

REPUBLIC OF SOUTH AFRICA

NATIONAL WATER ACT

Act No 36 of 1998

CHAPTER 3

PROTECTION OF WATER RESOURCES

*The protection of water resources is fundamentally related to their use, development, conservation, management and control. Parts 1, 2 and 3 of this Chapter lay down a series of measures which are together intended to ensure the comprehensive protection of all water resources. These measures are to be developed progressively within the contexts of the national water resource strategy and the catchment management strategies provided for in Chapter 2. Parts 4 and 5 deal with measures to prevent the pollution of water resources and measures to remedy the effects of pollution of water resources.*

*Part 1: Classification system for water resources*

*Part 1 provides for the first stage in the protection process, which is the development by the Minister of a system to classify the nation's water resources. The system provides guidelines and procedures for determining different classes of water resources.*

**Prescription of classification system**

- 12.** (1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources.  
(2) The system for classifying water resources may -  
(a) establish guidelines and procedures for determining different classes of water resources;  
(b) in respect of each class of water resource -  
(i) establish procedures for determining the Reserve;  
(ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource;  
(iii) set out water uses for instream or land-based activities which activities must be regulated or prohibited in order to protect the water resource; and  
(c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary.

*Part 2: Classification of water resources and resource quality objectives*

*Under Part 2 the Minister is required to use the classification system established in Part 1 to determine the class and resource quality objectives of all or part of water resources considered to be significant. The purpose of the resource quality objectives is to establish clear goals relating to the quality of the relevant water resources. In determining resource quality objectives a balance must be sought between the need to protect and sustain water resources on the one hand, and the need to develop and use them on the other. Provision is made for preliminary determinations of the class and resource quality objectives of water resources before the formal classification system is established. Once the class of a water resource and the resource quality objectives have been determined they are binding on all authorities and institutions when exercising any power or performing any duty under this Act.*

**Determination of class of water resources and resource quality objectives**

- 13.** (1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in the *Gazette*, determine for all or part of every significant water resource -  
(a) a class in accordance with the prescribed classification system; and  
(b) resource quality objectives based on the class determined in terms of paragraph (a).  
(2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply.  
(3) The objectives determined in terms of subsection (1) may relate to -

- (a) the Reserve;
  - (b) the instream flow;
  - (c) the water level;
  - (d) the presence and concentration of particular substances in the water;
  - (e) the characteristics and quality of the water resource and the instream and riparian habitat;
  - (f) the characteristics and distribution of aquatic biota;
  - (g) the regulation or prohibition of instream or land-based activities which may affect the quantity of water in or quality of the water resource; and
  - (h) any other characteristic,
- of the water resource in question.

(4) Before determining a class or the resource quality objectives in terms of subsection (1), the Minister must in respect of each water resource -

- (a) publish a notice in the *Gazette* -
  - (i) setting out -
    - (aa) the proposed class;
    - (bb) the proposed resource quality objectives;
    - (cc) the geographical area in respect of which the objectives will apply;
    - (dd) the dates from which specific objectives will apply; and
    - (ee) the requirements for complying with the objectives;
  - (ii) inviting written comments to be submitted on the proposed class or proposed resource quality objectives (as the case may be), specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;
- (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

#### **Preliminary determination of class or resource quality objectives**

**14.** (1) Until -

- (a) a system for classifying water resources has been prescribed; or
  - (b) a class of a water resource or resource quality objectives has been determined, the Minister may, for all or part of a water resource make a preliminary determination of the class or resource quality objectives.
- (2) A determination in terms of section 13 supersedes a preliminary determination.

#### **Giving effect to determination of class of water resource and resource quality objectives**

**15.** *The Minister, the Director-General, an organ of state and a water management institution, when exercising any power or performing any duty in terms of this Act, must give effect to any determination of a class of a water resource and the resource quality objectives as determined in terms of this Part and any requirements for complying with the resource quality objectives.*

### ***Part 3: The Reserve***

***Part 3 deals with the Reserve, which consists of two parts - the basic human needs reserve and the ecological reserve. The basic human needs reserve provides for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene. The ecological reserve relates to the water required to protect the aquatic ecosystems of the water resource. The Reserve refers to both the quantity and quality of the water in the resource, and will vary depending on the class of the resource. The Minister is required to determine the Reserve for all or part of any significant water resource. If a resource has not yet been classified, a preliminary determination of the Reserve may be made and later superseded by a new one. Once the Reserve is determined for a water resource it is binding in the same way as the class and the resource quality objectives.***

#### **Determination of Reserve**

**16.** (1) As soon as reasonably practicable after the class of all or part of a water resource has been determined, the Minister must, by notice in the *Gazette*, determine the Reserve for all or part of that water resource.

- (2) A determination of the Reserve must -
  - (a) be in accordance with the class of the water resource as determined in terms of section 13; and
  - (b) ensure that adequate allowance is made for each component of the Reserve.
- (3) Before determining the Reserve in terms of subsection (1), the Minister must -
  - (a) publish a notice in the *Gazette* -
    - (i) setting out the proposed Reserve; and

(ii) inviting written comments to be submitted on the proposed Reserve, specifying an address to which and a date before which comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;

(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and

(c) consider all comments received on or before the date specified in paragraph (a)(ii).

### **Preliminary determinations of Reserve**

**17.** (1) Until a system for classifying water resources has been prescribed or a class of a water resource has been determined, the Minister -

(a) may, for all or part of a water resource; and

(b) must, before authorising the use of water under section 22(5), make a preliminary determination of the Reserve.

(2) A determination in terms of section 16(1) supersedes a preliminary determination.

### **Giving effect to Reserve**

**18.** The Minister, the Director-General, an organ of state and a water management institution, must give effect to the Reserve as determined in terms of this Part when exercising any power or performing any duty in terms of this Act.