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1986

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## ORDER NO. 23 OF 1986

*Lesotho Highlands Development Authority Order, 1986**(Date of Commencement: See Section 2)*

## ORDER

To establish the Lesotho Highlands Development Authority, provide for its functions and for connected purposes.

*PART I — Preliminary*

- |   |                |
|---|----------------|
| 1. This Order may be cited as the Lesotho Highlands Development Authority Order, 1986.  | Short title    |
| 2. This Order shall be deemed to have come into operation on 24th October, 1986.  | Commencement   |
| 3. In this Order, unless the context otherwise requires:  | Interpretation |
| "Authority" means the Lesotho Highlands Development Authority established under Section 4;                                    |                |
| "Board" means the Board of the Authority established under Section 9;   |                |
| "Chairman" means a person holding the office of chairman of the Board constituted under Section 9;                            |                |
| "Chief Executive" means the Chief Executive of the Authority appointed under Section 7;                                       |                |
| "financial year" means the period of 12 months commencing on the first day of April and terminating on the last day of March; |                |
| "member" or "member of the Board" means a person appointed to be a member of the Board under Section 9;                       |                |
| "Minister" means the Minister responsible for Water, Energy and Mining;   |                |
| "road authority" means a person appointed to be a road authority under Section 3(1) of the Roads Act, 1969;                   | A. 24 of 1969  |
| "Secretary" means Secretary of the Board appointed under Section 17.  |                |

*PART II — The Authority*

- |  |                                |
|--|--------------------------------|
| 4. (1) There is established an authority to be known as the Lesotho Highlands Development Authority. | Establishment of the Authority |
| (2) The Authority  |                                |
| (a) is a body corporate with perpetual succession;   |                                |
| (b) is capable of:   |                                |
| (i) suing and being sued in its own name;  |                                |

- (ii) performing all such acts as are necessary for or incidental to the attainment of the purposes of the Authority; and
- (iii) performing the duties imposed on it and the powers conferred on it by or under this Order.

Common  
seal

5. (1) The Authority shall have a common seal.

(2) The affixing of the seal shall be authenticated by the signature of the Chairman of the Board or such other member authorised either generally or specially by the Board to act for that purpose and of the Secretary or some other person authorised either generally or specially by the Board to act for that purpose.

(3) A certificate signed by the Chairman or other member that any instrument purporting to be made or issued by or on behalf of the Board was so made or issued shall be conclusive evidence of that fact.

(4) Every document purporting to be an instrument made or issued by or on behalf of the Authority and to be sealed with the seal of the Authority and authenticated in the manner provided by this section shall be received in evidence and be deemed to be such an instrument and to be so made or issued without further proof unless the contrary is shown.

(5) In appropriate cases the seal may be affixed outside Lesotho.

Custody of  
seal

6. The seal of the Authority shall be kept in the custody of the Secretary.

#### PART III — Chief Executive

Appoint-  
ment of the  
Chief  
Executive

7. (1) There shall be a Chief Executive of the Authority who shall be appointed by the Minister on such terms and conditions as the Minister may determine.

(2) The Chief Executive shall hold office for a period of five years and shall be eligible for re-appointment.

Functions of  
the Chief  
Executive

8. The Chief Executive shall be responsible for the execution of the policy of the Authority and the transaction of its day to day business.

#### PART IV — The Board

Composi-  
tion of the  
Board

9. (1) The governing body of the Authority shall be a Board of Directors.

(2) The Board shall consist of:

- (a) the Principal Secretary of the Ministry of Water, Energy and Mining, who shall be Chairman;
- (b) the Chief Executive appointed under Section 7, who shall be an ex-officio member; and

(c) five other members.

(3) Members referred to in subsection (2) (c) shall be appointed by the Minister on such terms and conditions as the Minister may determine.

10. (1) A person shall not be appointed to be a member of the Board under Section 9 (2) (c) unless he has had experience and shown capacity in managerial, technical and financial matters. Tenure of office

(2) Subject to Section 9 (3), a member of the Board, other than the Chairman and the Chief Executive, shall hold office for a period of three years and shall be eligible for re-appointment.

(3) A member, other than the Chairman and the Chief Executive, shall vacate office if he,

- (a) accepts or continues to hold office as an auditor of the Authority;
- (b) accepts or continues to hold office or employment with the Authority;
- (c) becomes bankrupt;
- (d) becomes of unsound mind or otherwise becomes incompetent to act as a member due to physical disabilities;
- (e) has been convicted of an offence and sentenced to imprisonment without the option of a fine;
- (f) has been absent from three consecutive meetings of the Board without the permission of the Chairman; or
- (g) resigns his office by written notice to the Minister.

(4) The Minister may terminate the appointment of a member, other than the Chairman, if it is necessary in the interest of the effective performance of the functions of the Authority under this Order or if the public interest so requires.

(5) If a member ceases to be such member under subsection (3) the Board shall inform the fact and the date of cessation to the Minister.

(6) Every appointment or termination of appointment under this section shall be published by the Minister by notice in the Gazette.

11. If a member dies, resigns, or otherwise vacates his office before the expiry of the term for which he was appointed, another person shall be appointed by the Minister at the earliest opportunity to fill the vacancy. Vacancy

12. (1) The Board shall meet as often as the business of the Authority may require, but in any case not less than four times in each financial year. Meetings of the Board

(2) The Chairman shall preside at all meetings of the Board and, in his absence, the members present shall elect one

of their number to preside.

(3) Any question before the Board at a meeting shall be decided by the majority of votes of the members present and voting.

(4) The quorum at a meeting of the Board shall be five members.

(5) A presiding member shall have a deliberative vote and in the event of an equality of votes, he shall have a casting vote.

(6) Subject to this section, the Board shall regulate its own procedure.

(7) The validity of any act or proceedings of the Board shall not be affected by any vacancy among the members or by any defect subsequently discovered in the appointment of a member or by reason that some person who was not entitled to do so took part therein.

Remunera-  
tion of  
members of  
Board

13. A member of the Board shall be paid such remuneration, fees and allowances for expenses as may be determined by the Minister.

Personal  
immunity

14. No member of the Board shall be personally liable for any debt or obligation of the Authority.

Disclosure  
of interest

15. A member who has any direct or indirect interest in any company or concern with which the Authority proposes to make any contract or any interest in such contract shall disclose to the Board the fact of that interest, and such disclosure shall be recorded in the minutes of the Board and such member shall refrain from voting on any matter relating thereto.

Prohibition  
of interests  
in water or  
electrical  
under-  
takings

16. (1) A member shall, within three months after taking office, sell and dispose of all shares in any undertaking, storing and supplying water or in any electrical undertaking inconsistent with the interest of the Authority which he shall at the time of his appointment own or be interested in for his own benefit.

(2) If any shares in any such undertaking shall come to or vest in a member by will or succession for his own benefit, he shall, within three months after the shares shall have come to or vested in him, sell and dispose of the shares or his interest therein.

(3) A member shall not, while he holds that office, purchase, take or become interested in, for his own benefit, any shares in any undertaking, storing or supplying water or in any electrical undertaking.

(4) A member who shall retain, purchase, take, or become or remain interested in any shares in any undertaking, storing or supplying water or in any electrical undertaking in contravention of this section shall be disqualified from membership and be deemed to have vacated his office as such member.

(5) In this section, "shares in any undertaking, storing or supplying water and electrical undertaking" means any stock,



shares, debentures, debenture stock, bonds or other securities of any company engaged in the storing or supplying of water or the generation, distribution or supply of electricity or the manufacture, importation and installation of water or electrical apparatus, and includes any share or interest in any unincorporated undertaking similarly engaged.

*PART V — Officers and Servants of the Authority.*

17. (1) There shall be a Secretary of the Board who shall be appointed by the Board. Secretary

(2) The Secretary shall be responsible for the taking and keeping of minutes of the meetings of the Board, the custody of the seal and shall perform such other functions as may be conferred on him.

18. (1) The Authority shall have such other officers, servants and agents as may be appointed by the Board. Appoint-  
ment and  
control of  
officers and  
servants of  
the  
Authority

(2) The Authority shall pay to its officers, servants and agents such remuneration and allowances as the Board may determine.

(3) The officers, servants and agents of the Authority shall be under the administrative control of the Chief Executive.

*PART VI — Functions of the Authority*

19. (1) The Authority shall,

(a) notwithstanding the Water Resources Act, 1978, General  
functions  
A. 22 of 1978

(i) undertake studies, design, construct, operate and maintain water storage and supply schemes and supply, sell, export and distribute water from such schemes;

(ii) secure the supply of water at reasonable prices;

(iii) promote and encourage the economic and efficient use of water, and especially the use thereof for domestic, social, commercial, navigation, fisheries, agricultural, industrial, manufacturing, recreational and tourist purposes;

(iv) promote and encourage works for drainage, flood control and protection of the catchment areas;

(v) keep itself informed of developments relating to the storage and supply of water from natural sources within Lesotho, with particular reference to the implications of the Government of Lesotho for such developments;

(vi) conduct research, experiments or trials for the improvement of methods of storing, distribution, supply and use of water and incur expenditure for the purpose as the Authority may think fit, and

make contributions to the expenditure of any other person engaged on such research, experiments or trials with the object of achieving such improvements or promoting the optimum use of water;

- (vii) at the discretion of the Minister, store, divert, regulate, deliver and supply water to appropriate authorities for consumption, irrigation, industry, mining, domestic or other purposes; and
- (viii) provide advice on all matters relating to the storage and distribution of water and the construction of hydroelectric scheme;

A. 7 of 1969

- (b) notwithstanding the Electricity Act, 1969,
  - (i) undertake studies, design, construct, operate and maintain hydroelectric schemes and transmit, distribute, supply and sell power in bulk from such schemes;
  - (ii) generate, transform, sell and supply electricity in bulk to the Lesotho Electricity Corporation, and to other competent authorities;
- (c) make such provisions as appear appropriate for advancing the skill of its employees by education, training and otherwise;
- (d) undertake monitoring activities, including regular safety inspections in accordance with recognised international standards to ensure the safe and efficient design, construction and use of all works carried out in connection with an approved scheme, particularly on high dams;

A. 17 of 1979

- (e) subject to the Land Act, 1979,
  - (i) sell, exchange, lease, dispose of, turn to account or otherwise deal with its assets for such consideration as it thinks fit;
  - (ii) purchase, take on lease, build or otherwise acquire houses for its employees and sell, let or sublet such houses to its employees and may evict such employees on the cessation of employment after giving one month's notice;

A. 30 of 1984  
A. 01 of 1984

- (f) subject to the Patents Act, 1984, and the Trademarks Act, 1984, apply for, purchase or otherwise acquire, protect, prolong and renew any patents, patent rights, licences, trademarks, concessions or other rights, and deal with and alienate such rights;
- (g) enter into such contracts as may be necessary for the performance of its functions:
  - provided that any contract in respect of land or servitudes shall be subject to the Land Act, 1979;
- (h) insure against all normal commercial risks associated with the operations of the Authority; and

(i) generally perform such duties and exercise such powers as are conferred by the Minister by regulations.

(2) In carrying out any scheme under this section, the Authority shall;

- (a) ensure that its activities minimise any deterioration at that time or at any time thereafter in the health and ecological standards in the area of the scheme beyond the standards existing immediately prior to the commencement of the works connected with the scheme; and
- (b) conform to the highest standards of managerial, financial and technical competence, expertise and practice.

(3) For the purposes of subsections (1) and (2), the Authority may:

- (a) purchase, take on lease or otherwise acquire and hold any property and interest in or rights over land, water rights and any other rights which the Authority deems necessary or expedient and which will facilitate the efficient performance of its functions under this Order; and
- (b) carry out such activities as may appear to it requisite, advantageous or convenient for or in connection with the performance of its functions under this Order or with a view to making the best use of its assets.

20. The Authority is entrusted with the responsibility for the implementation, operation and maintenance of the Lesotho Highlands Water Project as defined in the Treaty on the Lesotho Highlands Water Project between the Government of the Kingdom of Lesotho and the Government of the Republic of South Africa, and shall give full effect to the rights and duties of the Joint Permanent Technical Commission provided for in the Treaty.

Functions and obligations in respect of the Lesotho Highlands Water Project

21. (1) Where the Authority is authorised by this Order to execute any work, the Authority may, in lieu of executing such work by its own officers and servants, contract with any person for the execution of the whole or part of such work by such person and may, for that purpose, enter into such contracts and agreements as may be requisite.

Power to employ contractors

(2) Where the Authority contracts with any person for the execution by him of any work in accordance with this section, the Authority may, by contract or agreement with such person, delegate to him the right to execute such work and, thereupon, such person shall have the right, concurrently with the Authority, to do such work and to exercise such of the powers conferred on the Authority by this Order as are necessary for the purpose of doing such work and as are specified in such contract or agreement.

(3) Reference in this Order to the doing of any work or thing by the Authority shall be construed as including the doing of such work or thing by a contractor employed and authorised in that behalf by the Authority under this section.

Employ,  
ment of  
technical  
advisers

22. (1) The Authority may, from time to time, employ such technical or other advisers as it thinks fit to advise it in respect of any matter or thing in connection with the exercise of its functions under this Order.

(2) There shall be paid out of the funds at the disposal of the Authority under this Order to any person employed by the Authority under this section, such fees and allowances as the Authority shall determine.

General  
powers of  
entry on  
land

23. The Authority and its officers, servants and agents may, after giving reasonable notice to the occupier or person in charge of any land, enter on the land for the purpose of doing thereon or at any other land all or any of the things which the Authority is authorised by this Order to do or making any inquiry, investigation or examination preliminary to the doing of any such thing.

Authority  
to consult  
with  
Ministries

24. In the performance of its functions under this Order, the Authority shall consult with Ministries, departments and other statutory bodies likely to be affected by its operations.

#### PART VII — *Financial Provisions*

Funds,  
assets,  
resources  
and  
liabilities

25. The funds, assets, resources and liabilities of the Authority consist of:

- (a) all funds, assets, resources and liabilities under any contract entered into by the Authority and any other person on behalf of the Authority prior to its establishment that have been assumed and accepted by the Authority;
- (b) all monies or property that may, from time to time, be donated, lent or granted to the Authority;
  - (i) by the Government of Lesotho or by a Ministry Department or other agency of the Government of Lesotho pursuant to any powers lawfully vested in it by an Appropriation Order, or otherwise; or
  - (ii) by the Government of another country or by a person or by an international organisation;
- (c) all property and investments acquired by or vested in the Authority and all monies earned or arising therefrom;
- (d) all sums, from time to time, received or falling due to the Authority in respect of the payment of any loan or advance made by the Authority or the interest payable in respect of any such loan or advance;
- (e) any monies raised or borrowed by the Authority under Section 30; and

- (f) such other monies or property as may, in any manner, become payable to or vested in the Authority in respect of any matter incidental to its purposes and functions.

26. (1) The Authority shall establish a general fund into which all monies received by it shall be paid in the first instance and out of which all payments by it shall be made, except payments from a reserve fund established under this section. Investments

(2) The Authority shall establish such other funds as may be requisite and shall maintain, make contributions to and make payments from such funds as may be necessary for the proper and efficient discharge of its functions.

(3) The Authority shall establish and maintain a reserve fund and, out of its revenue, make contributions to such fund for the purpose of performing its functions.

(4) The Authority may:

(a) invest any monies which are not immediately required, and which are in a fund established under this section, in such investments and securities as it may find prudent and convenient; and

(b) realise any investments, securities or loans under its control in order to finance its operations or for the purpose of reinvestment in accordance with this sub-section.

27. The Authority may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all time at least one such account. Bank accounts

28. All income and property and all revenues of the Authority acquired from whatever source are to be applied exclusively to the fulfilment of the purposes of the Authority. Appropriation of revenues

29. (1) Notwithstanding anything to the contrary in any written law contained, and subject to sub-section (2), the Authority is not liable to pay any sales tax payable under the Sales Tax Act 1982, tax on any income or profits from any source payable under the Income Tax Act 1981, transfer duties payable under the Transfer Duty Act 1966, stamp duties payable under the Stamp Duties Order 1972 and any fees payable under the Deeds Registry Act 1967. Exemption from taxation  
A. 8 of 1982  
A. 7 of 1981  
A. 7 of 1966  
O. 5 of 1972  
A. 12 of 1967

(2) The Authority is liable to pay ground rent payable under the Land Act, 1979, and rates payable under the Valuation and Rating Act, 1980. A. 17 of 1979  
A. 10 of 1980

30. (1) Subject to the Loans (Statutory Bodies) Act, 1975, the Authority may: Borrowing powers  
A. 22 of 1973

(a) borrow temporarily by way of bank overdraft or otherwise from inside or outside Lesotho, such sums as it may require for meeting its obligations or performing its functions; and

(b) from time to time, from inside or outside Lesotho,

raise money by way of loans, in such amounts and for such purpose and periods as may be authorised by the Minister.

(2) The repayment of monies borrowed by the Authority and the payment of interest thereon and of all charges connected with such borrowing shall be a liability of the Authority and shall be charged on such or such of its assets and revenue and on such conditions as may be agreed upon between the Authority and the lender.

(3) The Minister may from time to time, following consultation with the Minister of Finance, specify the amount of capital commitment of the Authority, which amount shall not be exceeded by the Authority.

Authority  
to cover  
outgoings

31. (1) The Authority shall so perform its functions as to ensure that, taking one year with another, its revenues are sufficient to meet the expenditure properly chargeable to revenue account.

(2) For the purpose of subsection (1) "the expenditure properly chargeable to revenue account" means all charges which in the normal conduct of business are proper to be charged to revenue account, including in particular adequate provisions for:

- (a) the depreciation or renewal of assets;
- (b) the redemption of any loan raised by the Authority;
- and
- (c) prudent reserves.

Accounts  
and audit

32. (1) The Authority shall keep proper accounts and other financial records in relation to the business of the Authority and such accounts and records shall conform with the accounting principles generally applied in commercial practice.

(2) The accounts of the Authority shall be audited by an external auditor appointed by the Authority:

A. 9 of 1977

provided that no person shall be qualified for appointment as an auditor of the Authority unless he is a member of the Lesotho Institute of Chartered Accountants, in terms of section 14 of the Accountants Act, 1977.

(3) The following persons shall not be appointed as auditors of the Authority:

- (a) a member of the Board, an officer or servant of the Authority;
- (b) a person who is a partner of a member of the Board, or of an officer or of a servant of the Authority;
- (c) a person who is an employer or employee of a member of the Board, or of an officer or of a servant of the Authority;
- (d) a person who is an officer or servant of a body corporate which is employed by the Authority;
- (e) a person who, by himself or his partner or his employee, regularly performs the duties of Secretary or bookkeeper to the Authority; or

(f) a body corporate.

33. The Authority shall, not later than three months after the end of the financial year, submit to the Minister:

Information to be furnished to the Minister

(a) a balance sheet and profits and loss account that truly and correctly reflects the state of affairs of the Authority at the end of the last preceding financial year;

(b) a report signed by the auditor appointed under section 32 (2) after examination of the accounts of the Authority,

(i) containing a statement that to the best of his knowledge and belief and on information supplied to him, the balance sheet and profit and loss account reflect a true statement of the assets and liabilities of the Authority at the end of the last preceding financial year and of the profit and loss for the period covered; or

(ii) if he is unable to make the statement or to make it without qualification, containing particulars of the facts or circumstances that prevent him from making that statement, or an indication of that qualification, as the case may be; and

(c) a report of the Authority concerning the business of the Authority during the last preceding financial year and its future policy programme.

34. (1) The Authority shall establish and maintain pensions, superannuation, provident and other funds as it may consider desirable for the provision of payments, gratuities or other allowances on death, sickness, injury, superannuation, resignation, retirement or discharge of its officers or servants and their dependants.

Superannuation, pensions, etc.

(2) The Authority may contract with an insurance company or other body for the maintenance of such funds.

#### PART VIII — The Scheme

35. (1) Notwithstanding the Water Resources Act, 1978, and the Electricity Act, 1969, the Authority may prepare and submit to the Minister a Scheme:

Preparation and approval of scheme

(a) for the development of water resources in Lesotho for the purposes of storing, distributing and supplying water; or

A. 22 of 1978  
A. 7 of 1969

(b) for the execution of works necessary for the generation of electricity by means of hydraulic power derived from the waters of any specified river impounded and made available for the purpose by means of a dam and other engineering works to be constructed by the Authority under this Order.

(2) Where a scheme is submitted to the Minister by the Authority under subsection (1), the Minister shall consider the scheme and may, after consultation with such other relevant Ministers;

- (a) by order, published in the Gazette, approve such scheme;
- (b) refer the scheme back to the Authority for reconsideration and resubmission to him; or
- (c) refuse to approve such scheme.

(3) In this Order, "approval order" means an order made by the Minister approving a scheme submitted to him by the Authority under this section, and "approved scheme" means a scheme approved by the Minister by order and in the case of any such scheme so approved with alteration, such scheme as so approved.

Amendment  
of approved  
scheme

36. (1) Where, in the course of carrying out an approved scheme, it appears to the Authority to be necessary that such scheme should be amended in any respect, the Authority may prepare such amendment of the approved scheme as it thinks proper and submit the amendment to the Minister.

(2) Where an amendment of an approved scheme is submitted to the Minister under this section, the Minister shall consider the amendment and may, after consultation with such other relevant Ministers:

- (a) by order, published in the Gazette, approve the amendment;
- (b) refer the amendment back to the Authority for reconsideration and submission to him; or
- (c) refuse to approve the amendment.

(3) Where the Minister approves an amendment of an approved scheme under this Section, the approved scheme shall have effect with and subject to such amendment, and, accordingly, reference in this Order to an approved scheme in addition to the approved scheme be construed and have effect wherever the context so permits as reference to the approved scheme as so amended.

Execution  
of approved  
scheme

37. (1) As soon as conveniently may be after the approval by the Minister of an approved scheme, the Authority shall execute the scheme.

(2) For the purposes of carrying out an approved scheme the Authority may, in accordance with such scheme:

- (a) make such additions, omissions, variations and deviations as may be necessary in the course of the work; and
- (b) do such of the following things as are expressly or by implication provided for by such scheme;



- (i) impound, hold up, divert, export, take and use the waters of the rivers to which such approved scheme relates and the waters of the river or stream, tributary to, and of any lake, pond, or canal on or connected with, the said rivers to which the approved scheme relates;
- (ii) embank, dam, dredge, deepen, widen, straighten, divert or otherwise alter the rivers to which the approved scheme relates or any river or stream tributary to those rivers;
- (iii) embank, dam, dredge, alter the canal of, and otherwise affect any lake, pond or other water on or connected directly or indirectly with the rivers to which the approved scheme relates;
- (iv) remove, alter, repair or reconstruct any sluice, weir, dam, embankment, quay, harbour, landing place, boat house, or other similar work in the rivers to which the approved scheme relates or in any river or stream, tributary to those rivers or any lake connected therewith, or any other water;
- (v) construct and maintain tunnels, sluices, weirs, dams, embankments and other similar works including passages for the ascent and descent of fish;
- (vi) construct and maintain generating stations, transformer stations, and other stations and places for generating, transforming, storing, transmitting or otherwise dealing with electricity generated in pursuance of the approved scheme;
- (vii) purchase, hire or otherwise provide and maintain machinery, plant and equipment for all generating stations, transformer stations, other stations and places constructed under sub-paragraph ((vi));
- (viii) construct or otherwise provide and maintain houses or other dwelling accommodation and canteens, churches, and other places of worship, clubs, places of refreshment or recreation for persons employed in the construction of works, and for persons affected by the approved scheme;
- (ix) subject to this Order, close, divert, remove, submerge or otherwise interfere with any public road and bridge; or
- (x) do any act or thing which may be necessary for or incidental to the doing of anything which the Authority is by this subsection authorised to do.

(3) Notwithstanding anything contained in any other enactment and for the avoidance of doubt, it is hereby declared that where the Minister has approved a scheme pursuant to

Section 35, no further approval, consent, permission or confirmation shall be required.

Acquisition  
of interests  
in land, etc.

A. 17 of 1979

38. (1) For the avoidance of doubt, it is hereby declared that:

- (a) the exercise by the Authority of any of its functions, expressed or implied under this Order, shall be deemed to be for public purposes within the meaning of the Land Act, 1979; and
- (b) in particular, for the purpose of carrying out the approved scheme or doing anything which the Authority is authorised by Section 37 to do for that purpose, the Authority may, upon being granted appropriate leases and public servitudes by the Minister of the Interior, Chieftainship Affairs and Rural Development, in accordance with the Land Act, 1979:
  - (i) acquire any interest in land;
  - (ii) acquire any servitude, wayleave, fishery, fishing right, water right over or in respect of any land or water;
  - (iii) interfere with any land or divert, close, submerge any private road, way, bridge, canal or other artificial water course; or
  - (iv) acquire any other right whatsoever over or in respect of land or water.

(2) Where, on the completion of the carrying out of an approved scheme, it appears to the Authority that any interest in land, servitude, wayleave or other property acquired by the Authority under this Order is not required for the purpose of the approved scheme, the Authority may, with the approval of the Minister of the Interior, Chieftainship Affairs and Rural Development, sell, lease or otherwise dispose of its interests in such property.

Entry on  
land

39. (1) Notwithstanding anything to the contrary in any other enactment, the Authority may, at any time after he making of an approval order and before conveyance or ascertainment of price or compensation:

- (a) enter on and take possession of any land, or exercise any right which the Authority is authorised by this Order to acquire for the purpose of carrying out the approved scheme to which the approval order relates;
- (b) terminate, restrict or otherwise interfere with any servitude or other property or right which the Authority is authorised by this Order to terminate, restrict or otherwise interfere with for the purpose of carrying out the approved scheme; or
- (c) divert, close, remove, submerge or otherwise interfere with any road, way or bridge or any canal or other artificial waterway, or any artificial watercourse which

the Authority is authorised by this Order to divert, close, remove, submerge or otherwise interfere with for the purpose of carrying out the approved scheme.

(2) In the exercise of its powers under subsection (1), the Authority shall be liable to pay to the occupier of the land or the owner of the servitude, right or other property entered upon, exercised or interfered with by the exercise of such power, interest on the amount of the price or compensation payable to such occupier or owner at the commercial lending rate of the Lesotho Bank, from the date of such entry, exercise or interference, until payment of such price or compensation.

(3) The Authority shall not:

- (a) enter on or take possession of any land under this section without giving to the occupier of such land at least one month's notice or, in the case of an occupied dwelling-house, six months' notice in writing of its intention so to do; or
- (b) exercise any servitude or other right or interfere with any right or property under this section without giving to the owner of such servitude, right or property at least one month's notice in writing of its intention so to do.

(4) A notice under subsection (3) may be served on the occupier of the land or the owner of the servitude, right or other property as is referred to in subsection (2) by sending the notice by prepaid post in an envelope addressed to the occupier or owner to his last known address and shall be deemed to have been served on the occupier or owner as aforesaid at the time at which the envelope would be delivered in the ordinary course of post.

(5) Where, for any reason, the envelope mentioned in subsection (4) cannot be addressed in the manner provided by subsection (4), such envelope shall be addressed to the person for whom it was intended by the description of "the occupier" without stating his name; and shall be served on such occupier,

- (a) by leaving it at his last known place of residence or business; or
- (b) by affixing it upon some conspicuous part of the land or the situation of the property to which the notice contained in the envelope relates.

(6) The Minister may, by notice published in the Gazette, designate an alternative method of service of notice to comply with subsection (3).

40. (1) As soon as may be after the making of an approval order and not later than one month,

Deposit of  
maps, plans,  
etc.

- (a) before commencing the construction of any particular part of the works required for the purpose of the approved scheme to which the order relates;
  - (b) before commencing to do for that purpose any particular thing which the Authority is authorised by this Order to do, for that purpose;
  - (c) before entering on land or premises; or
  - (d) before exercising any right or interfering with any property corporeal or incorporeal under this Order,
- the Authority shall cause maps, plans and books of reference in relation to such particular part of such works or such particular thing or such land, premises, right or property, as the case may be, to be deposited in accordance with this section.

(2) The maps and plans required by this section to be deposited by the Authority in relation to an approved scheme shall be sufficient in quantity and character to show on adequate scales:

- (a) the extent of the works in relation to which they are deposited;
- (b) all property corporeal and incorporeal proposed to be acquired for the purpose of such works; and
- (c) any interference, so far as it can be shown on a drawing proposed to be made for the purpose of such works, with any property corporeal or incorporeal or any public road or bridge.

(3) The books of reference required by this section to be deposited by the Authority in relation to an approved scheme shall contain:

- (a) the names of the lessees or reputed lessees, if any, and the names of occupiers of all land in which an interest is proposed to be acquired or otherwise affected under this Order for the purpose of the works in relation to which such books of reference are deposited; and
- (b) the description of all property corporeal or incorporeal including public roads and bridges proposed to be in any way interfered with under this Order for the purpose of the works.

(4) The maps, plans and books of reference required by this section to be deposited by the Authority in relation to an approved scheme shall,

- (a) be deposited,
  - (i) at the office of the Chief Surveyor in terms of Section 18 of the Land Survey Act, 1980;
  - (ii) at the head and local offices of the Authority; and
  - (iii) at such other places as shall be prescribed by the Minister in the approval order relating to such approved scheme, and

shall remain so deposited until the completion of such approved scheme; and

- (b) while so deposited, be open to inspection by any person, free of charge, between the hours of eight o'clock in the morning and four o'clock in the afternoon every day except on Saturdays, Sundays and public holidays.

(5) As soon as may be after the deposit of any maps, plans, or books of reference under this section, the Authority shall give public notice of such deposit by advertisement published in a newspaper circulating in Maseru and in such other newspapers as may be prescribed by the Minister in the relevant approval order or by any other means.

(6) Every public notice given by the Authority under subsection (5) shall state that the maps, plans and books of reference to which such notice relates are open to public inspection in accordance with this section and shall state the times and places at which they are so open to inspection.

41. Subject to this Order, where an approved scheme has been carried out and the water or hydroelectric works provided by such scheme have been completed with such additions, omission, variations and deviations as shall have been found necessary in the course of such work, the Authority shall store and supply water and generate and supply electricity by means of such works in such manner as shall, in the opinion of the Authority, be necessary for exercising its powers and fulfilling its duties and obligations.

Storage and supply of water and generation of electricity

42. (1) Subject to subsection (2), in the carrying out of an approved scheme, the Authority shall:

Protection of fisheries

- (a) take such precautions and make such provisions; or  
 (b) in the case of works executed by a contractor, ensure that the contractor takes such precautions and makes such provisions,

as the Minister may consider adequate for the protection of and avoidance of injury to fisheries during or in consequence of the carrying out of the approved scheme.

(2) The Minister shall, in consultation with the Authority, satisfy himself that the taking of such precautions and the making of such provisions will not cause substantial detriment to the works provided for by the approved scheme or substantial increase in the cost of such works.

43. (1) The Minister may, by order published in the Gazette or otherwise, whenever he thinks it necessary for the due execution of an approved scheme or for the operation of works constructed in pursuance of an approved scheme, prohibit, during such period as he shall consider necessary for the purpose of such execution, or such operation, as the case may be, navigation in or upon a river, or any particular part of a river or

Power to prohibit navigation

artificial lake or a navigable channel, to which such approved scheme relates.

(2) The Minister may make an order under subsection (1) notwithstanding any enactment declaring the river, artificial lake or navigable channel to which the order relates to be a public navigable river or stretch of water.

(3) Whenever the Minister makes an order under this section, he shall cause notices to that effect to be displayed in conspicuous places or otherwise inform persons likely to be affected by the order.

(4) A person who contravenes an order made by the Minister under this section is guilty of an offence and is liable on conviction to a fine of M5,000 or to imprisonment for three years or to both.

#### PART IX — Compensation

Assessment  
of compensa-  
tion

44. (1) Compensation in respect of rights or interests in land, servitude, wayleaves, fisheries, fishing rights, water rights or other rights whatsoever shall be paid by the Authority in accordance with the laws of Lesotho.

(2) The Authority shall,

- (a) ensure that as far as is reasonably possible, the standard of living and the income of persons displaced by the construction of an approved scheme shall not be reduced from the standard of living and the income existing prior to the displacement of such persons; and
- (b) submit to the Minister for approval, proposals for assisting such persons and expeditiously execute such proposals when approved.

Time for  
claims for  
compensa-  
tion

45. All claims for compensation in respect of any right or interest in land, servitude right or other property whether corporeal or incorporeal acquired or interfered with by the Authority under this Order shall be made within one year after such land, servitude, right or property is first entered or exercised or interfered with by the Authority under this Order.

Execution  
of works in  
lieu of com-  
pensation

46. Where a person is entitled to compensation in respect of anything lawfully done or intended to be done by the Authority under this Order, the Authority may execute for the benefit of such person such works as may be reasonable in all the circumstances of the case.

#### PART X — Particular Powers and Duties of the Authority

Non-appli-  
cation of  
the Roads  
Act

47. Notwithstanding the Roads Act, 1969, the Authority shall perform the functions in respect of an approved scheme

under Part VIII.

48. (1) Where the Authority is empowered by this Order to close, divert, submerge, or otherwise interfere with a public road or bridge or build replacement public roads or bridges for the purpose of the execution of any works whether in pursuance of an approved scheme or otherwise under this Order, the following provisions shall have effect:

- (a) where the execution of such works involves the closing of such road or bridge to traffic, the Authority shall:
  - (i) construct and, while such road or bridge is so closed to traffic, maintain a temporary road or bridge sufficient to carry traffic of such quality and character as normally uses the closed road or bridge; or
  - (ii) prescribe, with the consent of the Minister, an alternative route to be used while such road or bridge is so closed to traffic; and
- (b) at or before the completion of such works, the Authority shall:
  - (i) restore the closed road or bridge;
  - (ii) after consultation with the Minister, construct a new road or bridge sufficient to carry the like amount, in quantity and character, of traffic as the closed road or bridge was, before its closure, able to carry and not substantially less convenient in gradient and curve than the closed road or bridge; or
  - (iii) with the consent of the Minister, so improve, by reconstruction, strengthening, widening or otherwise, an existing alternative road or bridge that it will be sufficient to carry the traffic which will be likely to use it and which will not be substantially less convenient than the closed road or bridge.

(2) Where,

- (a) the Authority is empowered by this Order to close, submerge or remove permanently a public road or bridge for the purpose of the execution of any works, whether in pursuance of an approved scheme or otherwise under this Order; and
  - (b) the Minister is satisfied that, having regard to all the circumstances of the case, a new road or bridge, as the case may be, in lieu of the road or bridge so closed, submerged or removed, is not required,
- the Minister may, by notice published in the Gazette, declare that subsection (1) shall not apply or have effect in relation to such road or bridge as the case may be, and upon such notice being published;

- (c) subsection (1) shall not apply or have effect in relation to such road or bridge, as the case may be; and
- (d) the Authority shall be relieved from all obligations in relation to such road or bridge, as the case may be, which, but for such notice, would be imposed on it by subsection (1).

(3) Where, under this section, the Authority has completed:

- (a) the restoration of a closed road or bridge;
- (b) the construction of a new permanent road or bridge; or
- (c) the improvement of an existing alternative road or bridge,

the Authority shall hand over to the appropriate road authority who shall accept the road or bridge so restored, reconstructed or improved, as the case may be, and thereupon, the Authority shall be permanently relieved from all liability or responsibility for the maintenance of such road or bridge, as the case may be.

Power to  
alter levels  
of lakes

49. On the completion of the works provided for by an approved scheme, the Authority may control, alter or otherwise affect, in such manner as the Authority shall prescribe in rules, the level of any artificial lake, pond or other water in or connected with the river, in or on which such works are situated.

#### *PART XI — Environmental Protection*

Environmental  
and  
amenity  
provisions

50. In carrying out an approved scheme, the Authority shall:

- (a) take all reasonable measures to protect the environment and to minimise injuring the amenities of the area; and
- (b) in particular, and without prejudice to the generality of paragraph (a), take all reasonable steps to minimise injury to any building, site, flora, fauna, feature or other thing which is of particular architectural, historic, archaeological, ecological, geological or natural interest.

#### *PART XII — Ancillary Developments*

Fishery  
develop-  
ment

51. The Authority may maintain, improve and develop fisheries in the waters under its control.

52. The Authority may:

Recreation

- (a) take steps to secure the use of waters under its control and land associated with such waters for the purpose of recreation and development of tourism; and
- (b) take such steps as are reasonably practicable for putting its rights to the use of the water and of the land asso-



ciated with such waters, to the best use for those purposes.

53. The Authority shall carry out such irrigation and drainage schemes as the Minister may, from time to time, direct and shall be reimbursed the costs of such schemes.

Irrigation  
and  
drainage

54. The Authority shall, to the greatest possible extent consistent with the performance of its functions under this Part, consult and cooperate with departments and agencies of the Government of Lesotho having functions related to the functions of the Authority under this part or having aims or objects related thereto.

Authority to  
cooperate  
with  
Departments

#### *PART XIII — Offences and Penalties*

55. A person who obstructs, prevents or interferes with the exercise by the Authority, any officer or servant of the Authority or a person authorised by the Authority, of any power conferred on the Authority, officer or servant of the Authority, or person so authorised under section 23 is guilty of an offence and is liable on conviction to a fine of M5,000 or to imprisonment for three years or to both.

Obstruction  
of Authority  
its officers,  
servants,  
etc.

56. (1) No person shall, without the permission in writing of the Authority and except in accordance with the conditions as to time, place and manner stated in such permission:

Prohibition  
of discharge  
of corrosive  
matters

(a) deposit;

(b) discharge; or

(c) allow to escape, directly or indirectly, from any land, premises or place or any vessel,

in or into any river in which or on the lands of which a water works or generating station is being constructed or operated by the Authority or in or into any lake, pond, canal or other artificial water way or any artificial water course connected with such river, any chemical or other substance whether solid or liquid of a nature calculated to corrode, erode, pollute waters and entangle, stop, break or otherwise injure such water works or generating station or any part thereof or any works subsidiary thereto or connected therewith, or of a nature which causes degradation of the quality of the water therein, to an extent which prevents them from fulfilling their intended purposes and the international obligations assumed by the Government of Lesotho.

(2) A person who:

(a) deposits;

(b) discharges; or

(c) allows to escape, directly or indirectly,

in or into any river, stream, lake, pond, canal, artificial water way, or artificial water course or underground

aquifers, any substance in contravention of subsection (1), is guilty of an offence and is liable on conviction to a fine of M100,000 or to imprisonment for ten years or to both.

(3) The owner of any right or interest in land, premises, or place or the owner of any vessel from which such substance is so deposited, discharged or allowed to escape is guilty of an offence and is liable on conviction to a fine of M100,000 or to imprisonment for ten years or to both.

Damaging,  
destroying,  
interfering  
with or tres-  
passing on  
works

57. A person who:

- (a) damages;
- (b) destroys;
- (c) interferes with the operation of; or
- (d) trespasses on,

the works of the Authority is guilty of an offence and is liable on conviction to a fine of M50,000 or to imprisonment for ten years or to both.

#### PART XIV — Rules and Regulations

Power to  
make rules

58. The Authority may make rules:

- (a) providing for the better administration of the Authority;
- (b) regarding the holding of meetings of the Board, the notice in respect thereof, the proceedings thereat, the keeping of minutes of such meetings and the custody, production and inspection of such minutes;
- (c) prescribing the duties, conditions and terms of employment of its officers and servants;
- (d) providing for the payment of monies out of its revenue to any fund established by the Authority;
- (e) providing for the contributions to any fund of the Authority by its officers or servants; and
- (f) providing for the alteration of the levels of lakes in terms of section 49.

Regulations

59. The Minister may, by notice published in the Gazette, make regulations:

- (a) prescribing the remuneration, fees and allowances for expenses of members of the Board;
- (b) conferring powers and imposing duties to the Authority; and
- (c) generally for carrying into effect the principles and purposes of this Order.

