**Question 2: Mandate for Water Resource Management in South Africa**

**Question:**

Describe the environmental protection provisions of section 24 of the Constitution of the Republic of South Africa.

**Answer:** (The underlined should form the basis of the answer.)

These provisions form part of the constitutional mandate governing water.

A person has a right in terms of these provisions to an environment that is not harmful to his or her well-being, and requires the environment to be protected for the benefit of the present and future generations through reasonable legislative and other measures that:

* Prevent pollution and ecological degradation;
* Promote conservation; and
* Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Conduct of an organ of the State, a private individual or an organisation violating this may be challenged. The right imposes a duty on the State to take legislative and other measures to protect the environment. If the State fails to take these, the State could be forced to comply.

This right covers the conservation of the aquatic ecosystems and riparian habitat. Certain aspects of the environment merit protection purely for aesthetic reasons. It includes medical, spiritual or psychological aspects such as the individual’s need to be able to commune with nature and to use the water for religious or spiritual purposes such as baptising.

Sustainable development should be understood that it takes place in a way that allows the water resources to stay intact. Water resources should therefore be exploited in such a way that they will be able to sustain human, plant and animal life over the longest possible period.

A positive duty is placed on the State (all three spheres) to protect the environment, which must be achieved by legislation and administrative measures. Administrative measures include a wide field of measures. The goal of these should be to prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of the water resources, while promoting justifiable economic and social development.

There is a duty on the State to monitor and regulate those activities that are or are likely to be harmful to water resources and to ensure that there is sufficient water to maintain the ecological integrity of the country’s water resources, and that water conservation and sustainable, justifiable economic and social development are promoted. A balance should be struck between environmental protection and development that is sustainable. The State has to play a role here to ensure that effective legislation is in place and that it is enforced. This has already occurred with the enactment and application of for example the National Environmental Management Act 107 of 1998 and the National Water Act 36 of 1998, Mineral and Petroleum Resources Development Act 28 of 2002, Conservation of Agricultural Resources Act 43 of 1983, National Environmental Management: Air Quality Act 39 of 2004, National Environmental Management: Biodiversity Act 10 of 2004, National Environmental Management: Integrated Coastal Management Act 24 of 2008, National Environmental Management: Protected Areas Act 57 of 2003, National Environmental Management: Waste Act 59 of 2008 and Ordinances of the Provinces.