

CHAPTER 34:01 - WATER: SUBSIDIARY LEGISLATION

INDEX TO SUBSIDIARY LEGISLATION

Water Regulations

WATER REGULATIONS

(under section 35)

(6th September, 1968)

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S.I. 62, 1968,
S.I. 112, 1969.

PART I **General (regs 1-5)**

1. Citation

These Regulations may be cited as the Water Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"Board" means the Water Apportionment Board;

"Form" means a form prescribed in the First Schedule;

"Registrar", except in Part VII, means the Water Registrar.

3. Registers

(1) The Registrar shall design such registers as may be necessary to carry out the provisions of the Act.

(2) The Registrar shall verify and initial every entry in the registers of water rights and servitudes.

4. Fees

The fees to be charged in respect of any act, matter, or thing required or permitted to be done under the Act, shall be those specified in the Second Schedule.

5. Forms

(1) An application to the Board under the Act shall-

- (a) be addressed to the Registrar;
- (b) be in writing;
- (c) contain the name and address of the applicant and be signed by him or by his duly authorized agent; and
- (d) be accompanied by the fee prescribed in relation thereto in the Second Schedule.

(2) An application in respect of-

- (a) the notification of an existing right in accordance with the provisions of section 12 of the Act shall be in Form W1;
- (b) the grant of a water right in accordance with the provisions of section 15(2) of the Act shall be in Form W2;
- (c) the creation of a servitude in accordance with the provisions of section 26 of the Act shall be in Form W3,

and the Registrar may, if in his opinion the application is incomplete in any material respect or contains information which is inadequate for the purpose of enabling the Registrar to perform his functions under the Act in connection therewith, require the applicant to complete the form or supply such information as may be required, and, pending such completion or the supplying of such information, the application shall be deemed not to be an application for the purposes of the Act.

(3) The notifications of the acquisition of a right to abstract and use water by agreement in accordance with the provisions of section 16(5) of the Act shall be in Form W4.

(4) Certificates in respect of-

- (a) the recording of an existing right in accordance with the provisions of section 13(1) of the Act shall be in Form W5;
- (b) the grant of a water right in accordance with the provisions of section 15(4) of the Act shall be in Form W6;
- (c) the inspection of works in accordance with the provisions of section 18(2) of the Act shall be in Form W7.

PART II

Proceedings of the Water Apportionment Board (regs 6-11)

6. Meetings of the Board

The Board shall meet at such times and at such places as it may determine or as may be

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directed by the Minister:

Provided that the Board shall meet not less than four times a year.

7. Quorum

One half of the membership of the Board, including the chairman or other person presiding, shall constitute a quorum of the Board.

8. Presiding

At every meeting of the Board the chairman, or in his absence the vice-chairman, or in the absence of both the chairman and the vice-chairman, one of the members present appointed by the meeting shall preside.

9. Voting

Any question to be determined by the Board shall be decided by a majority of the members present and voting, the chairman or other person presiding having an original vote and, in the event of an equality of votes, a casting vote.

10. Disclosure of member's interest

If any member present at a meeting of the Board has any pecuniary or other interest, direct or indirect, in any matter under discussion, he shall disclose the fact and, if the chairman or other member presiding so directs, he shall withdraw from the meeting during such discussion or refrain from discussions, of, or voting on, the matter.

11. General

Subject to the provisions of the Act, the Board may regulate its own procedure.

PART III

Applications under the Act (regs 12-15)

12. Notification of application

(1) The Registrar shall give notice of an application for the grant of a water right under section 15 of the Act in accordance with the provisions of this regulation within four weeks of receipt thereof or, if he exercises his powers under regulation 5(2), within four weeks of the completion of the application form or of the supplying of information in accordance with the provisions of that regulation.

(2) Notice of an application under this regulation-

- (a) shall be served by the Registrar upon all persons who, to his knowledge, have an interest in the application, including, if the applicant is not the owner or occupier of the land concerned, the owner or occupier thereof;
- (b) shall be published in two separate issues of the *Gazette* and of a newspaper circulating in the district where the water right is sought.

(3) Notice given under subregulation (2) shall state-

- (a) the name and address of the applicant;

- (b) the location of the place in respect of which the application is made;
- (c) the nature of the right and whether it is desired that such right should be declared appurtenant to any land,

and shall call upon any person who objects to the grant of the right to lodge his objection in writing with the Registrar within the time prescribed in subregulation (4).

(4) The period for lodging objections shall expire 30 days after the last publication of a notice under subregulation (2)(b).

13. Objections

An objection to the grant of a water right lodged under the provisions of regulation 12 shall state-

- (a) the name and address of the objector;
- (b) the matter to which objection is made;
- (c) the grounds of the objection;
- (d) the interest of the objector; and
- (e) whether the objector wishes to be heard as to his objection by the Board.

14. Conditional grants

(1) Where the Board has granted an application for a water right subject to any condition or modification, it shall be deemed to be a condition of such grant that the Registrar may refuse to issue such grant until the applicant has stated in writing that such condition or modification is acceptable to him.

(2) Where the Board has granted a water right subject to the construction of works the Board may require the holder of the right to produce specifications and drawings of such works to the Registrar, and the Board may require the holder to modify such specifications and drawings and to construct the works in accordance with such modified specifications and drawings.

15. Public notice in the case of other applications

The Registrar may, in the case of an application for the registration of a water right under Part III of the Act, and shall in the case of the receipt of an application under section 26(2) of the Act, advertise such application in accordance with the provisions of regulation 12(2)(b), and in such a case the provisions of this Part relating to such advertisement and to the lodging of objections shall apply in relation to such application, subject to such modifications as may be occasioned by the circumstances of the case, as they do to an application under section 15 of the Act.

PART IV **Appeals (regs 16-19)**

16. Lodgement of appeals

(1) An appeal to the Minister under section 31 of the Act shall be made within one month

of the date of the notification to the appellant of the decision, act or direction appealed against, and shall be lodged with the Minister and with the authority whose decision, act or direction is appealed against.

(2) The notice of appeal shall set out-

- (a) the name of the appellant;
- (b) the nature of the decision, act or direction appealed against;
- (c) the grounds of appeal; and
- (d) the interest of the appellant in the matter.

17. Reasons

The Board, or, as the case may be, the Registrar, shall as soon as possible after being notified of the lodgement of a notice of appeal under regulation 16, supply to the Minister and to the appellant its reasons for making the decision, doing the act or giving the direction against which appeal is made.

18. Hearing of appeal

Subject to the requirements of natural justice, the Minister shall hear and determine the appeal in such manner as he may think fit.

19. Stay of action pending appeal

The lodgement of a notice of appeal shall stay the execution of the decision, act or direction appealed against unless the Minister, being satisfied that no prejudice of a permanent nature will be incurred by the appellant, directs to the contrary.

PART V ***Information (reg 20)***

20. Information

(1) The Registrar or the Board may, in the exercise of their powers under section 27 of the Act call upon any person by written notice served on him to supply such information, being information relevant to the exercise of the functions of the Registrar or the Board under the Act as may be specified in the notice, within the time and in the manner so specified.

(2) Without derogation from the generality of the powers conferred under subregulation (1), the Registrar may require the holder of a water right granted for mining, forestry or industrial purposes or for the generation of power, to provide such information as he may deem necessary as to the quantity and quality of any water which it is proposed to return to any stream or body of water, the method proposed to be used for its disposal, and the place at which it is proposed to be discharged.

(3) Without derogation from the generality of the powers conferred under subregulation (1), the Registrar may require any person abstracting or using water or constructing any work for conserving or abstracting or using water on any land in accordance with the provisions of section 6 of the Act, to produce evidence of his ownership or occupancy of

such land.

(4) Without derogation from the generality of the powers conferred under subregulation (1), the Registrar may require any person diverting, damming, storing, abstracting, using or discharging any effluent into public water or for any such purpose constructing any works, to disclose his right to do so.

(5) No person shall be required to comply with a notice under subregulation (1) as read, as the case may be, with subregulation (2), (3), or (4), requiring oral information to be given before the Registrar or the Board unless his expenses in giving such information, in such amount as the Minister may approve, have been tendered to him.

(6) Subject to the provisions of subregulation (5), any person who fails to comply with a notice served under subregulation (1) as read, as the case may be, with subregulation (2), (3), or (4) shall be guilty of an offence and shall be liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

PART VI **Advisory Boards (regs 21-27)**

21. Creation of advisory boards

(1) The Minister may by notice published in the *Gazette* create an advisory board either for the whole of Botswana or for any portion thereof and may, in like manner, appoint persons to be members thereof.

(2) An advisory board shall consist of not more than 10 members, including the chairman and secretary thereof.

22. Functions of advisory board

The functions of an advisory board shall be to assist the Registrar, or Board, or Minister in the discharge of such of their functions under the Act as may be specified in the notice referred to in regulation 21(1) and, further, to report to the Registrar, or the Board, or the Minister on such matters as may be referred to the advisory board by the Registrar, Board or Minister, as the case may be.

23. Tenure of office of members of advisory board

(1) A member of an advisory board, other than a member *ex officio*, shall hold office for a period of three years from the date of his appointment.

(2) Any member of an advisory board, other than an *ex officio* member, may at any time resign his appointment by writing under his hand addressed to the Minister.

(3) The Minister may, by writing under his hand addressed to a member, not being an *ex officio* member, remove such member from office where the member-

- (a) has been absent from two consecutive meetings of the advisory board without the consent of the chairman;
- (b) is unable to discharge his functions as a member by reason of illness or absence or other cause;

- (c) has been declared insolvent or adjudged or otherwise declared bankrupt under a law in force in Botswana or elsewhere and has not been discharged, and has made composition with his creditors and has not paid his debts in full; or
- (d) has been sentenced to imprisonment without the option of a fine for any offence whether in Botswana or elsewhere; or
- (e) is a Member of the National Assembly.

24. Vacancies

The Minister may at any time, by notice in the *Gazette*, make appointments to fill vacancies in an advisory board.

25. Meetings of advisory board

An advisory board shall meet at such times as the Minister may direct and, in addition, shall meet within two weeks of the reference to it of any matter under the provisions of regulation 22.

26. Presiding

At every meeting of an advisory board the chairman or, in his absence, one of the members present appointed by the meeting shall preside.

27. Application of Part II

The provisions of regulations 7, 9, 10 and 11 shall apply to an Advisory Board as they do to the Water Apportionment Board.

PART VII ***Water Servitudes (regs 28-37)***

28. Interpretation

In this Part unless the context otherwise requires-

"certificate" means a certificate issued under regulation 29;

"Deeds Regulations" means the Deeds Registry Regulations made under the Deeds Registry Act;

"diagram" has the meaning assigned to it in section 2 of the Deeds Registry Act;

"Registrar" means the Registrar of Deeds.

29. Certificate of creation of servitude

(1) A certificate under section 26(4) of the Act shall, unless the servitude has been made appurtenant to the land under section 26(5) of the Act, be in Form W8 and shall be issued under the hand of the Water Registrar.

(2) A certificate issued under section 26(4) of the Act shall, where such servitude has been made appurtenant to the land under section 26(5) of the Act, be in Form W9 and shall be under the hand of the Water Registrar.

(3) Where the servitude is to be exercised in relation to any specified area of land within the servient tenement, there shall be annexed to the certificate issued under this regulation a diagram showing the servient tenement and the area subject to the servitude unless the Director of Surveys and Lands directs that the requirements of this subregulation may, in any particular case, be dispensed with.

(4) The certificate shall contain a sufficient description of the land encumbered by the servitude and shall mention the title deed of such land.

(5) The certificate shall contain the full names and, in the case of natural persons, the dates of birth of the persons named therein unless the Registrar, in special circumstances, otherwise directs.

(6) Any certificate in favour of a partnership shall contain the full names of the partners constituting the firm.

(7) Any alterations or interlineations on the certificate shall be initialled by the Water Registrar.

30. Lodgement of certificate

Certificates and documents for registration in the Deeds Registry under the provisions of this Part shall be lodged for examination with the receiving officer (who shall note thereon the date of lodgement) at any time during office hours by the owner or by an attorney, notary or conveyancer practising at the seat of the Registry, and except where the Registrar otherwise directs such certificates and documents shall be lodged in duplicate.

31. Production of title deed

(1) Subject to the provisions of subregulation (2), for the registration of a certificate the title deed of the servient tenement shall be produced and, in the case of a praedial servitude, the title deed of the dominant tenement shall also be produced.

(2) Where the holder of a servitude granted under section 26 of the Act is unable to produce the title deed of the servient tenement and the Registrar is otherwise unable to obtain its production, the Registrar may dispense with the requirements of subregulation (1) in relation to such deed.

32. Endorsement

In registering a certificate, the Registrar shall endorse the terms of the servitude and the number and date of the certificate on the title deed of the servient tenement and, in the case of a praedial servitude, also on the title deed of the dominant tenement; should, however, the description of the servitude be of such a lengthy or complicated nature as to render an effective reference thereto or a transcription thereof impracticable by endorsement, an extract thereof certified by a conveyancer shall be lodged for annexure by the Registrar to the originals and office duplicates of the deeds affected, and a suitable reference to such extract shall be made by the Registrar upon such deeds.

33. Subsequent dealings with servitude

A servitude registered under the provisions of this Part shall thereafter be deemed to be a servitude registered under the provisions of the Deeds Registry Act and the provisions of

that Act shall apply in relation to subsequent transactions concerning that servitude, and to the lapse of such servitude, as if such servitude has been registered under the said Act, and for the purposes of that Act and the Deeds Regulations the certificate shall be deemed to be the title deed of the servitude.

34. Application of section 14 of Deeds Registry Act

Section 14 of the Deeds Registry Act shall apply in relation to a certificate issued under regulation 29 as it does in relation to deeds and other documents.

35. Application of section 61 of Deeds Registry Act

Section 61 of the Deeds Registry Act shall apply in relation to a servitude created under the Act as it does in relation to other real rights.

36. Application of certain provisions of Deeds Regulations

The provisions of regulations 2, 28(4) and (8), 37, 42, 43, 44, 45, 46, 47 and 48 of the Deeds Regulations shall apply in relation to a certificate as they do in relation to a deed of title or the procedure for the registration thereof with such adaptations and modifications as may be necessitated by the circumstances of the case.

37. Production of title deeds

(1) The Registrar may, by notice served upon any person whom he has reason to believe is in possession of any deed of title which he requires for the registration of a certificate, call upon such person to produce such deed to him.

(2) Any person who without just excuse fails to produce a deed when called upon to do so under the provisions of subregulation (1), shall be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

FIRST SCHEDULE FORMS

(regulations 5 and 29)

Form W1

APPLICATION FOR REGISTRATION OF EXISTING RIGHT

REPUBLIC OF BOTSWANA

WATER ACT

(Section 12)

To the Water Registrar

I,

(full names)

Date of Birth

Place of Residence

Postal Address

Married in community of property/out of community of property to-

Full Names

Place of Birth

hereby apply for the registration of the following existing right-

Description of existing right (stating, in the case of a right to abstract water, the source from which water is abstracted, the quantity abstracted per day, the number of hours per day during which it is abstracted, the purpose for which and the place at which it is used, or, in the case of any other existing right, all relevant particulars of the right)-

Description of works ancillary to the right-

I enclose the sum of P1.

I hereby certify that the right in respect of which application is made was lawfully acquired and was possessed by, and was being beneficially exercised by me immediately before the commencement of the Act.

Date:

*Signature of applicant or duly
authorized agent*

**Form W2
APPLICATION FOR GRANT OF WATER RIGHT**

REPUBLIC OF BOTSWANA

WATER ACT

(Section 15)

To the Water Registrar

I,

(full names)

Date of Birth

Place of Residence

Postal Address

Married in community of property/out of community of property to-

Full Names

Place of Birth

hereby apply for a water right as described below-

Description of water right applied for (stating, in the case of a right to abstract water, the source from which water is to be abstracted, the quantity to be abstracted per day, the number of hours per day during which it is to be abstracted, the purpose for which and the place at which it is to be used, or, in the case of any other kind of right, all relevant particulars of the right applied for)-

Description of works ancillary to the right-

* (1)and I request that the right be made appurtenant to the following land-

I enclose the sum of P1.

Date:

*Signature of applicant or duly
authorized agent*

**Form W3
APPLICATION FOR CREATION OF SERVITUDE**

REPUBLIC OF BOTSWANA

WATER ACT

(Section 26)

To the Water Registrar

I,

(full names)

Date of Birth

Place of Residence

Postal Address

Married in community of property/out of community of property to-

Full Names

Place of Birth

being the holder of Water Right No dated

hereby apply for the creation of the following servitude in my favour-

Description of land to be subject to the servitude-

Description of servitude-

*(2) and I request that the servitude be made appurtenant to the following land to which my water right is appurtenant-

I enclose the sum of P1.

I hereby certify that I have failed to secure a servitude by agreement with the owner or occupier of the land over which the servitude is required.

Date:

*Signature of applicant or duly
authorized agent*

**Form W4
NOTIFICATION OF ACQUISITION OF RIGHT BY AGREEMENT**

REPUBLIC OF BOTSWANA

WATER ACT

(Section 16)

To the Water Registrar

I,

(full names)

Date of Birth

Place of Residence

Postal Address

hereby give notice that I have acquired the following right-

No. and date of

water right

Full names of holder

of water right

Description of right acquired-

Description of works ancillary to the right-

in relation to the following land held under Deed of Title No.

of

in consequence of-

Date:

Signature

**Form W5
CERTIFICATE OF REGISTRATION OF EXISTING RIGHT**

REPUBLIC OF BOTSWANA

WATER ACT

(Section 13)

The Water Registrar hereby certifies that the right claimed by-

Full Names

Date of Birth

Place of Residence

has been recorded in the register of water rights as

No

Dated

in the following terms-

Description of right-

Description of works ancillary to the right-

GIVEN under my hand at this day of
..... 20

.....

Water Registrar

Form W6
CERTIFICATE OF GRANT OF WATER RIGHT

REPUBLIC OF BOTSWANA

WATER ACT

(Sections 15 and 16)

The Water Apportionment Board hereby grants to-

Full Names

Date of Birth

Place of Residence

Married in community of property/out of community of property to-

Full Names

Place of Birth

Water Right No

Dated

in the following terms-

Description of Water right-

Description of works ancillary to the right-

for the period-

on the following conditions-

*(3) The right has, in terms of section 16 of the Act been made appurtenant to-

GIVEN under my hand at this day
of20

.....

Water Registrar

Form W7
CERTIFICATE OF INSPECTION OF WORKS

REPUBLIC OF BOTSWANA

WATER ACT

(Section 18)

To The Water Registrar

I,

(full names)

Designation

have inspected the following works required to be constructed and completed by
(date)

by-

Full Names

Place of Residence

the holder of Water Right No. dated

Description of works-

and I hereby certify that, subject to the following remarks, the said works have been completed to my satisfaction-

Inspection remarks-

Date:

Signature

Form W8
CERTIFICATE OF CREATION OF PERSONAL SERVITUDE

REPUBLIC OF BOTSWANA

WATER ACT

(Section 26)

The Water Apportionment Board hereby creates in favour of-

Full Names

Date(s) of Birth

Place of Residence

Married in community of property/out of community of property to-

Full Names

Place of Birth

the following servitude-

Description of land which is subject to the servitude-

District in which situated

Held by

(full names)

Date of Birth

Under Deed of Title No. of

Description of servitude-

*(4) (as will more fully appear from the annexed diagram)

on the following conditions

GIVEN under my hand at this

day of 20

.....

Water Registrar

Form W9
CERTIFICATE OF CREATION OF PRAEDIAL SERVITUDE

REPUBLIC OF BOTSWANA

WATER ACT

(Section 26)

The Water Apportionment Board hereby creates in favour of-

Full Names

Date(s) of Birth

Place of Residence

as owner(s) of the following land-

Held by the aforesaid under Deed of Title No

of the following servitude-

Description of land which is subject to the servitude

District in which situated

Held by

(full names)

Date of Birth

Under Deed of Title No of

Description of servitude-

*(5) (as will more fully appear from the annexed diagram)

on the following conditions-

In terms of section 26(5) of the Water Act, the said servitude is made appurtenant to the land described above.

GIVEN under my hand at this

day of 20

.....
Water Registrar

SECOND SCHEDULE SCALE OF FEES

(Regulation 4)

	<i>Amount</i>
Recording of existing right and issue of certificate thereof:	
Application for the grant of water rights or servitude:	P1
Grant of water right and issue of a certificate thereof:	P5
Provided that half the fee be waived where in the opinion of the Board, the right is of a minor nature.	
Creation of servitude and issue of a certificate thereof:	P5
Certified extract from the register of water rights or register of servitudes:	P1

Uncertified extract from register of water rights or register of servitudes:

50t

Endnotes

1 (Popup - Popup)

Delete if inapplicable.

2 (Popup - Popup)

Delete if inapplicable.

3 (Popup - Popup)

Delete if inapplicable.

4 (Popup - Popup)

Delete if inapplicable.

5 (Popup - Popup)

Delete if inapplicable.