15 to 22 apply to use of water for mining, railway and urban purposes

Subject to the general provisions of this Act, the following sections, numbered fifteen to twenty-two inclusive, shall apply especially to the use of water for mining, railway and urban purposes.

15. Application to use public water for mining purposes

- (1) Any person requiring the use of public water for mining purposes shall make application to the Chief Inspector of Mines, setting out such particulars as to the volume required and the nature of the proposed use, and such other matters as may be prescribed.
- (2) On receipt of such application, the Chief Inspector of Mines shall cause an inquiry to be made into the merits of the application and shall thereupon forward the said application with his comments and recommendations to the Water Board for further action as hereinafter set out.

[As amended by No. 5 of 1950]

16. Conditions governing acquisition of use of water for mining purposes

- (1) If the Water Board is satisfied that the grant of a water right to a miner for mining purposes will not in any way prejudicially affect the holders of existing rights, and that the amount of water applied for is not in excess of reasonable requirements for the purposes specified, it may grant the application in whole or in part on such terms and conditions as it may deem fit.
- (2) If the public water, the use of which is required by a miner for mining purposes, is being beneficially used by any other person by virtue of a right granted under this Act or any other written law or by agreement with the Government, the Water Board may grant the whole or a portion of the water applied for by the miner after full inquiry and on payment of compensation to such other person on the terms and conditions as hereinafter provided.
- (3) Upon transfer of the mining rights for which the use of water has been granted, the right to such use shall pass with the mining rights.

[As amended by S.I. No. 55 of 1964]

17. Application to use public water for railway purposes

Subject to the provisions of section nineteen, any person duly authorised to construct, equip, maintain or operate any line of railway requiring the use of public water for the working of such line of railway, for the supplying of passengers and livestock carried thereon, for the use of servants required in connection with such line and for other like objects, may be authorised by the Water Board to use such public water for all or any of the aforesaid purposes. Applications for such use shall be forwarded to the secretary and shall be accompanied by full particulars of the proposed user.

[As amended by Nos. 5 and 39 of 1950]

18. Conditions governing acquisition of use of water for railway purposes

- (1) If the public water applied for under the last preceding section is being lawfully and beneficially used by any other person by virtue of a right granted under this Act or any other written law or by agreement with the Government, such use for railway purposes may be authorised by the Water Board to the extent it may deem fit on payment of compensation to such other person after full inquiry as hereinafter provided.
- (2) Upon transfer of the ownership of the railway for which the use of water has been granted, the right of such use shall pass with the ownership of the railway and on the abandonment of the railway or upon the water becoming no longer necessary for railway purposes, the right to take and use such water shall absolutely cease and such right shall lapse and revert to the President.

[As amended by S.I. No. 55 of 1964]

19. Railway prior rights reserved

The rights in respect of any water conferred upon any person duly authorised by any written law enacted prior to the commencement of this Act to construct, equip, maintain or operate any line of railway, or created by any agreement made with the Government prior to the commencement of this Act, are hereby preserved.

[As amended by S.I. No. 55 of 1964]

20. Power of entry on land to implement rights

For the purpose of making the grant of any water right for railway purposes effective and available, the holder of such grant may, with such animals, vehicles or implements as may be necessary, enter upon any land and construct, maintain and repair such works as may be necessary and proper. Save in cases of emergency, such entry may be made only with the approval of the Water Board, and after notice to the occupier, if any, of the land.

21. Application to use public water for urban purposes

Whenever a local authority desires to appropriate any public water for primary or tertiary purposes necessary to the community under its jurisdiction, such local authority shall, in the absence of any special law authorising such appropriation, make application to the secretary, setting out such particulars of the proposed appropriation as may be required by the secretary or as may be prescribed.

[As amended by No. 5 of 1950]

22. Conditions governing acquisition of use of water for urban purposes

If the public water applied for under the last preceding section is being beneficially used for secondary or tertiary purposes by any other person by virtue of any right granted under this Act or any other written law or by agreement with the Government, the use required by the local authority may be authorised by the Water Board to the extent it may deem fit on payment of compensation to such other person after full inquiry as hereinafter provided.

[As amended by S.I. No. 55 of 1964]

Part IV – Hearing and determination of applications

[No. 5 of 1950]

23. Establishment of Water Board

- (1) There shall be established a Board to be known as the Water Board.

- (2) The Water Board shall consist of a chairman and not less than four members appointed by the Minister (hereinafter called principal members) together with such other persons to be chosen by the chairman from a panel, appointed by the Minister, as the chairman may deem necessary or expedient for the purposes of any particular meeting, having regard to the nature of the applications to be considered at such meeting.
- (3) The quorum of the Board shall consist of the chairman and three members, of whom not less than two shall be principal members.
- (4) The chairman shall have a deliberative as well as a casting vote.
- (5) The Minister may appoint a secretary to the Water Board.
- (6) The Minister may, by statutory instrument, make rules prescribing the practice and procedure of the Board.

[As amended by No. 14 of 1955, G.N. No. 277 of 1964 and S.I. No. 55 of 1964]

24. Procedure on applications

- (1) Any person who wishes to be granted any water right or other right to enable him to exercise a right to the use of water shall submit an application therefor to the secretary.
- (2) The secretary shall thereupon cause an advertisement of the application to be published at the expense of the applicant in the *Gazette* and in at least one newspaper circulating in the area concerned. Such advertisements shall call upon any person who wishes to object to the application to send notice of objection so as to reach the secretary within one month of the date of publication of the advertisement.
- (3) The secretary shall send by registered post to any persons registered as owners of water rights, which in the opinion of the secretary are likely to be affected by the application, particulars of the application and of the date by which notices of objection must be received.
- (4) *[Obsolete]*
- (5) The secretary shall send a copy of every application to the Water Officer. On receipt of such copy, the Water Officer shall cause an investigation to be made into the application, and shall report the result of such investigation to the Water Board.
- (6) On the expiry of the period for sending notice of objection, the secretary shall submit the application, together with copies of the advertisements and any objections received, to the Water Board.
- (7) The Water Board may, pending investigation and consideration of an application, grant to the applicant a temporary permit to use water for such period and on such conditions as the Water Board may think fit.

[As amended by No. 39 of 1950 and G.N. No. 277 of 1964]

25. Consideration by Water Board

- (1) When the Water Board has received the documents submitted by the secretary and the report of the Water Officer, it shall consider the application.
- (2) If no objections have been received, the Water Board may grant the application in whole or in part or refuse the same in its discretion. In granting an application in whole or in part, the Water Board may, in its discretion, attach conditions to the grant.
- (3) If objections have been received, or if the Water Board deems it desirable to do so, the Water Board shall hold a public inquiry into the application.

26. Public inquiries

- (1) The secretary shall give at least one month's notice of any public inquiry—
 - (a) by inserting notice thereof in the *Gazette*; and
 - (b) by notifying, by registered post, all persons registered as owners of water rights which, in the opinion of the secretary, are likely to be affected by the application, and all persons who have objected.

In addition, the secretary shall cause notice of such public inquiry to be published in two issues of a newspaper circulating in the area concerned, and an interval of at least one week shall elapse between such publications. Such notices and notifications shall set out the scope, date and place of the proposed public inquiry.

- (2) Any person with the leave of the Water Board, and any person who has objected, may appear either personally or by counsel at a public inquiry and object to or support the application.
- (3) The Water Board when holding a public inquiry shall have power to take evidence on oath and for that purpose to administer oaths.
- (4) The Water Board in any case where it thinks fit may order such expenses of a witness as it deems desirable to be paid as part of the costs of the public inquiry.

27. Order by Water Board

The Water Board may, in its discretion, after a public inquiry—

- (a) grant or refuse an application in whole or in part;
- (b) attach any conditions to the granting of an application;
- (c) award compensation to affected registered owners of water rights;
- (d) revoke, vary or amend any registered water right in respect of the public water concerned in the application then before the Water Board:

Provided that the powers of revocation, variation and amendment shall not be exercised unless the affected registered holders of water rights consent, or unless the applicant pays such compensation as the Water Board may award to such registered holders;

- (e) make such order as to costs as it shall deem just.

[As amended by G.N. No. 277 of 1964 and No. 69 of 1965]

28. Survey or investigation of rights affected

If before or during any public inquiry it appears to the Water Board that it will be necessary for survey or investigation to be made of any land or water or works alleged to be affected by the application, the Water Board may order either the applicant or any person lodging any objection to the application to cause such survey and a plan thereof to be made, or may direct an engineer nominated by the Water Board to make such survey and plan or investigation.

29. Appeals

Any person aggrieved by a decision of the Water Board may, within thirty days, appeal to the High Court against such decision.

30. Arbitration to assess compensation

- (1) If the application is not refused and compensation is payable to affected registered holders of water rights or a rural council, the secretary shall call upon the applicant to lodge with him the written agreement of each such affected holder, or the rural council, to accept the amount of compensation deemed by the Water Board to be payable.
- (2) In the event of disagreement between the applicant and an affected registered owner of water rights regarding the amount of compensation, the matter in dispute shall be submitted to arbitration.

[As amended by G.N. No. 277 of 1964 and No. 69 of 1965]

31. Order of Water Board

As soon as the secretary has received from the applicant such written agreement to accept the compensation, or notification of agreement to submit the question of compensation to arbitration in respect of all affected registered holders, the Water Board may then issue the necessary order granting the water right to the applicant.

[As amended by No. 39 of 1950]

32. Renewal of water rights

- (1) Every water right which has been granted for a period of time shall be renewable in accordance with the provisions of this section.
- (2) Applications for renewal shall be made to the secretary not more than twelve and not less than three months prior to the date of expiry of the right.
- (3) Every application for renew shall be considered by the Water Board and the Board shall, after such inquiry, if any, as it thinks fit, order the renewal of the right for the same or such greater or lesser quantity of water, and on such terms and conditions, as it may consider desirable in the light of the hydrographic information available at the time of renewal.
- (4) Every renewal shall be deemed to be a continuation of the original grant and, for the purpose of priority under this Act, the original grant shall be deemed to have been made for the quantity of water and on the terms and conditions contained in the order of renewal, but without prejudice to anything lawfully done before the date of renewal.

[No. 39 of 1950]

33. Revision of order on subdivision of land

- (1) Every water right which has been granted in respect of any particular area of land shall be subject to revision by the Water Board on any subdivision of that area of land.
- (2) On any such revision the Water Board shall make such order as it thinks necessary for the purpose of securing an equitable apportionment of water to the subdivision.

[No. 39 of 1950]

34. Registration of order

Every order granting, renewing or revising a water right under this Part shall be registered by the applicant with the Water Registrar within three months of the date thereof in the prescribed manner and on paying the prescribed fees.

[No. 39 of 1950]

35. Publication of water rights

The secretary shall in the months of June and December of each year cause to be published in the *Gazette* a list of the names of the persons to whom water rights have been granted during the preceding half-year and shall specify the public water in respect of which such rights may be exercised and the quantity of water which may be taken.

[No. 39 of 1950]

36. Water right not to include easements

The grant of any water right to a person shall not be deemed to authorise the exercise of any easement or other right on or over the land of another person. Where any such right is required, the same may, in the absence of agreement between the parties, form the subject of an application under Part V.

[No. 39 of 1950]

Part V – Easements

37. Acquisition of right of storage, passage or abutment

Any person having a right to the use of water or being entitled to supervise or control the use of water may be granted temporarily or for a term of years at the discretion of the Water Board a right of storage of water, a right of passage or a right of abutment, or all or any such rights and all such other rights as the Water Board may deem necessary for the exercise by such person of his right to the use of such water:

Provided that—

- (i) the period of temporary right shall either be for a definite period of time, or for so long as it is used for the purpose for which it is granted, with or without further specifications of the period;
- (ii) no proceedings shall be taken for the acquisition of any right while applications for the right to the use of the water in respect of which the right is claimed are still under consideration by the Water Board;
- (iii) no such right shall give the person acquiring it a proprietary interest in respect of the area on, over or through which it is exercised and no encumbrance attaching to such area shall be affected thereby.

[As amended by No. 39 of 1950]

38. Right of entry

The grant of any rights under this Part shall include the right of entry for the purposes of survey and for all other purposes necessary to secure the same.

[As amended by No. 39 of 1950]

39. Right of storage

- (1) A right of storage shall not, subject to the terms of any award or agreement establishing it, deprive any owner of the area of the right of the use of that part of the area which is not submerged:

Provided that such use is not detrimental to the enjoyment of the right of storage.

- (2) When a permanent right of storage has been acquired, the proprietor of the area over which the right has been acquired may, before the commencement of the storage work, and on payment of his proportion of the cost thereof (to be determined in case of dispute by arbitration), demand and

thereafter shall be entitled to receive the benefit of the storage in proportion to the share he has contributed to the work.

40. Right of passage

- (1) A right of passage shall include the right of access to any area (after notice to the owner thereof) for the purpose of constructing, inspecting or maintaining such works.
- (2) The owner of any area over which the right exists may pass along such works any water to the use of which he is entitled on payment of such proportion of the cost of constructing, enlarging and maintaining such works and on such other terms as may be agreed upon or decided by arbitration.
- (3) In exercising such a right across a public road, the holder thereof shall construct and maintain as directed by the Water Board or by an officer appointed by the Water Board such works as will prevent danger or inconvenience to the public.

41. Right of abutment

- (1) The owner on whose land a right of abutment exists may, before the construction of the dam or weir, demand the right to lead therefrom such water as he may be entitled to take from the public stream and may obtain such right on paying the holder of the right such proportionate cost of the dam or weir as may be agreed upon or decided by arbitration.
- (2) For the purposes of this section, "dam" or "weir" shall mean an obstruction placed across the bed of a public stream in order to raise the water level in it, for diverting (without storing) such water on the land.

42. Right to take materials

Every person exercising a right under this Part shall, subject to the provisions of the Mines and Minerals Act, have the right to take stones, sand, earth, gravel or clay from the land over which the right exists for the purpose of constructing, maintaining or repairing any irrigation works thereon:

Provided that no such materials shall be taken from land within four kilometers of any house, or from any other structure, mine, open quarry or cultivated lands without the permission of the owner thereof.

[Cap. 213]

43. Liability of persons having interest in works

Any person who, by paying a proportion of the cost of constructing any irrigation works, as provided in sections thirty-nine, forty and forty-one, has acquired the right to the same, shall be liable to pay a like proportion of the cost of its maintenance and repair, unless or until exempted therefrom by agreement or order of the Water Board.

44. Liability of persons constructing works

Every person who, under the provisions of this Part, constructs works for the passage of water, which—

- (a) prevent any owner passing freely over or on to any area of which he is the owner; or
- (b) check the circulation of water in the irrigation or drainage of any area or interfere with the mining thereof;

shall construct and maintain in repair—

- (i) such bridges and other works as will make communication safe and convenient; and

- (ii) such culverts, aqueducts and other works as are necessary to secure the free circulation of such water or prevent interference with such mining;

unless he shall be exempt from such duty by agreement or other lawful cause.

45. Registration of water rights

All rights granted under this Part shall be registered by the applicant with the Water Registrar within three months of the date of granting thereof and in the manner and on paying the fees prescribed, and, in addition, all such rights which affect land shall be registered by the applicant with the Registrar of Lands and Deeds within the time and in the manner and on paying the fees provided by the Lands and Deeds Registry Act.

[Cap. 185]

Part VI – General powers of the Minister

46. Regulations

The Minister may, by statutory instrument, make regulations for the effective administration of this Act, and without prejudice to the generality of the foregoing may make regulations to carry out all or any of the following matters:

- (a) establishing and maintaining hydrographic stations on any private land and erecting gauging weirs, gauging poles or any other devices for the measurement of water and may obtain and record observations made at such hydrographic stations and the owner of the land on which such hydrographic stations are established shall not be entitled to any payment or compensation in connection therewith, if any existing works for the beneficial use of water, the right to which has been registered or authorised under this Act, are not thereby adversely affected;
- (b) obtaining and recording information as to the extent of land in Zambia under irrigation, the quantity of water used for the same, and the amount, nature and value of the crops raised thereby, and generally obtaining and recording information and statistics as to the hydrographic conditions of Zambia;
- (c) inspecting any works on the course of any public stream and ordering any person to do such acts and execute such repairs with respect to his works as may be deemed necessary in the public interest and, in default of compliance within the time specified in such order, executing the same and recovering the cost of such execution from the person making such default;
- (d) exercising general supervision over all public streams in Zambia, protecting the source of supply of any public stream, and, if he deems it necessary or expedient, causing the channels of such stream to be cleansed, deepened, widened or otherwise improved; preventing the leakage or flow of any public stream from the surface into subterranean channels; preventing any waste or any unlawful diversion, abstraction, storage or use of public water; causing to be removed any obstruction unlawfully placed in a public stream, and preventing any unlawful act calculated to diminish the quantity of water in any part of a public stream;
- (e) supervising and regulating the diversion, storage, distribution and use of water in any public stream;
- (f) investigating any existing or potential source of water power;
- (g) for the purpose of protecting any source of supply of any public stream, by statutory notice, defining the area of such source and prohibiting or restricting the entry of persons into such area;
- (h) requiring persons to whom the right to use water has been granted under this Act to erect adequate diversion sluices at their own expense, and to record and furnish measurements as to the volume of

the water abstracted or allowed to pass at or near the point of abstraction by the use of instruments specified or supplied for the purpose.

[As amended by G.N. No. 277 of 1964]

47. Power of entry upon property

- (1) The Minister or any person acting under his authority may, after notice to the owners, enter upon any area with such men, animals, vehicles, appliances and instruments, and do all such acts thereon as may be necessary for or incidental to the exercise of the powers conferred or the performance of the duties imposed by this Act on the Minister or any other officer:

Provided that no such person shall enter any building or any enclosed yard attached to a dwelling except with the consent of the occupant thereof, without previously giving such occupier seven days' notice of his intention to do so.

- (2) As little damage as possible shall be caused to any area by the exercise of the powers of this section, and compensation shall be paid by the Minister for all damage so caused, the amount thereof, if not mutually agreed upon, being determined by arbitration.
- (3) The Minister, Water Officer, Chief Inspector of Mines, members of the Water Board or persons authorised in writing by any of them, shall, to the extent necessary for exercising the jurisdiction of the Minister, Water Officer, Chief Inspector of Mines or Water Board, have the right to enter upon any area with the powers incidental thereto provided in subsection (1) and subject to the restrictions and obligations provided in subsections (1) and (2).
- (4) Any person who prevents such entry upon any area as is authorised by this section, or who wilfully obstructs or hinders any person so authorised in lawfully carrying out his powers or duties under this Act or the regulations made hereunder shall be guilty of an offence.

[As amended by G.N. No. 277 of 1964]

Part VII – Miscellaneous

48. Preservation of existing rights

Except as hereinafter provided by sections fifty and fifty-one, nothing in this Act shall interfere with or derogate from any rights lawfully acquired before the commencement of this Act in so far as actual use has been made of such rights or the priority of such rights *inter se*.

[As amended by No. 5 of 1950]

49. Registration of existing rights to secondary or tertiary use

- (1) Within twelve months of the commencement of this Act, every person claiming to have acquired a right to public water for secondary or tertiary use prior to the commencement of this Act shall lodge with the Water Registrar a claim to be registered as the holder of a water right. Every such claim shall be supported by a certified copy of the document conferring such right or by other evidence in support of the claim.
- (2) The Water Officer shall investigate all such claims and shall instruct the Water Registrar to register and record all water rights deemed to be valid, and shall notify within eighteen months of the commencement of this Act the person making the claim accordingly.
- (3) Should the Water Officer consider any such claims, as a whole or in part, not to be valid, he shall within eighteen months of the commencement of this Act notify the claimant to this effect, and such claim to the extent specified by the Water Officer shall be rejected and shall not be registered:

Provided that any person whose claim to have a water right registered has been rejected may, within three months of the issue of the notification rejecting the claim, appeal to the Water Board.

- (4) No claim for the registration of an existing water right submitted later than twelve months after the commencement of this Act shall be considered by the Water Officer unless the Minister is satisfied that special circumstances existed preventing the person making his claim within the specified period.

[As amended by G.N. No. 277 of 1964]

50. Rights to be void for want of registration

Any water right or appurtenant right required to be registered by any of the provisions of this Act and not registered within the proper time shall be null and void.

51. Forfeiture of rights

- (1) In case the owner of any right registered in accordance with the provisions of this Act—
- (a) fails to make full beneficial use of the same for a consecutive period of three years; or
 - (b) fails to comply with any condition imposed under section twenty-five, twenty-seven or thirty-two requiring any works to be constructed and maintained;

the secretary may, with the approval of the chairman of the Water Board, by notice in writing to such owner, call upon him to show cause why such registered right should not be forfeited in whole or in part and if, within three months of the service of such notice, no objection in writing is received by the secretary, he shall forthwith declare the same to be forfeited to the extent specified in the notice and shall forthwith issue a certificate to that effect, which certificate shall be registered by the Water Registrar.

- (2) In any case in which objection to such proposal for forfeiture is received by the secretary, he shall refer the matter to the Water Board which may, in its discretion, order such right to be forfeited in whole or in part or to be continued upon such terms and conditions as it shall think fit, and any such order shall be registered by the Water Registrar.
- (3) No order of forfeiture and no order which varies the conditions of a grant shall be made under subsection (2) unless—
- (a) the owner has been given an opportunity to be heard either personally or by counsel; and
 - (b) the owner has been given an opportunity to remedy the breach if the forfeiture or variation is due to a breach of a condition imposed under this Act and the breach is capable of being remedied.

[No. 39 of 1950]

52. Service of notices, orders, etc.

Any notice, order or other document required by this Act to be given to or served upon any person shall be deemed to be effectively served if delivered personally to such person or left at his abode or place of business, or sent by registered letter to his address or, if such person is absent from Zambia and has left no known representative, by publication in the *Gazette*. Service upon a person authorised to represent another shall be deemed to be service upon the person whom he represents, and, in the case of a company or syndicate having no domicile or office in Zambia, any person in charge of its property shall be deemed to be its representative:

Provided that nothing in this section shall prevent any person who has not been personally served with a notice, order or other document from proving that, through no fault of his own or of his representative, such notice, order or other document never came to his knowledge.

53. Offences and penalties

Any person who, without lawful right or authority—

- (a) alters, enlarges or obstructs any works, or destroys, defaces or moves any level marks, beacons or other structure or appliance erected or made in conjunction with such works;
- (b) takes for purposes other than primary use, any public water, unless authorised in terms of this Act or in the exercise of a legal right existing at the commencement of this Act;
- (c) interferes with or alters the flow of the water of any work or of a public stream, or interferes with the distribution of such water, or, after notice to refrain from doing so, takes more water than he is entitled to, or uses it in a manner contrary to this Act or any regulations made thereunder;
- (d) while using or being liable for the maintenance of any works, to the prejudice of others, wastes or does not take due precaution to prevent the waste of water from such works, or fails properly to maintain the works and keep them in repair;
- (e) wastes public water;
- (f) aids or abets or knowingly permits any such act or default;

shall be guilty of an offence and liable—

- (i) in the case of a first offence, to a fine not exceeding five hundred penalty units or, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months, or to both;
- (ii) in the case of a second or subsequent offence, to a fine not exceeding three thousand penalty units or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year, or to both.

[As amended by Act No. 13 of 1994]

54. Wilful or malicious acts

Any person who wilfully or maliciously commits any of the offences mentioned in paragraph (a) or (b) of section fifty-three shall be liable to a fine not exceeding fifteen thousand penalty units, or to imprisonment with or without hard labour for a period not exceeding two years, without the option of a fine.

[As amended by Act No. 13 of 1994]

55. Pollution

Any person who wilfully or through negligence pollutes or fouls any public water so as to render it harmful to man, beast, fish or vegetation shall be guilty of an offence and liable—

- (a) in the case of a first offence, to a fine not exceeding six thousand penalty units or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one year, or to both;
- (b) in the case of a second or subsequent offence, to a fine not exceeding twelve thousand penalty units or, in default of payment, to imprisonment with or without hard labour for a period not exceeding two years, or to both.

[As amended by Act No. 13 of 1994]

56. Failure to prevent pollution

- (1) Should the Water Officer be satisfied that public water is being fouled or polluted, he shall, in the prescribed form, call upon the person responsible therefor to take adequate measures to prevent such fouling or pollution within a specified period:

Provided that, on good cause being shown, the Water Board may, on application being made to it, extend the period specified.

- (2) Any person who, when called upon to take steps in accordance with subsection (1), fails within the specified time to take such adequate steps to prevent the fouling or pollution of public water, shall, in addition to any penalties to which he may be liable under the last preceding section, be liable on conviction to a penalty not exceeding three thousand penalty units a day until the matter is rectified.

[As amended by Act No. 13 of 1994]

57. Breach of condition

Any person who contravenes or fails to comply with any condition attached to the grant of a right under this Act shall be guilty of an offence:

Provided that no person shall be convicted of an offence under this section for the breach of a condition which is capable of being remedied unless he has been given a reasonable opportunity to remedy such breach and has failed to do so.

[No. 39 of 1950]

58. Penalty where none expressly provided

Any person who commits an offence against this Act or any regulation made hereunder, for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding seven hundred and fifty penalty units or, in default of payment, to imprisonment with or without hard labour for a period not exceeding six months.

[As amended by Act No. 13 of 1994]

59. Inquiry into damage sustained

- (1) Whenever any person is convicted by a court of an offence against this Act or any regulation made hereunder and it shall appear that such person has by that offence caused damage to any other person, such court may, at the written request of such other person, but in the presence of the convicted person, inquire summarily and without pleadings into the amount of damage so caused.
- (2) Upon proof of such amount, such court may give judgment therefor in favour of the applicant and against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before such court:

Provided that judgment shall not be given under this section for a sum exceeding the civil jurisdiction of such court.