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AGREEMENT

BETWEEN

THE GOVERNMENTS OF

THE REPUBLIC OF BOTSWANA

THE KINGDOM OF LESOTHO

THE REPUBLIC OF NAMIBIA

AND

THE REPUBLIC OF SOUTH AFRICA

ON THE ESTABLISHMENT OF THE

ORANGE-SENQU RIVER COMMISSION



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PREAMBLE

The Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Republic of South Africa (hereinafter jointly referred to as the "Parties" and in the singular as a "Party");

CONSIDERING the relative paucity of water resources in the Southern African Region and the need to provide the people in the Region with access to sufficient water supplies;

RECOGNISING the significance of the Orange-Senqu River System (hereinafter referred to as the "River System") as a major water resource in the Region;

CONSCIOUS that collaboration between the Parties with regard to the development of the River System as a water source of common interest could significantly contribute towards the mutual benefit, peace, security, welfare and prosperity of their people;

COMMITTED towards the realisation of the principle of equitable and reasonable utilisation, as well as the principle of sustainable development with regard to the River System;

BEARING in mind the Rules on the Non-Navigational Uses of the Waters of International Rivers, approved by the International Law Association at Helsinki in 1966;

RECALLING the Convention on the Law of the Non-Navigational Uses of International Watercourses, adopted by the General Assembly of the United Nations in 1997;

INSPIRED by the spirit of the Protocol on Shared Watercourse Systems in the Southern African Development Community Region;

DESIRING to extend and consolidate the existing tradition of good neighbourliness and friendly relations between the Parties by promoting close and co-ordinated co-operation in the development of all the resources of the River System;

HEREBY AGREE as follows:

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ARTICLE 1**ESTABLISHMENT OF THE ORANGE-SENQU RIVER COMMISSION**

- 1.1 The Parties hereby establish and undertake to maintain the Orange-Senqu River Commission (hereinafter referred to as the "Commission") in accordance with the provisions of this Agreement.
- 1.2 The Commission shall be an international organisation and shall possess international legal personality with the capacity to enter into international agreements and shall further possess legal personality within the legal systems of each of the Parties.
- 1.3 In the absence of an agreement to the contrary, nothing in this Agreement shall affect the rights and obligations of a Party arising from other agreements in force prior to the date this Agreement comes into force for such a Party.
- 1.4 Nothing in this Agreement shall affect the prerogative of any number of the Parties to establish among themselves river commissions with regard to any part of the River System. All such Commissions will be subordinate to this Commission and existing Commissions will liase with this Commission in terms of this Agreement.

ARTICLE 2**INSTITUTIONS OF THE COMMISSION**

- 2.1 The highest body of the Commission shall be the Council.
- 2.2 The Council shall consist of one delegation per Party that ratified this Agreement.

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- 2.3 Each delegation shall consist of not more than three permanent members and such other advisers as each Party may determine: Provided that a delegation may be accompanied by not more than three advisers at any meeting of the Council unless otherwise determined by the Council for any particular meeting.
- 2.4 One of the permanent members in the delegation of each Party shall be designated by the Party concerned as the leader of its delegation and shall be a co-chairperson at Council meetings.
- 2.5 Each Party shall expeditiously notify the other Parties of the appointment of its permanent members and the leader of its delegation, as well as of the termination of such appointments.

ARTICLE 3

MEETINGS OF THE COUNCIL

- 3.1 The Council shall meet at least once a year in ordinary session and may meet in extraordinary session at the request of any one of the Parties.
- 3.2 Unless otherwise determined by the Council, ordinary meetings shall take place on a basis of rotation in the country of one of the Parties.
- 3.3 The Council shall determine the date and time of all meetings, including the territory of the Party in which such meeting shall take place.
- 3.4 The leader of the delegation of the Party hosting a particular meeting of the Council, shall in respect of that meeting be the chairperson, and shall be responsible for making a suitable venue available for the meeting.
- 3.5 The chairperson of a meeting of the Council shall be responsible for the preparation and timeous distribution of the agenda, including all supporting documentation, as well as the recording of the minutes of the meeting and the distribution thereof to the Parties within thirty days of that meeting.

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- 3.6 Each delegation to the Council shall have one vote.
- 3.7 No decision of the Council shall be valid unless taken at a meeting attended by at least three of the delegations.
- 3.8 A decision taken at a meeting which was not attended by a delegation of one of the Parties, shall be communicated by the chairperson of that particular meeting to the leader of the delegation not represented at the meeting and shall be binding on such Party unless within thirty days of such leader being notified, the communicating chairperson is informed that such Party is not in agreement with such decision.
- 3.9 The Council shall make every effort to take decisions on the basis of consensus. If all efforts of reaching consensus on a particular matter at a meeting of the Council have been exhausted and no agreement was reached, then the matter shall be dealt with at the next meeting of the Council. In the event of failure to reach agreement at such meeting of the Council, the matter shall be made the subject of negotiations between the Parties.
- 3.10 The Council shall determine its own rules of procedure.

ARTICLE 4

OBJECTIVES OF THE COUNCIL

The Council shall serve as technical advisor to the Parties on matters relating to the development, utilisation and conservation of the water resources in the River System and shall perform such other functions pertaining to the development and utilisation of water resources as the Parties may agree to assign to the Commission.

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ARTICLE 5

FUNCTIONS OF THE COUNCIL

- 5.1 The Council shall take the decisions necessary to implement this Agreement.
- 5.2 The Council shall take all measures required to make recommendations, or to advise the Parties, on the following matters:
- 5.2.1 Measures and arrangements to determine the long-term safe yield of the water sources in the River System;
 - 5.2.2 the equitable and reasonable utilisation of the water sources in the River System to support sustainable development in the territory of each Party;
 - 5.2.3 the investigations and studies conducted separately or jointly by the Parties, with regard to the development of the River System, including any project or the construction, operation and maintenance of any water works;
 - 5.2.4 the extent to which the inhabitants in the territory of each Party concerned shall participate in respect of the planning, development, utilisation, protection and conservation of the River System, as well as the harmonisation of policies in that regard and the possible impact on the social, cultural, economic and natural environment;
 - 5.2.5 the standardised form of collecting, processing and disseminating data or information with regard to all aspects of the River System;
 - 5.2.6 the prevention of the pollution of water resources and the control over aquatic weeds in the River System;
 - 5.2.7 contingency plans and measures for responding to emergency situations or harmful conditions resulting from natural causes such as droughts and floods, or from human conduct such as industrial accidents;

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- 5.2.8 the regular exchange of information and consultation on the possible effects of planned measures;
- 5.2.9 measures with a view to arriving at a settlement of a dispute between two or more of the Parties; and
- 5.2.10 such other matters as may be determined by the Parties.

ARTICLE 6

POWERS OF THE COUNCIL

- 6.1 The Council may establish *ad hoc* or standing working groups or committees comprising of representatives of the Parties as each Party may determine.
- 6.2 The Council may appoint technical experts and consultants to provide expert opinion and advice on any matter referred to in Article 5 and may exercise such powers and make the decisions relating thereto as may be assigned to it in this regard by the Parties.
- 6.3 The Council shall ensure that advice on any matter referred to in Article 5 shall be contained in a report, signed by the leader of each delegation at the meeting of the Council at which the report is adopted, and such report shall be submitted to the Parties by the respective delegations.
- 6.4 The Council shall ensure that every report referred to in subArticle 6.3, shall include estimates of the cost involved in the implementation thereof and it may require that proposals be contained in such report for the apportionment of such costs between the Parties.

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ARTICLE 7

OBLIGATIONS OF THE PARTIES

- 7.1 The Parties shall give their full co-operation and support to the implementation of this Agreement as well as the recommendations of the Council.
- 7.2 The Parties shall, in their respective territories, utilise the resources of the River System in an equitable and reasonable manner with a view to attaining optimal and sustainable utilisation thereof, and benefits therefrom, consistent with adequate protection of the River System. The term "equitable and reasonable" shall be interpreted in line with the Revised Protocol on Shared Watercourses in the Southern African Development Community (SADC) Region.
- 7.3 The Parties shall, in utilising the resources of the River System in their territories, take all appropriate measures to prevent the causing of significant harm to any other Party. The term "significant harm" shall be interpreted in line with the Revised Protocol on Shared Watercourses in the Southern African Development Community (SADC) Region.
- 7.4 The Parties shall exchange available information and data regarding the hydrological, hydrogeological, water quality, meteorological and environmental condition of the River System.
- 7.5 A Party planning any project, programme or activity with regard to the River System which may have a significant adverse effect upon any one or more of the other Parties, or which may adversely affect such River System, shall forthwith notify the Council and provide all available data and information with regard thereto.
- 7.6 Unless otherwise agreed, a Party notified as contemplated in subArticle 7.5, shall communicate its reply to the notifying Party within six months.

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- 7.7 In the event that the implementation or execution of any planned measures is of the utmost urgency in order to save life, or to protect public health and safety, or other equally important interests as a result of an emergency situation, the Party planning the measures may immediately proceed with implementation or execution: Provided that in such event a formal declaration of the urgency of the measures shall be communicated to Council.
- 7.8 If so requested by any affected Party or Parties or technical experts or consultants appointed by the Council, a Party shall provide the other Parties as well as technical experts and consultants with data and information which are available or obtainable on any planned project, programme or activity which may have a significant adverse effect upon the other Parties.
- 7.9 For the purposes of this Article, information in respect of a planned project, programme, or activity which may have a significant adverse effect upon any other Party, or which may adversely affect the River System, shall include the findings of an environmental impact assessment addressing the effects on the ecosystems of the watercourse as well as the social, cultural, economic and natural environment.
- 7.10 If a Party has reasonable grounds to believe that another Party is planning a project, programme or activity which may have a significant adverse effect upon it, such Party may request the other Party planning the project, programmes or activity to comply forthwith with the provisions of subArticle 7.5. The request shall be accompanied by a documented explanation setting forth its grounds.
- 7.11 The Parties shall employ their best efforts to collect and, where appropriate, to process data and information with regard to the River System, in a manner which facilitates its utilisation by the other Parties, technical experts or consultants who may be appointed by the Council. The Parties shall make every effort to employ the standardised form for collecting, processing and disseminating data and information, where appropriate.
- 7.12 The Parties shall individually and jointly take all measures that are necessary to protect and preserve the River System from its sources and headwaters to its common terminus.
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- 7.13 The Parties shall individually and jointly prevent, reduce and control pollution of the River System that may cause significant harm to one or more of the Parties, including harm to the environment, or to human health or safety, or to the ecosystem of the River System.
- 7.14 The Parties shall, individually and jointly take all measures that are necessary to protect and preserve the estuary of the River System, including the marine environment, taking into account generally accepted international rules and standards.
- 7.15 The Parties shall take all measures necessary to prevent the introduction of species, alien or new, into the River System that may have a detrimental effect to the ecosystem of the watercourse.
- 7.16 If two or more of the Parties agree to co-operate in the planning of a project, programme or activity with regard to the use of the River System, either jointly or by way of a continuous exchange of available data and information, and communicate timeously their respective evaluations and findings on the data and information, any specific periods of notification and reply with regard to the projects, programmes or activities shall only apply to the extent agreed to by these Parties.

ARTICLE 8

SETTLEMENT OF DISPUTES

- 8.1 Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation and/or negotiation between them.

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- 8.2 If the Parties to the dispute have not arrived at a settlement through the means provided for in subArticle 8.1, the dispute may, unless the Parties agree otherwise, be brought before the Tribunal established in terms of Article 16(1) of the Treaty of the Southern African Development Community of 1992, in accordance with the rules and procedures applicable with regard to the function of such Tribunal.
- 8.3 The Parties shall accept the decision of the Tribunal as final and binding.

ARTICLE 9

WITHDRAWAL

- 9.1 At any time after three years from the date on which this Agreement has entered into force for such a Party, that Party may withdraw from this Agreement by giving written notice to the other Parties. Any such withdrawal shall take effect on the date specified in the notification, which date may not be less than twelve months after such notification. A Party withdrawing from this Agreement shall remain bound to contractual relationships to which it is a party and to its obligations thereunder for the duration of the notification period.

ARTICLE 10

FINANCIAL ARRANGEMENTS

- 10.1 Each Party shall in respect of all meetings of the Council be responsible for all costs incurred in connection with the attendance and participation of its delegation and of any person included in its delegation as an adviser.
- 10.2 The Party hosting a meeting of the Council shall be responsible for all costs incurred in making a venue available for the meeting, the preparation and distribution of the agenda for the meeting, as well as for the recording and distribution of the minutes of the meeting.

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10.3 All other costs incurred or liabilities accepted by the Council in the performance of its functions and the exercise of its powers, shall be shared equally by the Parties, unless otherwise agreed by the Council.

ARTICLE 11

GENERAL AND FINAL PROVISIONS

11.1 This Agreement shall enter into force on the date on which all Parties have notified each other through the diplomatic channel of their compliance with the constitutional requirements necessary for the implementation thereof.

11.2 This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments have signed and sealed this Agreement in quadruplicate in the English language, all texts being equally authentic.

DONE at Windhoek on this 3rd day of November 2000.

Ronald Kasrils

FOR THE REPUBLIC OF SOUTH AFRICA

Lea Kgatla

FOR THE REPUBLIC OF BOTSWANA

Molotsi

FOR THE KINGDOM OF LESOTHO

Puise

FOR THE REPUBLIC OF NAMIBIA