

Water Law Publication A First for SA

The new water law compendium, published by the Water Research Commission (WRC) is proving a valuable legal resource in the implementation of the National Water Act (NWA).

Lani van Vuuren reports.

The publication, *Water Law of South Africa 1912 – 1998*, captures nearly 400 water court cases handled by the legal system from 1912 to 1998. The work is authored by water law expert Adv Maritza Uys and took almost four years to complete.

'Water law' is concerned with persons' rights to water and concomitant duties of others. Water courts were established by colonial legislation, consolidated in the Irrigation Act of 1912, and abolished by the NWA in 1998. All cases dealing with the then current general Water Acts (Irrigation Act of 1912 and Water Act of 1956) and common water law are included in the publication.

Interestingly, the first case captured in the compendium is dated 21 February 1912. It involved the case of Koffyfontein Estates Ltd (a diamond-mining company) vs Havenga (a farmer) over rights to water in the Riet River. Also included is the text of the 1912 and 1956 Water Acts and regulatory publications until 31 September 1998 when the NWA came into effect.

According to WRC Director: Water Resource Management Eiman Karar, the compendium is meant to fill the need for a legal source for use during the implementation of the NWA, and especially for purposes of determining existing lawful water uses, as defined in the Act. "During the investigation of this research, it was realised that, although certain import water court judgements had been published before 1970, these publications did not provide adequate data for purposes of utilisation for the various phases and

processes of implementation of the Act, and that a more complete source was necessary, containing all water cases."

She explains that the reason is that the justification for codification has changed: before the Act, judgements were used firstly 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."

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 one. After the Act of 1956, the Minister of Water Affairs 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 & Forestry is in the process of finalising the registration process under section 34 of the NWA as well as the verification process. To verify existing lawful water uses, DWAF 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 licensing 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," notes Karar.

Minister of Water Affairs & Forestry Lindiwe Hendricks has welcomed the compendium. "This is a valuable contribution from the WRC as being an outstanding knowledge dissemination initiative for the benefit of all users. Equity and redress are cornerstones in the NWA which signals an end to any discrimination in allocations of water. To be able to rectify misgivings of the past, we need to be fully aware of the history and learn from it. This publication seeks to create a historical perspective of water laws in South Africa, and will be a vital resource for future planning scenarios."

Karar comments: "It is expected that water allocation practitioners as well as the water tribunal especially will find this addition a valuable one which fully justifies the investment made."

* To order the report and accompanying CD (**Report No: KV 203/08**), contact Publications at Tel: (012) 330-0340 or E-mail: orders@wrc.org.za 