



**ENVIRONMENTAL LAW AND POLICY IN SABAH:
FROM RIDGE TO REEF**

VOLUME 7: WATER RESOURCES

DRAFT FOR PEER REVIEW

Disclaimer, Acknowledgements and Call for Inputs

Disclaimer: This legal brief is intended as a means to engage with the relevant law and policy, and should not replace a thorough reading of the official documents themselves, which can be found online.

Acknowledgements: The authors have striven to provide an easily accessible and accurate overview of the law. Many thanks to the anonymous reviewers who have provided their inputs.

Call for inputs: We welcome further comments on content, format, and the brief's potential development and uses. Please email Holly Jonas (holly@foreversabah.org) and Harry Jonas (harry@foreversabah.org).

Citation: Forever Sabah, 2015 (draft for peer review). *Environmental Law and Policy in Sabah: From Ridge to Reef. Volume 7: Water Resources*. Forever Sabah: Malaysia.

Cover photo: Harry Jonas



OVERVIEW

There are nine pieces of legislation that together provide the overarching regulatory framework for Sabah's water resources. These include:

- [Water Resources Enactment \(1998\)](#),
- [Land Ordinance \(1930\)](#),
- [Land Acquisition Ordinance \(1950\)](#),
- [Town and Country Planning Ordinance \(1950\)](#),
- [Drainage and Irrigation \(1956\)](#),
- [Forest Enactment \(1968\)](#),
- [Environment Protection Enactment \(2002\)](#),
- [Water Supply Enactment \(2003\)](#), and
- [Inland Fisheries and Aquaculture Enactment \(2003\)](#).

This brief provides an overview of each law, details of the institutional arrangements, and sets out the relevant case law. With the exception of the Water Resources Enactment, all laws referenced in this brief are set out in chronological order and do not reflect their relative importance.

1. WATER RESOURCES ENACTMENT

Purpose

The *Water Resources Enactment (1998)* provides the cornerstone of Sabah's water resource-related legislation and establishes rules relating to the sustainable management and efficiency of water activities¹, Water Conservation Areas and Water Protection Areas. The *Water Resources Enactment* has eight major areas of focus. These include:

- Water Protection Areas
- Water Conservation Areas,
- River and Shore Reserves,
- Floodplain Management Areas,
- Catchment Management Plans,
- Water Usage,
- Water Activities, and
- Water Activity Licences.

Water Protection Areas

Water Protection Areas are established for the protection of an individual water source, water resource, body of water, location, reduction in flow, prevention

¹ “[W]ater activities” are defined as taking water from a body of water, returning water to a body of water by artificial means, controlling, diverting or mitigating floodwaters outside of a Floodplain Management Area or conducting a water body alteration activity. Water Resources Enactment, 1998, section 17 (1), (a)-(d).

against pollution and degradation. Forest Reserves are considered areas of State land appropriate for water protection.²

Process to establish a Water Protection Area

The Yang di-Pertua³ has the power to establish areas of State land as Water Protection areas, with advice from the Water Resources Council (the Council).⁴

a. *Proposal for a Water Protection Area*

Notice of the Yang di-Pertua Negeri's intention to establish a Water Protection Area should be published in the *Gazette*. Notice in the *Gazette* should include the location of the area intended for protection and the date intended for the declaration.⁵

b. *Notice of proposed area*

After notification in the *Gazette* is published, the District Officer or Assistant Collector of Land Revenue (Assistant Collector) for the area should advertise the intention to establish a new Water Protection Area. The District Officer and Assistant Collector should also investigate and report any claims or rights and privileges that will affect the land and determine whether the rights should remain or be revised.⁶ The District Officer and Assistant Collector are also responsible for fulfilling all requirements for obtaining the land for public purpose under the Land Acquisition Ordinance.⁷ Advertisements around the intended area should include how to make and objection or inquiry for the following concerns:

- Exercise of any right or privilege including modification to an existing right,
- Location of the land proposed for the protected area, and
- The proposed method for water management that will be used in the area.⁸

c. *Restrictions on proposed area*

Once a notice is issued in the *Gazette*, the land proposed to become a Water Protection Area cannot be alienated and no new building or plantation should be erected/ formed within the area proposed.⁹

d. *Obtaining land for Water Protection Area*

The Yang di-Pertua Negeri has the authority to acquire land to be used for a public purpose under the *Land Acquisition Ordinance (1950)*. Land acquired for a Water

² Water Resources Enactment, 1998, section 36 (1).

³ The Supreme Head of Sabah.

⁴ Water Resources Enactment, 1998, section 36 (1).

⁵ Water Resources Enactment, 1998, section 36 (2).

⁶ Water Resources Enactment, 1998, section 36 (4), (a)-(c).

⁷ Water Resources Enactment, 1998, section 36 (4)(d), cross-referenced below in reference to Land Acquisition Ordinance.

⁸ Water Resources Enactment, 1998, section 36 (5), (a)-(c).

⁹ Water Resources Enactment, 1998, section 36 (3), (a)-(b).

Protection Area is considered for a public purpose. The Yang di-Pertua Negeri can acquire land that may be leased, granted to or lawfully occupied by a person.¹⁰

Control of Water Protection Areas

Water Protection Areas are under the control of the Director of Water Resources (the Director). If land in a Water Protection Area is a designated Forest Reserve then that area should be under the control of the Director of Forestry Department instead.¹¹

a. *Restrictions on a Water Protection Area*

After a Water Protection Area is established it is prohibited to enter the protected area or the protected water area in a Forest Reserve without authorization from the Director, designated person in control or the Director of the Forestry Department (if applicable). Entrance into any of these protected areas without approval will result in an offence.¹²

b. *Fees for Water Protection Area*

If a person receives any benefit from the authorized use of water from a protection area they can be subject to pay a fee established by the Director.¹³

FREQUENTLY ASKED QUESTIONS

Can private land be acquired for a Water Protection Area?

Only State land can be included in Water Protection Areas, private land cannot be acquired.¹⁴ State land includes all land that has not been reserved for public purpose¹⁵, land that has not been leased or granted, land not lawfully occupied and areas of land that have been forfeited.¹⁶ Forfeiture includes violating conditions that may have been associated with a person's right to land or surrendering their land to the Government.

State land includes Forest Reserves, Nature Reserves, Parks and Wildlife Sanctuaries. If a person or organization is looking to protect a water source included in an area of private land they should consider establishing a Water Conservation Area. Water Conservation Areas have lower standards of protection that allow landowners to continue to reside on and develop their land. They are discussed below.

Water Conservation Areas

¹⁰ "[P]ublic purpose", land used in connection with the conservation, improvement or exploitation of natural resources. Land Acquisition Ordinance, section 2 (h), Water Resources Enactment, 1998, section 36 (7).

¹¹ Water Resources Enactment, 1998, section 8.

¹² Water Resources Enactment, 1998, section 37.

¹³ Water Resources Enactment, 1998, section 37.

¹⁴ Water Resources Enactment, 1998, section 36.

¹⁵ "[P]ublic purpose", land used in connection with the conservation, improvement or exploitation of natural resources. Land Acquisition Ordinance (Cap. 69) section 2 (h).

¹⁶ Land Ordinance, 1930, section 2, interpretation of 'State land'.

The Yang di-Pertua Negeri has the authority to establish a Water Conservation Area, with the recommendation of the Council. Water Conservation Areas are established to control and modify activities in a particular area of land to prevent pollution, degradation or the loss of availability of water and water resources. Water Conservation Areas are also established to protect water bodies or aquifers that require additional protection identified from a Catchment Management Plan or another form of investigation.¹⁷

a. Establishing a Water Conservation Area

In order for the Yang di-Pertua Negeri to establish a Water Conservation Area he must declare the area of land in the *Gazette*. The declaration publication in the *Gazette* should include the following:

- Purpose for establishing the Conservation Area,
- Modifications or conditions that will apply to activities, measures or development, and
- The types of activities or development that cannot occur in the area or can occur with specific regulation.¹⁸

b. Owner and occupiers of land in a Water Conservation Area

The Director is responsible for notifying an owner or occupier of land in writing of any changes to land use that will be required in the newly designated Water Conservation Area.¹⁹ Occupants on the land should be given notice of the specified manner, location or distance from the water bodies that they are allowed to conduct activities or development.²⁰

c. Additional requirements for owners and occupiers of land

The Director can also require the occupants to take additional measures to slow, reduce or prevent water from running off land into a water body, plant specific types of vegetation in an area, relocate structures, perform an act in a particular way or take any other measure to prevent the degradation of water resources.²¹ The Director should take into consideration the impact these changes will have on the current occupants when determining the changes.²² Not following the Directors directions will result in a fine not more than fifty thousand ringgit or imprisonment not more than five years, or both.²³

¹⁷ Water Resources Enactment, 1998, section 38 (1).

¹⁸ Water Resources Enactment, 1998, section 38 (2) (3).

¹⁹ Water Resources Enactment, 1998, section 38 (1)(2).

²⁰ Water Resources Enactment, 1998, section 38 (3).

²¹ Water Resources Enactment, 1998, section 38 (4)(5).

²² Water Resources Enactment, 1998, section 38 (6).

²³ Water Resources Enactment, 1998, section 38 (7).

FREQUENTLY ASKED QUESTIONS

What is the difference between a Water Protection Area and a Water Conservation Area?

Water Protection Areas (WPAs) are established by the Director of Water Resources. WPAs are created for the protection of an individual water source.²⁴ Water Conservation Areas (WCAs) are established by the Yang di-Pertua Negeri to control and modify activities in a particular area. WCAs can be established on State land, private areas or any area that the Yang di-Peruta Negeri believes is appropriate.²⁵ WPA's can only be established on State land.²⁶

When the Director establishes a WPA he is not obliged to follow the formal and lengthy process that is required for the establishment of WCAs.²⁷ Despite the shorter process for the establishment, WPAs have a stronger method of protection over the water source. Unlike WCAs, WPAs prohibit the entry of any person who does not have prior approval from the Director of Water Resources or the Director of Forestry. Whether the Director of Water Resources or the Director of Forestry has the authority to approve a person's entrance depends on the area of entry.²⁸

Establishing a WCA can be used as an alternative step for State land before a WPA is established. This alternative step can be used to determine if the WCA will provide enough protection. WCAs can provide control over an area to prevent future degradation but still allow people and communities to access their area of land, with limited restrictions.²⁹ As stated above, owners of the land in a WCA usually continue to occupy their land. However, they must abide by the restrictions placed by the Director overseeing their area.³⁰

River and Shore Reserves

Rivers and Shore Reserves are established for protecting the volume or flow of water in water bodies. River and Shore Reserves are also established to prevent the degradation of the quality of water resources and damage to aquatic environment in water bodies.³¹

a. Land included in a River or Shore Reserve

The land included in a River Reserve must be within twenty meters of the top of the bank, this measurement includes the estuary and the river channel, not less than three meters in width.³² The land included in a Shore Reserve must be within twenty meters of the coastal waterbed.³³ Artificial watercourses are not included in River

²⁴ Water Resources Enactment, 1998, section 8.

²⁵ Water Resources Enactment, 1998, section 38 (1).

²⁶ Water Resources Enactment, 1998, section 36.

²⁷ Water Resources Enactment, 1998, section 38.

²⁸ Water Resources Enactment, 1998, section 37.

²⁹ Water Resources Enactment, 1998, section 38 (1).

³⁰ Water Resources Enactment, 1998, section 38 (1)(2).

³¹ Water Resources Enactment, 1998, section 40 (3).

³² Water Resources Enactment, 1998, section 40 (1)(a).

³³ Water Resources Enactment, 1998, section 40 (1)(b).

and Shore Reserves.³⁴ The Yang di-Pertua can make changes to the land included in specific reserves by notice in the *Gazette*, changes can include the following:³⁵

- Reserve of a specified width is established adjacent to a river with a channel less than three meters wide,
- Reserve of a specified width is established adjacent to a water body not included in the list above, or
- The width of an existing River Reserve or Shore Reserve is increased or decreased.

b. Alienating land from a River or Shore Reserve

State land cannot be alienated from a River or Shore Reserve without written consent from the Council.³⁶

c. Control in a River or Shore Reserve

The Director has the authority to ask a person to modify, discontinue or relocate any activity or structure that interferes with the volume, flow or quality of water in a River or Shore Reserve.³⁷ The Director should ask the person in writing and can direct the regulation to an activity or building within or adjacent to the Reserve.³⁸

It is prohibited to conduct any of the following acts in a River or Shore Reserve without written approval from the Director:

- Remove natural vegetation or material,
- Erect a structure or building, or
- Carry out a commercial or agricultural activity.³⁹

FREQUENTLY ASKED QUESTIONS

Does the Director of Land and Surveys have the authority to alienate land from a River or Shore Reserve?

River and Shore Reserves are established to protect the volume and flow of water bodies and prevent the degradation and damage of those water sources as well. River and Shore Reserves are declared by the Yang di-Pertua Negeri after the Water Resources Council (the Council) has recommended the protection.⁴⁰ Section 40 of the Water Resources Enactment (the Enactment) provides that State land cannot be alienated from a River or Shore Reserve without written consent from the Council.⁴¹ The Director of Land and Surveys, or an

³⁴ Water Resource Enactment, 1998, section 40 (2).

³⁵ Water Resources Enactment, 1998, section 40 (4).

³⁶ Water Resources Enactment, 1998, section 40 (5).

³⁷ Water Resources Enactment, 1998, section 41 (2), (a)-(c).

³⁸ Water Resources Enactment, 1998, section 41 (2).

³⁹ Water Resources Enactment, 1998, section 41 (1).

⁴⁰ Water Resources Enactment, 1998, section 40 (3).

⁴¹ Water Resources Enactment, 1998, section 40 (5).

authorized representative from the department, is one of the members that makes up the Water Resources Council, but is not the only member.⁴² Since he/she is not the only member of the Council that makes the decision to alienate land from a River or Shore Reserve the Director of Land and Surveys decision alone does not authorize alienation.

The Land Ordinance states that the Government has the authority to reserve portions of land along the banks of rivers, streams, creeks, along the seashore, above the high water mark or along the ridges of hills if they believe it is necessary for the proper control of water resources.⁴³ The Land Ordinance also states that unless otherwise established, the Government is in control of the River and Shore Reserves. Although, the Director of Land and Surveys is the Director for matters under the Land Ordinance and the Director of Water Resources is the primary authority of Rivers and Shore Reserves.

The Enactment gives the Council the authority to approve all land that may be alienated from River and Shore Reserves, and any alienation that occurs without the Councils approval will not be valid. Although the Director of Water Resources and the Director of Land and Surveys are members of the Council, they have influence on the decision but are not the sole decision makers.

Floodplain Management Areas

Floodplain Management Areas are established to control, limit or modify activities in an area that is known to flood. Floodplain Management Plans are designed to help the development and location of structures, building and flood protection works in order to lower the damage and degradation that can be caused by flooding.⁴⁴

a. Establishing a Floodplain Management Area

The Yang di-Pertua Negeri has the authority to establish a Floodplain Management Area by publication in the Gazette and with the advice of the Council.⁴⁵ Floodplain Management Plans should include the following information:⁴⁶

- Description of the areas flood characteristics and summary of investigations of previous flood behavior,
- Evaluation of economic, social and environmental consequences of flooding, and
- Measures that can be taken to minimize the flooding impact.

b. Owners and occupiers of land in a Floodplain Area

The Director has the authority to require the owners and occupiers of land in a Floodplain Management Area to comply with certain directions in order to ensure the effective management of a floodplain. Notification of any changes should be done in writing. The Director has the authority to require owners and occupiers of land to alter or remove a building or structure from a Floodplain Management Area.

⁴² Water Resources Enactment, 1998, section 5 (1)(d).

⁴³ Land Ordinance, 1950, section 26 (2).

⁴⁴ Water Resources Enactment, 1998, section 39 (1).

⁴⁵ Water Resources Enactment, 1998, section 39 (1), (2).

⁴⁶ Water Resources Enactment, 1998, section 39 (3).

The Director can also require certain activities or developments to be undertaken in a particular manner, location or distance from water bodies in a Floodplain Management Area, or the director can restrict an activity completely.⁴⁷

Catchment Management Plans

The Director is responsible for preparing Catchment Management Plans (Management Plans) for the State. The Director should coordinate with relevant public authorities when establishing a Management Plan. The Director should take into consideration the priorities, geographical areas and timetables that the Council has created for Management Plans.⁴⁸ Management Plans should include the following:

- Description of the water resources of the catchment, the condition of the catchment and its effects on the quantity and quality of water resources and the aquatic environment,
- Analysis of the cause of degradation, and the influence from natural or human activity,
- Summary of existing and proposed legislative, controls and protection measures, for using and developing land in the catchment, and
- Recommended actions for the planned development, maintenance and improvement of water resources, quality of water, a catchment and aquatic environment.⁴⁹

Recommendations for a Management Plan may include Water Protection, Water Conservation, Floodplain, River Reserves and Shore Reserve Areas if there are no other plans in place.⁵⁰

a. Establishing a Catchment Management Plan

The Yang di-Pertua Negeri has the authority to approve a Management Plan with publication in the *Gazette* upon recommendation of the Council.⁵¹ In order to establish a Catchment Management Plan the Director should submit a draft Management Plan to the Council for approval.⁵² The Council may require the Director to consult with public authorities or affected parties, recognize matters that require further consideration or require the plan to be modified before they approve the Plan.⁵³

b. Catchment Management Plan Committees

The Council has the authority to establish Catchment Management Plan Committees. Catchment Management Plan Committees should assist in the development and

⁴⁷ Water Resources Enactment, 1998, section 39 (4).

⁴⁸ Water Resources Enactment, 1998, section 34 (1)(2).

⁴⁹ Water Resources Enactment, 1998, section 34 (3).

⁵⁰ Water Resources Enactment, 1998, section 34 (5).

⁵¹ Water Resources Enactment, 1998, section 35 (2).

⁵² Water Resources Enactment, 1998, section 35 (1).

⁵³ Water Resources Enactment, 1998, section 35 (1), (a)-(c).

implementation of a Management Plan. The Committee may be required to report to the Director or Council on the progress of the Management Plan they oversee.⁵⁴ If the Council believes that the progress of the plan is insufficient based on the report they may have another public authority take over the Management Plan.⁵⁵

c. Reporting on Catchment Management Plans

The Director is responsible for reporting to the Council on the implementation and effectiveness of the Management Plan two years after it is established and five years after the initial report.⁵⁶

FREQUENTLY ASKED QUESTIONS

Are Wetlands protected under the Water Resources Enactment and why are they so important?

The Water Resources Enactment (the Enactment) establishes rules and legislation that promote sustainable management and efficiency of water activities, Water Conservation Areas and Water Protected Areas.⁵⁷ Water Conservation and Water Protection Areas are established to conserve and protect of water bodies and water sources. The Enactment defines *water body* as an aquifer, declared channel, costal waters, river, estuary, lake, lagoon, swamp, marsh or other wetland.⁵⁸ Wetlands are considered any area where water covers the soil.⁵⁹

Although, most individuals associate water bodies as rivers and streams with free flowing water, areas of land with still water are also considered water bodies and are capable of protection. Wetlands are considered bodies of water that are protected under the Enactment. Wetlands include mangroves, coral reefs, swamps, marshes and lakes.⁶⁰

Wetlands are important because they can provide habitat for animals, reduce the impact of floods and can help improve the quality of water by helping to absorb pollutants before they hit a larger water body. As communities continue to develop and Governments try to make State land as profitable and productive as possible, it is important to recognize that if areas of Wetlands are beneficial to your environment they are capable of being protected under the Water Resources Enactment.⁶¹

Water usage

a. Government right to water

⁵⁴ Water Resources Enactment, 1998, 35 (4).

⁵⁵ Water Resources Enactment, 1998, 35, (6).

⁵⁶ Water Resources Enactment, 1998, section 35 (5).

⁵⁷ Water Resources Enactment, 1998, Introduction.

⁵⁸ Water Resources Enactment, 1998, section 2, interpretation of 'water body'.

⁵⁹ Wetlands International, What Are Wetlands,

<http://www.wetlands.org/Whatarewetlands/tabid/202/Default.aspx>, 2014.

⁶⁰ Wetlands International, What Are Wetlands,

<http://www.wetlands.org/Whatarewetlands/tabid/202/Default.aspx>, 2014.

⁶¹ Wetlands International, What Are Wetlands,,

<http://www.wetlands.org/Whatarewetlands/tabid/202/Default.aspx>, 2014.

The Government has control over the use and flow of water bodies, water that forms naturally on the surface of the ground and water that is conserved.⁶² The Government does not have the right to use the water if the Council or the Director has taken their privilege away.⁶³

b. Private right to water

If a person owns or occupies land, they are allowed to take, use and control water under the land or water that is connected to the land (i.e. a body of water). The person who owns or occupies the land is not required to obtain a licence to use the water and can use the water free of charge. The water should not be used in excess and should be enough for the use in a household and agricultural purpose.⁶⁴

c. Restrictions for a private right to water

A person who has a private right to water should not do any of the following:

- Interrupt the flow of water,
- Store more than one megaliter of water or more than the amount prescribed by the Director, or
- Take water from a water body at a rate exceeding twenty liters per second.⁶⁵

Although a person may have a private right to water, where the Director determines that the person exercising that right is a threat to the water availability, aquatic environment or that an approved catchment plan requires the need for information, then the Director may require the person to use a device to regulate the flow and facilitate the passing of water.⁶⁶

d. Additional directions for private rights to water

The Director may give a person who has an established private right to water additional directions that they should follow to administer their water.⁶⁷ These directions should be given in writing and any person that does not follow the direction is guilty of an offence and subject to a fine not more than thirty thousand ringgit or imprisonment for no more than three years, or both. Continuing offenders will be subject to a higher penalty.⁶⁸ Appropriate directions that the Director can impose on a person include:

- Fitting a work with a device for measuring water intake,
- Limiting the capacity of work to impound, extract or divert water,
- Operating work in accordance with time and procedures requested by the Director, and

⁶² Water Resources Enactment, 1998, section 15 (1), (a)-(b).

⁶³ Water Resources Enactment, 1998, section 15 (2).

⁶⁴ Water Resources Enactment, 1998, section 16 (1), (a)-(b).

⁶⁵ Water Resources Enactment, 1998, section 16 (2), (a)-(c).

⁶⁶ Water Resources Enactment, 1998, section 16, (3)(4).

⁶⁷ Water Resources Enactment, 1998, section 28 (1).

⁶⁸ Water Resources Enactment, 1998, section 28 (2).

- Any other directions that the Director may see necessary to prevent the improper use, pollution or harm to water and the aquatic environment.⁶⁹

e. Protected Water Order

The Director has the authority to establish a Protected Water Order. Protected Water Orders are established in order to maintain the flow, volume or quality in a water body.⁷⁰ The Director can establish a Protected Water Order if the area suggested meets the following requirements:

- Lawful requirements for taking and using water and the requirements of the aquatic environment are unable to be met because the quantity of water is unlikely to be available,
- There is a significant or immediate threat to water resources,
- There is a serious threat to health caused by activities in the enactment,
- There is a significant threat to the aquatic environment, or
- Any other reason to create immediate protection of the water.⁷¹

f. Notification of Protected Water Order

When the Director issues a Protected Water Order, the Order should include the person who the Order applies to and whether that person is a licence holder or a person who has a private water right.⁷² The Order should also include the water body that the order applies to, the purpose of the order, the actions/ measure that should be taken and the activities that will be modified or suspended.⁷³ The Director should discuss the Order with Government officials and those affected by the Order before it is published in the *Gazette*, unless there is an extreme urgency to protect the area.⁷⁴

g. Length of a Protected Water Order

A Protected Water Order can last for a maximum of thirty days or until the situation is no longer a concern, orders can be renewed if approved by the Council.⁷⁵

Additional provisions for water usage

a. Directions given to a person with no rights

When a person does not have a water activity licence, has a suspended licence or has breached a condition on the licence, they do not have a right to engage in water activities, including activities relating to construction, installation and work measures. A person who was previously entitled to a private water right and did not follow the

⁶⁹ Water Resources Enactment, 1998, section 18 (1), (a)-(d).

⁷⁰ Water Resources Enactment, 1998, section 29 (1).

⁷¹ Water Resources Enactment, 1998, section (2), (a)-(b).

⁷² Water Resources Enactment, 1998, section 28 (3)(a).

⁷³ Water Resources Enactment, 1998, section 28 (3), (b)-(e).

⁷⁴ Water Resources Enactment, 1998, section 28 (5).

⁷⁵ Water Resources Enactment, 1998, section (6), (7), (8).

directions of the Director does not have a right to water.⁷⁶ The Director may ask any person listed above that does not have a right to use the water to:

- Remove the whole or part of the work,
- State that the work is ineffective,
- Allow the flow of water through or past the work,
- Prevent the use of the work,
- End the an activity of measure that is being carried out,
- Carry out remedial or regeneration work, or
- Carry out any combination other combination appropriate.⁷⁷

Failure to comply with the direction of the Director will result is an offence. A person found guilty for an offence will be subject to a fine not more than fifty thousand ringgit or imprisonment not more than five years, or both.⁷⁸

b. Directions not followed

Once a person does not comply with the Director's written orders, the Director can enter the area to obtain the work, carry out the act originally directed in the order, or perform any other act necessary relating to the matter.⁷⁹

c. Impounding orders

The Director has the authority to issue an impounding order to seize an item that has been removed from land forming the bed and banks of a water body and land considered a River and Shore Reserve.⁸⁰ The Director has the authority to issue an impounding order for the whole or specified part of the material removed or any specified plant or equipment used in the removal.⁸¹ Impounding orders take effect from the moment they are issued or from the date stated on the notice.⁸² If the person who receives the impounding order has a concern with the order they may request for the order to be revoked or certain conditions removed. The Director has the authority to approve any changes.⁸³

d. Measuring devices

The Director has the authority to direct a person to install a measuring or recording device for work authorized for taking and using water.⁸⁴ Where a person has been directed to install the measuring device damages the device, prevents the device from recording properly or interferes with the device without the Directors approval,

⁷⁶ Water Resources Enactment, 1998, section 30 (1).

⁷⁷ Water Resources Enactment, 1998, section 30 (2), (a)-(f).

⁷⁸ Water Resources Enactment, 1998, section 30, (3).

⁷⁹ Water Resources Enactment, 1998, section 31 (1).

⁸⁰ Water Resources Enactment, 1998, section 32 (1).

⁸¹ Water Resources Enactment, 1998, section 32 (2).

⁸² Water Resources Enactment, 1998, section 32 (3).

⁸³ Water Resources Enactment, 1998, section 32 (6).

⁸⁴ Water Resources Enactment, 1998, section 33 (1).

they will be guilty of an offence.⁸⁵ Interference with the device can be done without any intention and will still be considered an offence (willfully or negligently).⁸⁶

Water activities

It is prohibited to take water from a body of water, return water to a body of water by artificial means, control, divert or mitigate floodwaters outside of a Floodplain Management Area or conduct a water body alteration activity.⁸⁷ Any person who engages in one of the prohibited acts will be guilty of an offence and subject to a fine, imprisonment, or both, not more than fifty thousand ringgit and/or five years.⁸⁸ Any person who receives an order is restricted from selling, moving or disposed of the item requested.

Inland waters

Inland waters are considered any water that is not covered by Federal laws. The Director has the authority to determine the effects that certain activities will have on the water, beds, banks, shores and aquatic environment of inland water. The Director's authority allows him to determine the type or class of vessel, maximum speed and maximum draught of a vessel that can be used for navigation on inland waters.⁸⁹ The Minister of Agriculture and Food Industry⁹⁰ (the Minister) has the authority to make rules governing inland water.⁹¹

a. Disposing waste into inland waters

It is prohibited to dispose waste from a vessel, cause a substance to spill, or create any circumstance where inland waters are polluted or are likely to be polluted the circumstance. Disposal of any waste or substance into inland waters must be approved in writing by the Director.⁹²

b. Recreation on inland waters

The Director has the authority to require any of the following acts performed in inland waters to be registered. Registered activities are activities that cause:

- Damage to the bed, bank, or shore of a water body,
- Pollution or degradation to a water body,
- Harm or threat to an aquatic environment,
- Harm or threat to the aquatic environment,
- Obstruction to navigation, or

⁸⁵ Water Resources Enactment, 1998, section 33 (2), (a)-(c).

⁸⁶ Water Resources Enactment, 1998, section 33 (2).

⁸⁷ Water Resources Enactment, 1998, section 17 (1), (a)-(d).

⁸⁸ Water Resources Enactment, 1998, section 17 (2).

⁸⁹ Water Resources Enactment, 1998, section 47 (2), (a)-(c).

⁹⁰ Official Website Ministry of Agriculture and Food Industry State of Sabah, Functions, <http://www.sabah.gov.my/mafi/ENG/InfoFunction.html>, 2012.

⁹¹ Water Resources Enactment, 1998, section 47, (3).

⁹² Water Resources Enactment, 1998, section 47 (4).

- Danger or nuisance.⁹³

In order to protect the safety of the water quality and environment, the Director can issue directions for the above activities, which include the manner, location and timing of the activity taking place.⁹⁴ Any person who does not follow the directions will be guilty of an offence subject to a fine not more than fifty thousand ringgit or imprisonment not more than five years, or both. Repeat offenders will be subject to higher penalties.⁹⁵

Water Activity Licences

In order to lawfully engage in any of the prohibited water activities, a Water Activity Licence (Licence) must be obtained.⁹⁶ The Director is responsible for approving all Licence applications.⁹⁷

a. Application for a Water Activities Licence

Licence applications should include the nature of the water activity, work and measures to undertake activity, and information the Direction may request to evaluate the application.⁹⁸ The Director can reject any application for not including the information necessary. The Director should notify the applicant in writing if their application was not approved.⁹⁹

b. Objection to a Licence application

Any person can make an objection to an application for a Licence.¹⁰⁰ The objection should be in writing, state the objections and be given to the Director during the required time period.¹⁰¹ The public is notified about all Licence applications by notice in the local newspaper and in the office of the Assistant Collector of Land Revenue for the District. The notification to the public should include the details about the application submitted and the deadline for objections. The Director is not responsible for notifying the public about any Licence applications that were included in the declaration for the land.¹⁰² The Director is responsible for notifying the party applying for a Water Activity Licence of any objections that are filed against their application. Applicants should be given a reasonable time to respond.¹⁰³

c. Review of Water Activity Licence

⁹³ Water Resources Enactment, 1998, section 48 (1), (a)-(f).

⁹⁴ Water Resources Enactment, 1998, section 48 (2).

⁹⁵ Water Resources Enactment, 1998, section 48 (3).

⁹⁶ Water Resources Enactment, 1998, section 18 (1).

⁹⁷ Water Resources Enactment, 1998, section 18 (2).

⁹⁸ Water Resources Enactment, 1998, section 18 (2), (a)-(b).

⁹⁹ Water Resources Enactment, 1998, section 18 (4).

¹⁰⁰ Water Resources Enactment, 1998, section 19 (2).

¹⁰¹ Water Resources Enactment, 1998, section 19 (3).

¹⁰² Water Resources Enactment, 1998, section 19 (1).

¹⁰³ Water Resources Enactment, 1998, section 19 (4).

The Director has the authority to refuse or approve a Licence.¹⁰⁴ Certain applications may be reported back to the Council at their request.¹⁰⁵ The Director is not authorized to issue a Licence without the Councils approval for Licence that will likely have regional significance, local significance or significance to public authority.¹⁰⁶ Unless the Council states that they would like to determine the outcome of an application the Director is not required to follow any recommendations given by the Council on the determination or conditions of a Licence.¹⁰⁷ When reviewing an application for a water activity Licence the Director or Council should take into account the following:¹⁰⁸

- Historic practice and benefits obtained from the water activity and works,
- Impact of major change created from the conditions of the Licence in relation to the stability of the pre-existing businesses, and
- Objections made to the application.

d. Approval of Water Activity Licence

Approved Licences should state the approved activities, works or measure permitted for the purpose of the activity.¹⁰⁹ The Director should only approve activities that can be lawfully performed on the proposed land and should notify the applicant in writing with the decision including any attached conditions.¹¹⁰

e. Appeal of licence decision

If a person does not agree with the denial of a Licence application, they can appeal the decision to the Council.¹¹¹ In order to file an appeal all fees must be paid or it should not be more than thirty days after the person was notified of the decision.¹¹² Appeals should be addressed on the appropriate form and should include particulars to the reason and portion of the decision that the person is appealing.¹¹³

f. Transfer of licence

Unless otherwise stated, Licences can be transferred by successive occupation for the remaining term. The successive occupier should inform the Director of the change not more than thirty day after the change of occupation to the licence.¹¹⁴

Special provisions for Water Activity Licences

a. Changes to a Water Activity Licence

¹⁰⁴ Water Resources Enactment, 1998, section 20 (1)(a).

¹⁰⁵ Water Resources Enactment, 1998, section 20 (1)(b), (6).

¹⁰⁶ Water Resources Enactment, 1998, section 20 (2), (a)-(c).

¹⁰⁷ Water Resource Enactment, 1998, section 20 (5).

¹⁰⁸ Water Resources Enactment, 1998, section 20 (8).

¹⁰⁹ Water Resources Enactment, 1998, section 21 (1).

¹¹⁰ Water Resources Enactment, 1998, section 21 (2)(3).

¹¹¹ Water Resources Enactment, 1998, section 24 (1).

¹¹² Water Resources Enactment, 1998, section 24 (2), (a)-(b).

¹¹³ Water Resources Enactment, 1998, section 24 (3).

¹¹⁴ Water Resources Enactment, 1998, section 21 (4).

If there has been an extreme change in circumstance the Director has the authority to change, modify or revoke previously approved Licences. The notice of change of revocation should be in writing and the Licence holder has the option to file and objection to the decision. Objections should be in writing or in person. After reviewing the objection the Director can continue with their original changes to the Licence or not proceed.¹¹⁵

b. Request to change a Water Activity Licence

Licence holders also have the option to request a change to their Licence. The Director has the authority to approve any changes and should give the Licence holder a notice of his final decision.¹¹⁶

c. Time period of Licence

Licences can be issued for not more than twenty years.¹¹⁷ In order to renew a Licence, the holder should apply for renewal six month prior to the expiration date or at the date specified by the Director.¹¹⁸ In order to determine a Licence term, the Director and council should consider the nature, scale, duration and likely impacts of the water resources and body.¹¹⁹ Failure to follow the appropriate timeline for renewal could result in fees three times the normal price of renewal.¹²⁰

d. Cancellation of a Water Activity Licence

The Director has the authority to suspend or cancel a person's licence if they do not comply with all the conditions of their Licence.¹²¹ The Director should provide a written notice for the Licence holder including the reason for the Licence including:

- Any work or measure that may have been approved under the Licence that was harmful to water resources, water bodies or has caused water to be wasted,
- Fees that must be paid in relation to the Licence,
- The Licence holder that has committed an offence, or
- Any other sufficient causes of the Director.¹²²

The Licence holder has the option to file and objection to the decision. Objections should be in writing or in person. After reviewing the objection the Director can continue with their original changes to the Licence or not proceed.¹²³

e. Water Activity Licence holders

¹¹⁵ Water Resources Enactment, 1998, section 25.

¹¹⁶ Water Resources Enactment, 1998, section 26.

¹¹⁷ Water Resources Enactment, 1998, section 22 (1).

¹¹⁸ Water Resources Enactment, 1998, section 22 (2), (a)-(b).

¹¹⁹ Water Resources Enactment, 1998, section 22 (3).

¹²⁰ Water Resources Enactment, 1998, section 22, (3)(4).

¹²¹ Water Resources Enactment, 1998, section 27 (1).

¹²² Water Resources Enactment, 1998, section 27 (2), (a)-(d).

¹²³ Water Resources Enactment, 1998, section 27 (3)(4).

The Minister is responsible for establishing the form of all Licences. Licences should include a statement requiring the holder to comply with the terms and conditions of the Licence and the provisions of the Water Resources Enactment.¹²⁴ The Director is responsible for keeping a list of all the Licences issued.¹²⁵

f. Failure to comply with Licence

Any person commits one of the prohibited acts listed under the water activities section¹²⁶ above or does not comply with one of the conditions in his Licence will be guilty of an offence. All offences under the section will be subject to a fine not more than fifty thousand ringgit or imprisonment not more than five years, or both.¹²⁷

g. Exemptions to Licences

The Minister has the authority to waive a public authorities responsibility to obtain a Licence for all water activities or those specified by the Minister.¹²⁸

h. Water expiration of alteration licence

All Water Body Alteration Licences expire at the completion of the water alteration activity. The Director approves when the water alteration activity is complete.¹²⁹

Additional powers of authority

a. Power of entry

Authorized persons are allowed to enter or pass through areas of land, a building or a vessel in order to carry out the Water Resources Enactment. The authorized persons are given this privilege and can use it to accompany workmen and equipment. An authorized person is given the right of entry can do any of the following:

- Inquire, investigate, inspect, gauge a reading, measure or survey,
- Install, operate and maintain river gauging equipment and monitor bores,
- Dig or bore into the subsoil,
- Take water samples,
- Determine whether an act has been carried out within the provisions of the Enactment, and
- Perform any other acts necessary to properly administer the Enactment.¹³⁰

b. Declared channels

¹²⁴ Water Resources Enactment, 1998, section 23 (1)(2).

¹²⁵ Water Resources Enactment, 1998, section 23 (6).

¹²⁶ Water Resources Enactment, 1998, section 17 (1).

¹²⁷ Water Resources Enactment, 1998, section 17 (2).

¹²⁸ Water Resources Enactment, 1998, section 17 (4).

¹²⁹ Water Resources Enactment, 1998, section 17 (3).

¹³⁰ Water Resources Enactment, 1998, section 63.

The Director has the authority, with the approval of the Council, to establish a channel, canal drain or artificial watercourse that will be recognized as a declared channel. The Director must make his declaration in writing.¹³¹

c. Offences with no penalty specified

If a person commits an offence where there is no established penalty, the person will be subject to a fine not exceeding ten thousand ringgit or imprisonment not more than one year, or both.¹³²

d. Offences of a corporate body

When charging a corporate body with an offence every person including the managing Director, manager or similar officers that were in office at the time of the offence will be liable for the corporation's actions. Any person that has committed an offence as a corporate body may be considered jointly liable. A person or manager will not be held liable if they can prove the offence was committed without their knowledge or that they had taken reasonable measures to prevent this offence from happening.¹³³

2. LAND ORDINANCE

Please note that there is a dedicated brief on the *Land Ordinance (1950)* and related legislation. This section only sets out information from the Land Ordinance that is relevant to water resources.

Purpose

The *Land Ordinance (1950)* establishes rule and regulations for the alienation and occupation of State land.

Representation on the Water Resources Council

The Director of Land and Surveys, or an authorized representative from the Department, should be one of the members that makes up the Water Resources Council.¹³⁴

Alienated land

The *Land Ordinance* describes alienated land as land that is leased or disposed of State land on behalf of the Government. Alienated land may require payment such as rent or another type of premium.¹³⁵

River and Shore Reserves

¹³¹ Water Resources Enactment, 1998, section 66.

¹³² Water Resources Enactment, 1998, section 60.

¹³³ Water Resources Enactment, 1998, section 58.

¹³⁴ Water Resources Enactment, 1998, section 5 (1)(d).

¹³⁵ Land Ordinance, 1930, section 4, "alienate".

The *Land Ordinance* authorizes the Government to reserve portions of land along the banks of rivers, streams, creeks, along the seashore above the high water mark or along the ridges of hills if they believe it is necessary for the proper control of water resources.¹³⁶ Unless stated otherwise the Government is in control of the property which includes the waterways stated above.¹³⁷

Special rights of the Government

The *Land Ordinance* authorizes the Government to make drains and sewers, irrigation works, survey stations, lay down water pipes, erect wires for telegraphs and other electric communications and use, repair and maintain the land they are making improvements to without making any payment.¹³⁸

3. LAND ACQUISITION ORDINANCE

Purpose

The *Land Acquisition Ordinance (1950)* establishes the power of the Yang di-Pertua to acquire land for public purpose.

Including alienated land in a Forest Reserve

The Yang di-Pertua Negeri has the power to acquire alienated land and use it for a public purpose.¹³⁹ A Forest Reserve is land used for public purpose.¹⁴⁰

Temporary occupation

The Yang di-Pertua Negeri has the power to determine if the State should temporarily occupy a piece of unoccupied land and use it for a public purpose.¹⁴¹ If the Yang di-Pertua Negeri believes a piece of land is suitable for a public purpose he may give permission to complete the anticipated project. Temporary occupation of the land should not be longer than three years.¹⁴²

4. TOWN AND COUNTRY PLANNING ORDINANCE

Purpose

The *Town and Country Planning Ordinance (1950)* establishes rules relating to the development of rural and urban towns, land and other areas, to preserve and improve matters and amenities for the area.

Representation on the Water Resources Council

¹³⁶ Land Ordinance, 1950, section 26 (2).

¹³⁷ Land Ordinance, 1950, section 26 (1).

¹³⁸ Land Ordinance, 1950, section 30 (b).

¹³⁹ Land Acquisition Ordinance (Cap. 69), section 3 (1).

¹⁴⁰ “[P]ublic purpose”, land used in connection with the conservation, improvement or exploitation of natural resources. Land Acquisition Ordinance (Cap. 69) section 2 (h).

¹⁴¹ Land Acquisition Ordinance (Cap. 69), section 11 (1).

¹⁴² Land Acquisition Ordinance, section 11 (2).

The Director of the Department of Town and Regional Planning, or an authorized representative from the Department, should be one of the members that makes up the Water Resources Council.¹⁴³

Structure plans

The Director of the Department of Town and Regional Planning has the authority to draft structure plans, which can include policies and proposals for the development and use of land in the State, including the territorial waters.¹⁴⁴

Control over public services

The *Town and Country Planning Ordinance* gives the Director of the Department of Town and Regional Planning the authority to facilitate the construction of works relating to lights, water supply, sewerage, drainage, sewage disposal, refuse disposal or other public services.¹⁴⁵

No compensation for inefficient plans

The *Town and Country Planning Ordinance* will not provide any compensation for an approved development scheme that would likely involve danger, injury or excessive amount of public money to road, sewers, water supply or other public services.¹⁴⁶

Consulting with Director of Town and Regional Planning

If there is already a proposed order for any of the Water Conservation Areas or Plans established in this enactment, the Director should consult with the Director of the Department of Town and Regional Planning to determine the effect of the proposed order on any drafted or approved plans.¹⁴⁷

Documents used as measures taken to minimize flooding impact

A Floodplain Management Area is required to have a series of documents attached to its declaration that describes the approved plan for the land.¹⁴⁸ One of the documents required for the plan is a document that describes that measure that will be taken to minimize the impact of flooding. The development of a scheme or plan made under the *Town and Country Planning Ordinance* is one of the documents that will be considered sufficient to describing the measures that will be taken for the area.¹⁴⁹

5. DRAINAGE AND IRRIGATION ORDINANCE

Purpose

¹⁴³ Water Resources Enactment, 1998, section 5 (1)(i).

¹⁴⁴ Town and Country Planning Ordinance, 1950, section 4C (2)(b).

¹⁴⁵ Town and Country Planning Ordinance, 1950, Part V, Public Services.

¹⁴⁶ Town and Country Planning Ordinance, 1950, section 25 (2)(h).

¹⁴⁷ Water Resources Enactment, 1998, section 45.

¹⁴⁸ Water Resources Enactment, 1998, section 39 (3).

¹⁴⁹ Water Resources Enactment, 1998, section 39 (3)(iv).

The *Drainage and Irrigation Ordinance (1956)* provides regulation for drainage and irrigation areas. The Ordinance contains provisions for the construction and facilitation of waste channels and water resources, particularly in urban areas establishes rules and regulations for drainage and irrigation areas in Sabah.

Representation on the Water Resources Council

The Director of Irrigation and Drainage, or an authorized representative from the Department, should be one of the members that makes up the Water Resources Council.¹⁵⁰

Institutions and implementation

The Drainage and Irrigation Ordinance assigns power to the Minister in administering regulation of drainage and irrigation areas. The Yang di-Pertua Negeri has the power to select certain areas for either drainage or irrigation usage.¹⁵¹

Drainage and Irrigation Committee

The Drainage and Irrigation Committee (the Committee) is authorized to make decisions and policies in accordance with the provisions of the Ordinance. One of the functions of the Committee is to classify lands for drainage and irrigation utilization.¹⁵² The Committee is made up of the following members:

- District Officer Of the District (or the President Of The Municipality),
- Collector Of the District,
- Executive Officer As Secretary, and
- Director Of Agriculture.¹⁵³

6. FOREST ENACTMENT

Please note that there is a dedicated brief on the Forest Enactment and related legislation. This section only sets out information from the Forest Enactment that is relevant to water resources.

Purpose

The *Forest Enactment (1968)* provides the cornerstone of Sabah's forest-related legislation, and establishes rules relating to the preservation of forests, regulation and control of forest produce.

Representation on the Water Resources Council

The Director of Forestry, or an authorized representative from the Department, should be one of the members that makes up the Water Resources Council.¹⁵⁴

¹⁵⁰ Water Resources Enactment, 1998, section 5 (1)(j).

¹⁵¹ Drainage and Irrigation Ordinance, 1956, section 3.

¹⁵² Drainage and Irrigation Ordinance, 1956, section 4 (1).

¹⁵³ Drainage and Irrigation Ordinance, 1956, section 4 (2), (a)-(e).

Amendments to Forest Enactment

The *Amendment to Forest Enactment (1968)* eliminates the entire section of the Forest Enactment titled “Forest Reserve not to cease or to be excised”.¹⁵⁵ The elimination of this section allows authorities to remove or modify portions of a Forest Reserve at their discretion. Prior to this amendment, authorities could remove land in a Reserve if it was to be used as a Park, Game Sanctuary or Bird Sanctuary.¹⁵⁶

Including Forest Reserves in Water Protection Areas

The Yang di-Pertua Negeri, after advisement of the Council, may include land portions or entire areas of land established in a Forest Reserve in a Water Protection Area. The Water Protection Area should be established to protect water, water bodies, the locality of water, flow of water or to guard against pollution or degradation.¹⁵⁷

Control of a Forest Reserve in a Water Protection Area

If an area of a Forest Reserve is included in a Water Protection Area it is subject to the control of the Director of the Forestry Department.¹⁵⁸ If a person enters a Water Protection Area that is also a Forest Reserve without of the approval from both the Director Water Resources and the Director of Forestry they will be guilty of an offence.¹⁵⁹

7. ENVIRONMENT PROTECTION ENACTMENT

Please note that there is a dedicated brief for the Environment Protection Enactment and related legislation. This section only sets out information from the enactment that is relevant to water resources.

Purpose

The *Environment Protection Enactment (2002)* establishes Sabah’s laws for the protection of the environment and all other related matters.

Establishing protection policies and areas

The Minister has the authority under the Environment Protection Enactment to establish an environmental protection policy for an area where pollution is significant or likely to become significant for the environment.¹⁶⁰ In addition, the

¹⁵⁴ Water Resources Enactment, 1998, section 5 (1)(e).

¹⁵⁵ Forest Enactment, 1968, section 22.

¹⁵⁶ Forest (Constitution of Forest Reserves and Amendment) Enactment 1984, section 3.

¹⁵⁷ Water Resources Enactment, 1998, section 36 (1).

¹⁵⁸ Water Resources Enactment, 1998, section 36 (8).

¹⁵⁹ Water Resources Enactment, 1998, section 37 (1)(b).

¹⁶⁰ Environment Protection Enactment, 2002, section 9, 10 (1), (a)-(b).

Minister also has the authority to establish Environmental Protection Areas for the protection on the environment by notification in the Gazette.¹⁶¹

8. WATER SUPPLY ENACTMENT

Purpose

The *Water Supply Enactment (2003)* establishes Sabah's rules relating to the distribution and supply of water and matters related.

Power to delegate authority

The Director has the authority to delegate powers of the Water Resources Enactment to any officer of a public authority or to a committee established by the Director for the protection of the water supply for a village or local community.¹⁶² The State Water Authority is established in the Water Supply Enactment to oversee the custody, management and administration of the water supply system independent to the Water Resources Enactment but could be suitable for delegation of powers from the Director.¹⁶³

9. INLAND FISHERIES AND AQUACULTURE ENACTMENT

Purpose

The *Inland Fisheries and Aquaculture Enactment (2003)* provides sustainable development and management regulations for inland fisheries, aquaculture and other related matters in Sabah. This enactment is not yet in force but should be used as a guideline for regulations that may be relevant for the future.

Representation on the Water Resources Council

The Director of the Fisheries Department, or an authorized representative from the Department, should be one of the members that makes up the Water Resources Council.¹⁶⁴

10. INSTITUTIONAL ARRANGEMENT

Water Resource Council

The Water Resource Council includes the Chairman, Secretary of Ministry of Culture, Environment and Tourism, Secretary for Natural Resources, two member with technical or academic experience for the position and the Directors from the following Departments: Lands and Surveys, Forestry, Agriculture, Water Resources, State Economic Planning Unit, Town and Recreational Planning, Irrigation and

¹⁶¹ Environment Protection Enactment, 2002, section 11.

¹⁶² Water Resources Enactment, 1998, section 13 (1), (a)-(b).

¹⁶³ Water Supply Enactment, 1950, section 4 (2).

¹⁶⁴ Water Resources Enactment, 1998, section 5 (1)(k).

Drainage, Fisheries, Water, Ports and Harbours, Geological Surveys, and the Federal Department of Environment for the Sabah Region.¹⁶⁵

The Water Resource Council is responsible for advising the Minister of Agriculture and Food Industry (the Minister) on certain areas of water management and uses in addition to the following responsibilities:

- Report conditions of water resources to Minister,
- Make recommendations on the improvement of the quantity and quality of water for human use, the aquatic flora and fauna and the aquatic environment,
- Distribute water activity licences,
- Adopt and review plans for effective development of water resources,
- Oversee and regulate catchment management plans and other plans for water resources,
- Develop and issue, with the approval of the Minister, State policies and guidelines for water resources, and
- Require authorities to take action to implement catchment management plans and preventing harm to water resources.¹⁶⁶

Department of Irrigation and Drainage

The Department of Irrigation and Drainage was established in 1967. The Department of Irrigation and Drainage is responsible for managing the irrigation and drainage for agricultural areas, river conservancy, hydrology, flood mitigation, urban drainage and state water resources. The State has the intention of establishing a separate department for Water Resources in the future. The Department of Irrigation and Drainage is responsible for the enforcement of the following regulations:

- Drainage And Irrigation Ordinances (1956),
- Drainage and Irrigation Enactment (Amendment) (1983), and
- Sabah Water Resources Enactment (1998).¹⁶⁷

Director of Water Resources

The Minister is responsible for appointing the Director of Water Resources¹⁶⁸ and for the following: managing the State's water resources, protecting the quantity/ quality of water, promoting beneficial water use, deciding licence applications, planning and developing areas of water use to reduce conflict, protecting river and shore reserves, developing catchment/management/flood plans, collecting data, providing education and information programs for water resources, developing policies and coordinating the administration of water resources management.¹⁶⁹ The Director can delegate any of his powers away by notification in the *Gazette* to another

¹⁶⁵ Water Resources Enactment, 1998, section 5 (1), (a)-(p).

¹⁶⁶ Water Resources Enactment, 1998, section 4 (1), (a)-(h).

¹⁶⁷ Official Website of Department of Irrigation and Drainage Sabah, <http://www.did.sabah.gov.my/mobile/index.php?id=3uphi2w2>.

¹⁶⁸ Water Resources Enactment, 1998, section 12 (1).

¹⁶⁹ Water Resources Enactment, 1998, section 12 (2), (a)-(l).

authority figure.¹⁷⁰

FREQUENTLY ASKED QUESTIONS

If a mangrove is established as a Forest Reserve does the Department of Forestry or the Department of Irrigation and Drainage manage the area?

The Department of Irrigation is responsible for enforcing the provisions of the Water Resources Enactment (the Enactment). Since the Enactment creates the rules and regulations for water resources, it also is responsible for the maintaining and regulating mangroves. Generally, a mangrove is managed by the Department of Irrigation and Drainage, the Water Resources Council and the Director of Water Resources.¹⁷¹ Officials and the department ensure that the mangrove is being managed properly and that requirements of management plans are being met.¹⁷²

The officials responsible for the maintenance of a mangrove can change when the classification of the mangrove area is altered. A mangrove can be protected in a Water Protected Area or a Water Conservation Area. If a mangrove is protected as a Water Protection Area in a Forest Reserve it should be under the enforcement of the Department of Forestry.¹⁷³

The Forest Enactment designates Class V Forest Reserves as Mangrove Forests.¹⁷⁴ A Mangrove Forest is established to supply mangrove timber or other produce to meet the general demands of trade.¹⁷⁵ If a Mangrove Forest is protected under the Forest Enactment, and has been authorized by the Yang di-Pertua Negeri as a Class V Reserve, the Department of Forestry, Forest Officers and any other authorized officials under the Forest Enactment should look after the maintenance of the Reserve.¹⁷⁶

It is important to remember that even if officials of the Forestry Department regulate and maintain a Mangrove Forest, if the Forest is also a Water Protected Area the Water Resources Council is still responsible for developing a management plan for the area.¹⁷⁷

11. CASE LAW

The following is relevant case law from other jurisdictions:

- Australian Case, *Coulton v. Holcombe* [1990] 20 NSWLR 138, relating to landowner's authority to draw water.¹⁷⁸

¹⁷⁰ Water Resources Enactment, 1998, section 13 (1).

¹⁷¹ Water Resources Enactment, 1998, section 5 (1), Official Website of Department of Irrigation and Drainage Sabah, <http://www.did.sabah.gov.my/mobile/index.php?id=3uphi2w2&bhs=English>.

¹⁷² Water Resources Enactment, 1998, section 36 (9).

¹⁷³ Water Resources Enactment, 1998, section 36 (8).

¹⁷⁴ Forest Enactment, 1968, section 5, (a)-(g).

¹⁷⁵ Forest Enactment, 1968, section 5, (a)-(g).

¹⁷⁶ Cross referenced Forest Enactment Brief, section 8, "authorized officer".

¹⁷⁷ Water Resources Enactment, 1998, section 36 (9).

¹⁷⁸ Cited in *Environmental Law in Malaysia (Borneo edition)*, 2007, James Lam Chee Seng.

- Indian Case, Jagannath v. Union of India (1997) 2 SCC 87, relating to coastal zone pollution in relation to prawn fishing.¹⁷⁹

¹⁷⁹ Cited in Environmental Law in Malaysia (Borneo edition), 2007, James Lam Chee Seng.