



# Water Law of South Africa

2 CPD Points



**Presented By: Hubert Thompson**

## What are the course objectives?

This course will familiarise the attendees with the principles of the water law of South Africa so that they have a better working knowledge and understanding thereof and can afterwards participate with confidence in their daily work.

The course will be such to allow for interactive participation by those attending and addressing specific problems in more detail.

## Course background

The political and social reform during the last decade of the 20th century, the water-related problems experienced, the growth in the demand for water, the influence of land use on water availability and the prominence given to fundamental human rights and environment-related matters have significantly increased the need for knowledge regarding the water law.

The water law includes a framework on how to manage the water resources and the provision of water services in a holistic and integrated manner, which is very complex and dynamic. It aims to manage absolute water scarcity with significant participation by interested and affected persons. An integrated approach is therefore followed, involving all three spheres of government, various organs of State and other organisations. This should take place in accordance with the constitutional mandate and framework as contained in the Constitution of the Republic of South Africa of 1996.

South Africa's water resources in global terms are scarce and extremely limited in extent. South Africa is already on the threshold of the internationally used definition of water stress. Our population growth, developing economy and urgent need to supply basic water to the millions of people previously without access to clean water will take us below this level. More water will be needed than could necessarily be delivered at a given time and place. South Africa already has less water per person available than countries widely considered being much drier, such as Namibia and Botswana.

The problem of water scarcity is essentially one of conflict between:

- different uses and users in or between catchments
- present and future generations
- application of human and capital resources for water resource development relative to other investments and
- economic prosperity and preservation of ecosystems.

These conflicts should be resolved through interventions to ensure that the water resources are protected, used, developed, conserved, managed and controlled in such a way to achieve optimum long-term environmentally sustainable, social and economic benefit for the society.

These interventions include principles, policies, strategies, measures and effective institutions from all three spheres of government and other organs of state. A process of implementing and administrating these interventions is done by applying the law and the other measures to these interventions.

## What is the course content?

The following topics will be discussed:

### **The water management policy process**

The differences between principles, policies, strategies and law will be discussed as well as the role of each. Included will also be the organisational structure for water management.

### **Constitutional mandate relevant to water**

The requirements of the following fundamental rights of the Bill of Rights will be analysed:

- Environment that is not harmful and that should be protected when developing and using the water resources;
- Right to dignity;
- Measures to achieve water reform;
- Access to sufficient water.

It will be explained how effect should be given to these.

### **Management and protection of the water resources**

The principles and application of the public trust doctrine will be discussed. The role, legal requirements and applications of the National Water Resource Strategy and catchment management strategies will be analysed. The role, legal requirements and applications of the resource-directed measures (classification system and the determination of the class, resource quality objectives and Reserve for a specific resource), source-directed controls and measures to prevent and remedy the effects of pollution and control emergency incidents will be analysed.

### **Utilisation of the water resources**

The elements of the framework to use water will be analysed and discussed. It will include the legislative requirements of what all the different water uses are and when and how a water use may be undertaken and the constitutional aspects regarding this.

### **Constitutional requirements when effect is given to the water laws**

The requirements of the following fundamental rights of the Bill of Rights will be analysed:

- Equality before the law (why may stricter requirements be placed on certain categories of water users than on others);
- Protection of property (deprivation and expropriation of entitlements to water);
- Administrative actions that are lawful, reasonable and fair. It will be explained why an understanding and application of these principles are essential and how effect should be given to these.

### **The legal requirements to involve role-players in decision-making**

The legal requirements when and how to involve affected persons on the one hand and interested persons on the other when making a decision will be discussed. A decision includes any action taken regarding the issuing of a regulation, rule, strategy, licence, directive or notice.

### **The role and functions of the different water management institutions**

The role, powers, duties and functions and organs of state and differences between catchment management agencies, water user associations, advisory committees and international water management institutions as well as the Water Tribunal will be discussed.

### **Provision of potable water and sanitation services**

The rights to and conditions for provision of water services, the role of water services authorities and the different water services providers, such as water boards, will be discussed.

## **What is the course structure?**

The course is offered over 2 consecutive days.

This course has been accredited for 2 CPD credits with the Engineering Council of South Africa.

## What should attend?

The course is aimed at those involved in water management and the provision of water services. These include

- officials of the custodian of the water resources;
- officials of regulators developing the water resources;
- officials of regulators authorising the use of water;
- officials of regulators regulating land-use activities affecting the water resources;
- officials of regulators providing frameworks for the provision of water services;
- officials of water services authorities, service providers and intermediaries;
- persons and bodies interested in water conservation, environmental considerations and human rights;
- lawyers involved in water-related matters;
- water researchers;
- water users; and
- consultants of all of the above.

## Course lecturer

The course will be presented by Hubert Thompson, an Honorary Fellow of the South African Institution of Civil Engineering. He is registered as a professional engineer with the Engineering Council of South Africa as well as admitted and authorised to practice as an advocate of the High Court of South Africa. He has almost 40 years of experience in water management, of which the last 30 years related mainly to the water law and its applications. Hubert was actively involved in formulating various aspects of the water resource management policies and drafting of the National Water Act 36 of 1998.

Hubert works for his own account under the trade name Thompson & Thompson, Consulting Engineers and Legal Advice Services in Pretoria, providing inter alia engineering, legal, policy and institutional advice, with the emphasis on water, natural resources and the environment.

Hubert is also the author of the book *Water law - A practical approach to resource management and the provision of services*, Juta & Co Ltd 2006, which could be ordered directly from them at [cserve@juta.co.za](mailto:cserve@juta.co.za).

**Register**

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