

## **1. INTRODUCTION TO THIS REPORT**

This water law cases compendium is meant to fill the need for a legal source for use during the implementation of the National Water Act, 1998, and especially for purposes of determining existing lawful water uses, as defined in the Act. During the investigation for purposes of this research, it was realized that, although certain important water court judgements had been published before 1970, these publications did not provide adequate data for purposes of utilization for the various phases and processes of implementation of the Act, and that a more complete source was necessary, containing all water cases, and not only reportable ones ("reportable cases" being those which had been identified as material contributing to the contents of the water law). The reason is that the justification for codification has changed: before the Act, judgements were firstly used by the affected parties to the cases to vest rights, and secondly to report cases of special importance for purposes of use by the judiciary in the interpretation of the water law.

Under the 1998 Act, however, a complete record of all water cases is required, to determine existing lawful water uses for purposes of the establishment of water use entitlements under the new Act, and also to understand the water law of the previous dispensation, to facilitate continuity of water use and water resource development and management.

It was also found that the majority of water court cases were decided before 1956, when water users relied heavily on the courts to establish and declare their water rights, mainly because the water law was a statutory system and not an administrative system. After the 1956 Act, the minister increased the assumption of control over water sources, by the declaration of government water control areas – in these areas, water rights were administratively allocated, which had a huge affect on the role of the water court to determine water rights.

The Department of Water Affairs and Forestry is in the process of finalizing the registration process under section 34 of the National Water Act of 1998, as well as the verification process. In order to verify existing lawful water uses, the department and its support practitioners will rely heavily on established rights, and will need legal sources to prove the existence thereof. After verification, the even more onerous task of compulsory licencing will follow which will once again rely heavily on historical water rights. A well-recorded case register and publication of judgements will form one of the most important sources of both these processes to make the era of equitable distribution of water entitlements in the quest for redress not only in the water but also in the land allocations in South Africa.

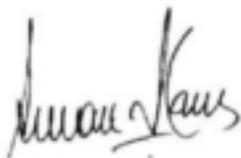
The work on compiling the water law cases started in 2004 by Dr Heather MacKay and is managed by E Karar from 2005 until this successful production. Since 2004, the author has put in tremendous amount of effort to make the product as simple and user friendly as possible and at the same time as informative as possible not only to the law practitioners but to all water users. Hence, the sources of water law should be easily accessible to everyone who has to research, apply or otherwise deal with any matter concerning water, such as The Minister of Water Affairs and Forestry, the staff of the Department of Water Affairs and Forestry, Water Consultants (Technical and Legal), Judges and Magistrates, the Water Tribunal Advocates, attorneys and other legal practitioners, the Department of Justice and its prosecuting authorities, bulk users of water (local authorities, industries and farmers), Water Management Institutions under the current water law and all other interested water scientists and engineers.

The Reason for the investment and the Scope thereof "Water law", for the purposes of this work, means every general South African rule of law concerning water. The Sources of the water law are to be found in CASE LAW, namely the judgments and orders of the supreme / high courts,

including the water courts; LEGISLATION, namely Acts of Parliament and the notices published under them; and LEGAL LITERATURE, namely books and articles which set out and explain the rules of our water law both common law and modern.

Due to the costly production costs, it was decided to publish the summary of all the court cases whilst capturing all the background support detailed sources in a compact disc which can be found attached to this report.

This report and supporting attached CD should be available to all South Africans free of charge. Proper acknowledgement to the holder of the copy right, the WRC should be made.



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