



Department of Water Affairs and Forestry
Directorate: Water Allocations
Republic of South Africa

**A DRAFT POSITION PAPER FOR WATER
ALLOCATION REFORM IN SOUTH AFRICA**

**TOWARDS A FRAMEWORK FOR WATER ALLOCATION
PLANNING**

DISCUSSION DOCUMENT

JANUARY 2005

FOREWORD

As custodians of the national water resource, the Department of Water Affairs and Forestry must promote the beneficial use of water in the best interests of all South Africans.

The allocation of water should, therefore promote equity, address poverty, generate economic growth and create jobs. The water allocation process must also recognise that redressing the effects of previous discriminatory legislation also provides social stability, which in turn promotes economic growth. Moreover, the water allocation process must allow for the sustainable use of water resources and must promote the efficient and non-wasteful use of water.

On the other hand, allocating water without ensuring that all users have the capacity to use this water productively will limit these benefits. Consequently, water allocation should not only aim at realising the above goals, but must work closely with all spheres of government to promote the productive and responsible use of water. Likewise, water allocations should try to minimise the impacts on existing lawful users of water who are already contributing to our development. As such, water allocations should promote shifts in water use patterns that are equitable but also gradual and carefully considered.

This goes well beyond the Department of Water Affairs and Forestry's mandate and requires the active pursuit of those cooperative governance arrangements required to support the productive use of water. In many instances, this will be a difficult and costly process. Accordingly, approaches to water allocation will initially be rolled out in areas experiencing water stress. However, in order to address the short-term need for equity in other areas, the approaches will include options that promote the beneficial and equitable use of water in all catchments.

Lastly, water allocations should phase in the change of water use entitlements from Existing Lawful Use to Licences under the National Water Act.

In order to address these challenges, the Department of Water Affairs and Forestry have recently commenced a project, with financial assistance from the United Kingdom's Department for International Development, to review existing and develop alternative approaches to water allocation in South Africa.

This document proposes a draft framework to address the issues at hand. It considers the issues raised by a wide range of stakeholders during the extensive public consultation process for the Proposed National Water Resource Strategy and during subsequent processes and serves as the basis for specific public consultation around the development of creative solutions for allocating water fairly and equitably into the future.

Minister: Water Affairs and Forestry
April 2005

Comment on this framework

The Department of Water Affairs and Forestry is actively seeking comment on the approaches outlined in this document. Please submit comment, by 27th May 2005, to: Mr Ashwin Seetal, Director: Water Allocations, Department of Water Affairs and Forestry, Pretoria.
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SECTION 1 - INTRODUCTION

Why change the way we allocate water?

Equitable access to water, or to the benefits derived from using water, is critical to eradicating poverty and promoting growth. This is particularly important in South Africa, which is still facing significant inequities in access to and use of water.

These inequities are reflected both in the disproportionate use of water and, in many cases, a lack of capacity to use water to generate income and jobs. In addition, much still has to be done to improve the capacity of Historically Disadvantaged Individuals and the poor to participate equitably in water resources management.

It is therefore important to develop methods for water allocation that:

- Take proactive steps to meet the water needs of historically disadvantaged individuals and the poor;
- Ensure participation by the poor and HDIs;
- Work with other agencies to help build capacity to use water productively;
- Promote the sustainable use of water resources; and
- Promote the beneficial and efficient use of water in the public interest.

Why develop this document?

While South Africa's National Water Act and National Water Policy provide the legislative and policy framework for water allocations, they do not provide detailed strategies and approaches to promote equity, sustainability and efficiency in water use, or a process to roll this out across the country.

Moreover, the process of water allocation to realise equity is likely to be both technically demanding and contentious. Participation by all stakeholders is therefore vital to allocating water fairly, as well as to providing support for productive water use. It is therefore important to develop clearly articulated approaches to allocating water.

Given the contentious nature of this process, it is essential that these approaches are developed together with all stakeholders. This document considers the issues raised by a wide range of stakeholders during the extensive public consultation process for the National Water Resource Strategy and takes the first step in the public participation process that will lead to clearly defined strategies and approaches for water allocations.

A Balancing Act

There are still significant inequities in access to and use of our water resources, as well as inequities in the benefits that accrue from water use. There are growing demands to address these gaps.

The way in which water is allocated is important, particularly in areas where it may be necessary to re-allocate water between users and/or sectors to achieve equity and beneficial use. Due consideration must be given to this urgent need for equity, notwithstanding the fact that many existing water users are also making productive and beneficial use of water and are contributing to economic growth.

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However, if this re-allocation of water is done too quickly, or haphazardly, the country may suffer economic or environmental damage as emerging users struggle to establish productive and beneficial uses of water. Conversely, if water re-allocations take place too slowly, social and political pressures will force a quicker pace for water reform, which could destabilise the process.

Water allocation, while founded on sound water resources management approaches, is therefore profoundly a social, political, economic and legal process. The framework outlined in this document seeks to identify and present an appropriate balance for the process, taking account of the implications of all these factors.

Part of an ongoing process

This document does not represent a new approach to water reform, but rather gives effect to the reform processes initiated in 1994 with the Water Law Review process. The approaches outlined here are consistent with the National Water Act and the National Water Policy for South Africa.

The document also seeks to provide greater clarity on how water allocation will be undertaken in future. This is intended to provide a stable environment for existing lawful users of water, while taking positive steps towards the allocation of water to historically disadvantaged individuals in our society.

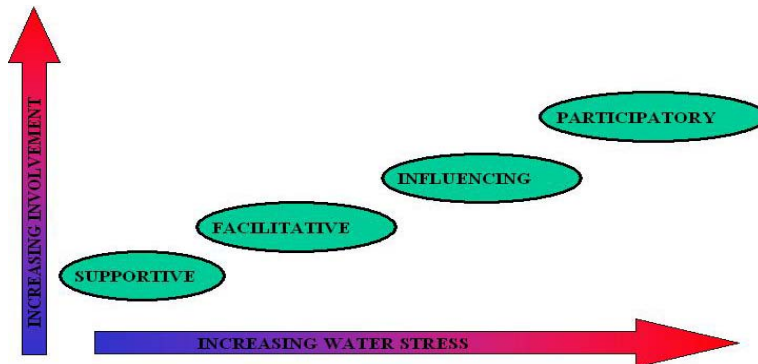
What is the role of the water allocation process?

The water allocation process must support Government's poverty eradication and economic development strategic objectives. The Department of Water Affairs and Forestry (the DWAF) and other Water Management Institutions should, therefore, work towards providing the water required to meet these objectives.

It is recognised that the Department's role within these programmes is:

- (a) to indicate where water is available to support growth; and
- (b) to influence and be a part of the planning processes in water stressed areas to promote and support growth and development initiatives. Where appropriate it should encourage the establishment of enterprises that are less water intensive.

The role of water allocation in supporting economic development programmes will therefore increase as water becomes more limiting.



THE ROLE OF WATER ALLOCATIONS IN DEVELOPMENT

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What is “the beneficial use of water in the public interest”?

Water allocation must promote the beneficial use of water in the public interest (see Glossary Box 1). This includes a commitment to the fair and equitable allocation of water to all South Africans, which promotes social stability and investor confidence.

However, while supporting the provision of water for uplifting the poor, the process should not fall into a “poverty trap” of only providing water to sustain basic livelihoods. The water allocation process should therefore also support and facilitate Broad-based Black Economic Empowerment by promoting larger-scale productive commercial uses of water.

This does not mean that the water allocation process will focus solely on issues of equity. While addressing issues of equity, it will also support water uses that generate employment and growth. Similarly, where water must be re-allocated between users, the impacts of curtailing existing beneficial uses of water will be carefully considered and, where appropriate, re-allocations could follow a phased approach. Beneficial use also means promoting a broad range of uses of water across variety of sectors to support a diverse, robust and stable economy

The impact of HIV/AIDS

Apart from the enormous human suffering caused by HIV/AIDS, there is growing evidence that the pandemic could have significant impacts on economic growth. These impacts are not only related to the rate of infection, but also to the quality of life and life expectancy of people living with HIV and AIDS.

The water allocations process should therefore also support programmes aimed at improving the nutritional status of the poor in an attempt to help stave off the most debilitating impacts of the disease.

The water allocation process could consequently play an important role in mitigating both the human suffering and the economic consequences of the HIV/AIDS pandemic. This relates to its role in promoting and supporting subsistence and household food security initiatives.

Why guidelines for water allocation?

This draft document interprets and consolidates the intent and ideals of South Africa’s Constitution, the Water Law Principles (from the National Water Policy) and the National Water Act as guidelines for the Water Allocation Reform process. These guidelines are intended to remind us of the concerns and issues raised by stakeholders over the last ten years and to re-state these in the context of the approaches for water allocation reform.

These guidelines therefore provide:

- ◆ A link between the Constitution, the Water Law Principles in the National Water Policy, the National Water Act and the Water Allocation Reform process;
- ◆ A basis for stakeholders to contribute to and influence the development of approaches to water allocation and re-allocation;
- ◆ A commitment to stakeholders regarding the intent of the process; and,
- ◆ The basis for developing the water allocation principles that must be included in Catchment Management Strategies [NWA, Section 9 (e)].

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What “water use” is included?

The National Water Act [**NWA, Section 21**] refers to 11 uses of water including abstraction, storage, stream flow reductions, recreational use, discharge of waste, diverting and impeding flow, controlled activities and altering the bed, banks or characteristics of a water course.

The guidelines proposed in this document will initially be used to formulate approaches for allocations and re-allocations of the following three water uses :

- Abstraction of water (either from groundwater or surface water sources)
- Storage of water, and
- Stream Flow Reduction Activities. [**NWA, Section 36**]

The impacts of these uses on other water uses are given consideration within the described approaches. These are also consistent with the integrated water resources management processes being followed. Examples include the possible water quality implications of water allocation scenarios, or potential surface- and groundwater inter-relationships that could be affected.

Specific allocation and re-allocation approaches and associated processes for the other Section 21 uses of water are currently receiving attention and will be formally documented in the future. Their non-inclusion at this stage relates largely to the greater and more obvious benefits from interventions associated with the three uses mentioned above. Furthermore, given the resource and capacity constraints within the DWAF and the sector, best value would be achieved by these interventions at this stage of the programme.

Notwithstanding the above, the guidelines described in Section 2 of this document serve as the basis for allocation approaches for the all the water uses described in Section 21 of the National Water Act.

How is water use authorised?

The National Water Act only makes provision for one right to water, the Reserve. This represents the water required for basic human needs and the water required to maintain ecosystem functioning. This Reserve gets the priority allocation and therefore determines the amount of water available for other uses.

Except for the water required for the Reserve and Schedule 1 uses, all water use must be authorised. Entitlements to use water are as follows:

- Schedule 1 use - small volumes of water for household use with little potential for negative impacts on the water resource, for which no application for authorisation needs to be made.
- General Authorisations - larger volumes of water with some potential for negative impacts on the water resource which may be generally authorised in any catchment or for a specific type of water use anywhere in the country.
- Existing Lawful Use - which is a water use that lawfully took place in the period two years before the commencement of the National Water Act, and
- Licensed Water Use - larger volumes of water or other water use authorised in terms of a licence issued under the National Water Act, and upon approval of an application by a responsible authority.

Introduction Cont...

The process of water allocation reform addresses the last three of these authorisations and will also aim to gradually replace Existing Lawful Use entitlements with licences issued under the National Water Act via Compulsory Licensing. Licences are not issued in perpetuity and may be reviewed as specified in the licence conditions. As such, water allocation is an ongoing process that should continually respond to the dynamics of South Africa's ongoing development and growth.

What is Compulsory Licensing?

Compulsory licensing [NWA, Sections 43-48] is a mechanism to reconsider all the water use authorisations in an area, to:

- (1) achieve a fair allocation of water from a resource that is under stress or to achieve equity in allocations;
- (2) promote beneficial use of water in the public interest;
- (3) to facilitate efficient management of the water resource; or
- (4) to protect water resource quality.

Allocation considerations to be taken into account include: the needs of the Reserve and any relevant international obligations, the requirements of existing licences, allocations for the need to redress the results of past racial and gender discrimination in accordance with the constitutional mandate for water reform, existing lawful uses to whom the licensing authority determines that licences should be issued, and other allocations by public tender or auction.

GLOSSARY BOX 1

- Allocation:** This refers to the allocation of "allocable water" in catchments that are not water stressed.
- Re-allocation:** This refers to the re-allocation of water between users via compulsory licensing or when licences are reviewed
- Allocable water:** This refers to that water that can still be allocated to new licences after meeting the requirements of the Reserve, International Obligations, and Existing Lawful Use.
- Water stressed:** This refers to areas where the existing use of and the additional demands for water exceeds the water available.
- "In the public interest":** This refers to water allocations that are to the benefit of the public and the nation as a whole. It balances the broader public interest with the rights of the individual, and includes the commitment to equity.

SECTION 2 – GUIDELINES FOR WATER ALLOCATION

The guidelines in this section outline the scope and intent of the Water Allocation Reform programme. They will provide a basis for the development of approaches towards water allocation and re-allocation and will underlie the approach to water allocations in all catchments.

Guideline 1

A primary focus of water allocation processes will be to redress past imbalances in water allocations to Historically Disadvantaged Individuals (HDI).

The Department is compelled by a constitutional mandate to undertake redress in water allocations (i.e. access to the resource and/or the benefits from its use) to Historically Disadvantaged Individuals (HDI). The need for decisive action in this regard is underpinned by the fact that there has been slow progress with, and little evidence of, redress as we enter into the second decade of South Africa's democracy. The Water Allocations Reform programme must provide uncomplicated and pragmatic approaches to achieve this objective in catchments across the country.

The role of the Department

As the sector leader, the DWAF has the responsibility to develop and implement a specific programme of action for water allocation redress. Interventions in support of this programme of action include *inter alia* budget and financial provision and support; forging strategic co-operative partnerships; developing, supporting and/or implementing relevant capacity building initiatives; aligning actions with other similar programmes; etc. The First Edition National Water Resources Strategy is one part of this programme of action that highlights the challenges and opportunities that should be taken into account. Furthermore it provides a sector-wide basis for coherent action in support of a Water Allocation Reform Programme.

Guideline 2

The water allocations process must be supported by capacity development programmes that support the use of water to improve livelihoods and to support the productive and responsible use of water by all users. These capacity development programmes should also help HDI and the poor to participate equitably in the process of informing the allocation of water.

The DWAF must do more than allocate water – it should also support and facilitate the development of capacity, especially among the HDI and poor, to actively and equitably participate in the process of water allocation. Special focus should be given to the needs, participation and importance of women in the water allocation process.

Furthermore, water allocations must promote the use of water to improve livelihoods. This goes beyond the use of water for basic needs, and should promote the use of water for household food security and small scale commercial enterprises. To achieve this end, the process should include capacity development programmes for the productive use of water which focus on Schedule 1 or General Authorisation uses for food security, as well as promoting licensing or authorisation of water use for commercial gain.

The role of the Department

One of the primary intentions of the National Water Act is to devolve decision making on the management of water resources to the lowest practicable level. This would be effected by

the establishment of institutional structures for water management, and to give society, especially the HDI and poor, a voice in the water allocation process. This guideline will therefore be given effect by Water User Associations, Catchment Forums and Catchment Management Agencies. Within the Department, this is the responsibility of the Institutional Oversight Chief Directorate.

An intervention could be the provision of extension support to small-scale water-using enterprises, the mandate for which lies outside the Department. This principle could, therefore, be given effect by cooperative governance processes, which should include the establishment of working relationships with other departments and agencies to build the capacity to support the use of water to improve livelihoods. The joint Department of Water Affairs and Forestry and Department of Agriculture programme to support resource poor farmers will take up some of this responsibility as will our relationship with the Departments' of Land Affairs, Trade and Industry and Provincial and Local Government. The Department should also establish firm links with the Land Reform Programme of the DLA as well as the DTI's programmes to support the establishment of SMME's.

GLOSSARY BOX 2

Livelihoods use of water includes the small-scale use of water for basic human needs, as well as for household food security. This includes water used by farmers to grow crops which may be sold or traded for other commodities.

Productive use of water includes the use of water for commercial gains. This may include water for irrigation purposes as well as for other industrial uses.

The capacity for productive use includes; 1) The mandate to use the water and the land. 2) Support programmes that make the water available., 3) The financial resources – i.e. the funds for infrastructure and operation and maintenance, 4) Technical skills and extension support, 5) Markets for the products, 6) Institutional arrangements, 6) Planning skills – i.e. the ability to plan for the water use, and to be able to manage times of shortage, 7) Enthusiasm – i.e. the desire to use the water, 8) Sense of catchment – i.e. the recognition that the use forms part of a wider catchment, and is affected by upstream use and effects downstream use and the aquatic ecology.

Guideline 3

The water allocations process will contribute to Broad-Based Black Economic Empowerment (BBBEE) and gender equity by facilitating access by black- and women-owned enterprises to water.

After securing water for basic livelihood needs, water allocations will facilitate the licensing of water use for emerging black- and/or women-owned enterprises wishing to make productive use of water for commercial gain. However, the water use authorisation process must include mechanisms to ensure that the benefits of the water use actually flow to BBBEE enterprises and women, and that “fronting” does not occur.

The role of the Department

The establishment and support to BEE enterprises is outlined in the Broad-Based Black Economic Empowerment Act (Act 53 of 2003). The water allocation process must support and facilitate the establishment of these enterprises. To do this, in areas where there is allocable water, the process will establish working relationships with line function Departments and other agencies that promote and support the establishment of BBBEE and women-owned enterprises. This will include “advertising” the availability of water, as well as

facilitating the licensing of water to these enterprises. In places where there is limited water, a more proactive stance will be adopted, where opportunities for productive use of water by BBBEE and women-owned enterprises will be jointly identified with line function Departments and other agencies (including private enterprise). The compulsory licensing process can be used to make water available to these enterprises.

Guideline 4

The water allocations process will respond to local, provincial and national planning initiatives, as well as to South Africa's international obligations and regional SADC initiatives.

Sustainable development will primarily be driven by local and provincial planning initiatives and national policies. These initiatives have water resource implications. The water allocations process will work with these planning processes to inform the water requirements of those initiatives and plans. The process will also actively seek to influence regional and local planning in water stressed areas to encourage development that has smaller impacts on water resources. Special attention will also be paid to working with local government to support Integrated Development Plans and Integrated Sustainable Rural Development Plans or to influence these processes in catchments where water is scarce.

The role of the Department

It is recognised that the Department has a limited role to play in land-use and development planning. However, these planning initiatives would provide the resources to support the productive use of water by emerging users. The Department should establish bilateral and multilateral working relationships with government agencies in all spheres of government to give effect to this principle. In most cases this will take place via existing committees and processes and will be informed by existing initiatives like the policy for support to resource poor farmers, and provincial liaison committee's. However, in stressed catchments new arrangements may have to be established as part of the compulsory licensing process. It is also recognised that the Department's level of engagement in these processes will increase as water becomes more limiting.

Guideline 5

The water allocation process will be undertaken in a fair, reasonable and consistent manner and existing lawful uses will not be arbitrarily curtailed.

In consultation with stakeholders, water allocations and re-allocations will be informed by the development of a range of possible options to meet water demands, before the re-allocation of water is considered. Where the re-allocation of water between users is the only viable way of realising equity goals, the intention would be to minimise the impacts on Existing Lawful Users of water. In these cases the criterion of beneficial use in the public interest would underlie any re-allocation decisions. Similarly, water curtailments could take place progressively with users being given the opportunity to phase out their water use or become more efficient water users.

The role of the Department

The Department currently has the primary responsibility for water allocation, and as such should include socio-economic, co-operative governance and stakeholder participation processes as part of the compulsory licensing process.

Guideline 6

The water allocations process will give effect to the protection of water resources as outlined in the National Water Act by promoting the phased attainment of both developmental and environmental objectives.

Job creation and economic growth are among South Africa's most important priorities. These priorities provide the financial resources that would be necessary to protect our water resources. However, short-term development needs should not compromise the sustainable use of the country's water resources. Equally overprotective approaches can slow the pace of development and compromise our ability to effectively protect our water resources. For this reason the National Water Act makes provision for a Reserve, a Resource Classification System and Resource Quality Objectives. These are an expression of the management goals for the resource as informed by stakeholders, and what the Minister: Water Affairs and Forestry considers to be in the best interests of the country as a whole.

The role of the Department

The Department has the responsibility of establishing the Reserve and Preliminary Reserve. However, in water stressed catchments the processes of establishing the Reserve and Resource Class should be completely integrated with the allocation process. In this way, users would be made completely aware of the implications of various Reserve and Class scenarios on the water available for allocation purposes.

GLOSSARY BOX 3

The Reserve is the quality and quantity of water required to satisfy basic human needs and to ensure the ecologically sustainable development and use of the relevant water resource. The Reserve is the only right to water use in the National Water Act, and water must be assigned to meet the requirements of the Reserve before water can be allocated to other uses. As such a Reserve must be determined before any water use can be authorised.

A Preliminary Reserve can be determined before the methodologies for determining the Reserve have been finalised.

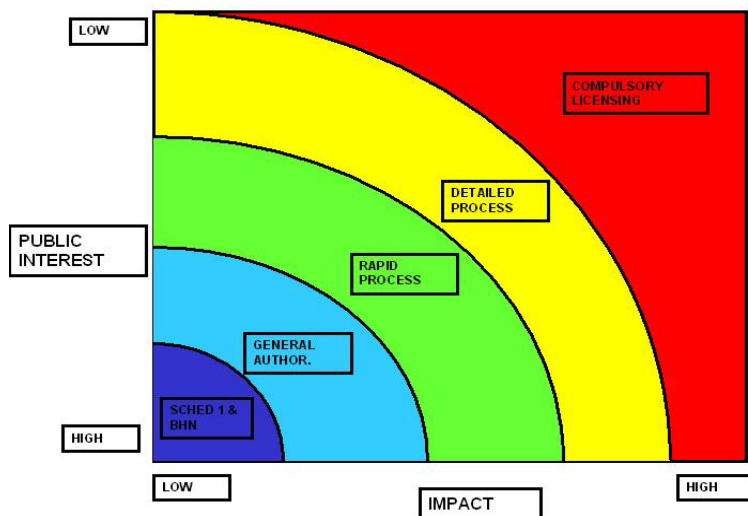
Guideline 7

Innovative mechanisms that reduce the administrative burden of authorising water use, while still supporting its productive use, as well as the effective management and protection of water resources will be developed.

Mechanisms to facilitate licensing evaluation procedures and to speed up the time it takes to authorise water use (consistent with the Administrative Justice Act and Batho Pele principles) are being developed. These balance the likely impacts of water use with the public benefits that result from the authorisation and give effect to the provisions of Section 27 of the National Water Act. These evaluation procedures could also be used to guide applicants to explore options on how to increase the benefits of the proposed water uses, and/or reduce its impacts.

Similarly, planning mechanisms to expedite authorisation processes of water use on a catchment scale are also being developed. These include guidelines for the determination of resource specific General Authorisations and/or the nature and extent of licence authorisation delegations.

The mechanisms described above (including the Streaming Model illustrated below) form part of a “Toolkit in Support of Water Allocation Reform”. This is a decision-support toolkit that will contain procedures, processes and steps to support and guide the Water Allocation Reform programme and is supplementary to this Draft Position Paper for Water Allocation Reform in South Africa.



SECTION 3 –APPROACHES TO WATER ALLOCATION

This section links the guidelines described in the previous section with more detailed approaches to water allocations in different catchments. These approaches will differ according to the availability of water.

A

THE APPROACH FOR CATCHMENTS WHERE THE ALLOCABLE WATER IS SUFFICIENT TO MEET THE DEMANDS IN THE FORESEEABLE FUTURE

In these catchments all applications for water use will be evaluated as they are received. However, applications that promote HDI redress will be sought and encouraged. In order to encourage applications from HDI users, awareness and capacity building programmes will specifically target this sector.

The intention in these catchments is to evaluate licence applications as they are received. This does not mean that all applications will be authorised and the requirements of Section 27 of the National Water Act (considerations for the issue of general authorisations and licences) will be used in the evaluation process. However, the primary focus of allocations in these catchments would be to promote redress and equity, as well as economic growth and job creation. Applications that promote these ideals will be encouraged.

Stakeholder empowerment and communications processes will, nevertheless, highlight the ways in which HDIs and the poor can use water to improve their livelihoods, and where they could get advice and extension support. This will be done together with other agencies in all three spheres of government and applications that are in accordance with regional planning goals will be encouraged. Awareness programmes should highlight the licence evaluation process. Allocations approaches should include support via cooperative governance arrangements, where necessary and appropriate.

No lowering of the ecological state of water resources below the present state should be considered in these catchments.

In catchments where water is not limited, the water required for the Reserve is, by definition, already available. Water allocations should ensure that additional water use does not impinge on this Reserve. Additionally, processes to establish the Resource Class and Reserve can be undertaken separately from the water allocations process

B

THE APPROACH FOR CATCHMENTS WHERE CURRENT APPLICATIONS MAY EXCEED THE ALLOCABLE WATER.

In these catchments, the approach would be to prioritise, or group, the applications based on an initial screening of the applications. This screening would balance the expected beneficial use in the public interest with the expected impacts of the use.

Mechanisms that help determine the likely public interest benefits, as well as the possible impacts that may arise from the water use, will be developed. These can then be used to help prioritise applications for evaluation. Applications that promote equity, BBBEE, job creation and economic growth, while demonstrating little impact on other users or the resource will be given priority consideration. Again, this will include taking into account the requirements of Section 27 of the National Water Act. Applicants could be advised of their priority rating and the basis thereof.

Attempts should be made to reconcile the available water with the demands from all the outstanding applications. This will be done by *inter alia* identifying illegal use, instituting water conservation measures, lowering the assurance of supply for new applications, or by encouraging water trading.

The underlying principle of water allocations under these circumstances would be to authorise as many of the outstanding applications as possible, with a preference being given to uses that represent beneficial use in the public interest. However, if there are applicants requesting water for beneficial and high public interest uses that cannot be accommodated with the available water, attempts will be made to support these uses by identifying local illegal use, encouraging more efficient use, lowering the assurance of supply or by helping them identify opportunities for water trading.

Applications that cannot be accommodated within the initial prioritisation must still be evaluated. However, should the water not be available after detailed investigations, applicants may be refused a license, but could reapply once Compulsory Licensing is initiated.

By definition, once the applications have been evaluated and all the available water has been allocated, the catchment is stressed and must be prioritised for compulsory licensing. The prioritisation for compulsory licensing will be informed by the extent of the stress, the number of outstanding applications and the extent of inequitable allocations in the catchment.

In these cases, Preliminary Reserves may be determined after considering a lowering the ecological state (below present state) to create allocable water, but only if highly beneficial water use applications cannot be accommodated once the above actions have been instituted.

While, in general a principle of “not below the present ecological state” will be followed, it is accepted that the country (and many areas) cannot afford to refuse licences to uses that promote equity and significant job creation in the short term. Similarly, it may be counter productive to indicate that these users should wait for compulsory licensing, especially where the catchment has not been prioritised for this intervention in the short term. In these cases, a lowering of the present ecological state should be considered to facilitate the authorisation of these applications, provided that allocations controls are put in place to give effect to the desired Class of the Resource (and hence Reserve) once these have been determined. However, where aquatic ecosystem functioning is already severely impacted, no further lowering of the present ecological state should be considered.

C

THE APPROACH FOR CATCHMENTS THAT HAVE BEEN PRIORITISED FOR COMPULSORY LICENSING

In catchments where the water resource is already over-allocated, the compulsory licensing process will be initiated as soon as circumstances allow, or as outlined in the National Water Resource Strategy.

In areas where there is no available allocable water, water may have to be re-allocated using compulsory licensing - to ensure the fair and equitable use of water, to correct over-allocations or to protect aquatic ecosystems. In these cases, special attention will be given to the possible social, economic and ecological implications of the re-allocation process.

In these catchments new demands for water could be met by taking into account all relevant considerations including alternative sources of water or mechanisms for re-allocation without the need for curtailing existing lawful water use.

The following processes (amongst others) can be progressively followed to identify allocable water before curtailing existing lawful water uses:

1. Ending unlawful use;
2. Removal of alien invasive vegetation;
3. Promoting the use of groundwater resources, where possible and available;
4. Actively promoting Water Conservation and Demand Management¹;
5. Phased and progressive curtailment of existing lawful water use;
6. Lowering the assurance of supply;
7. Developing the resource (for example, construction of new impoundments);
8. Promoting water trading.

Where water must be re-allocated to support equity, support programmes should be established through co-operative government/governance processes to promote the productive and sustainable use of water by all users.

The compulsory licensing allocations process should not only promote equity in water use, but should also encourage the most beneficial use of water resources in the public interest. Accordingly, an important consideration in the re-allocation process should be the ability of beneficiaries of re-allocated water to use the water productively. This means that co-operative government capacity development and support programmes (see Glossary Box 1) should form part of the compulsory licensing process. Re-allocations between users should also be undertaken in a phased manner to optimise the benefits of the process to both the beneficiary and the existing user. .

Water use allocation schedules resulting from the Compulsory Licensing process must give a greater measure of security to water users.

Compulsory licensing should not be repeated in any catchment. Moreover, compulsory licensing will require the active support and participation existing and potential users. This is only possible if the allocation schedule provides security of use to all users. This means that licences issued at the end of a compulsory licensing period should be issued recognising the need for economic and social stability for users who may make investments to effectively take up their allocations.

Where the re-allocation of water could be considered to meet equity needs, water users using water most efficiently and productively should have their existing lawful water use curtailed last and to the least extent.

One of the intentions of the compulsory licensing process is to promote the efficient and beneficial use of water. To encourage this, and to act as an incentive to users in the run up to compulsory licensing, those users using water most efficiently should be targeted last when identifying possible curtailments in existing lawful water use.

The water re-allocation process should include mechanisms to work directly with the public throughout the process to ensure that their concerns are consistently understood and considered.

It is recognised that the Compulsory Licensing process could be controversial and conflictual because it affects stakeholders' livelihoods and potential livelihoods. This demands a high level of participation in the process. The commitment to stakeholders in this respect (as defined by the International Association of Public Participation) should be: "We will work with you to ensure that your concerns are reflected in the alternatives developed and we will provide feedback on how public input influenced the decision."

The Compulsory Licensing process should be paralleled with procedures to assist emerging and existing users to form Water User Associations or any other appropriate water management institution.

Water User Associations would be eligible subsidies to support their enterprise development. As such the Compulsory Licensing process should actively encourage the establishment of Water User Associations and/or other co-operative structures.

Where existing lawful use of water is curtailed on the basis of a Preliminary Reserve, stakeholders may be afforded the opportunity to comment on the Preliminary Reserve.

Where the Preliminary Reserve, and/or emerging demands indicate that existing lawful use will need to be curtailed, the responsible authority may be required to publish the Preliminary Reserve in the Gazette, as is contemplated in Section 16 (3) of the NWA for the Reserve. This will give water users the opportunity to comment on the proposed Preliminary Reserve, or to propose alternative options for realising the desired level of ecosystem protection.

Once the Reserve methodologies and Classification system have been promulgated, compulsory licensing should be paralleled with the determination of the Reserve and Class. In these cases catchment wide Reserve determinations may be done.

Catchment wide studies should aim to determine the Reserve for all the resources in the catchment in a holist manner. It could identify certain resources that provide important refuge sites for aquatic organisms, which would require higher levels of protection. Equally, other resources could bear the brunt of development requiring lower levels of protection.

Furthermore, as the Class of the resource will impact on the availability of allocable water, the development of allocation schedules and Resource Classes should as far as possible be integrated. Water allocation schedules developed in these catchments should allow for the progressive realisation of the Reserve and Class of the resources.

The assurance of supply associated with the allocation of water should be determined by taking into account all relevant factors, including but not limited to: the strategic nature of the water use and the impacts of reduced water availability on the economic viability of the undertaking.

Smaller productive users of water do not have the resilience to withstand reduced assurances of supply. These users should consequently be given a greater but not absolute assurance of supply. Similarly, the water required for basic livelihood support should be given an even greater assurance of supply. Strategically important water users, such as Eskom, will be given a very high assurance of supply.

SECTION 4 – PROGRESSIVE IMPLEMENTATION

Using limited resources wisely It is recognised that the ideal of carefully identifying and balancing all the needs of existing and emerging water users to ensure the most beneficial use of water in the public interest will be highly resource intensive. It is therefore unlikely that the compulsory licensing process could be implemented nationally, on an extensive basis, in the short term.

As such, the Department will initially limit the compulsory licensing process to the priority catchments identified in the National Water Resource Strategy. However, this will be supported by nation-wide initiatives to promote equity in water allocations and use in all areas of the country.

Testing the approaches to water allocation Approaches to water allocation will be developed and formalised over the next year in consultation with stakeholders. These approaches will then be tested in several catchments and the lessons used to update the methods. Full-scale compulsory licensing will be undertaken in these catchments.

These approaches and methodologies will initially be tested in the following areas;

- Inkomati Water Management Area, including the Nkomati, Crocodile and Sabie River systems.
- Olifants Water Management Area, this includes the full catchment from the upper Olifants users near Witbank, through to the international requirements from Mozambique. This will also address the water quality implications of different allocation schedules.
- Mhlathuze catchment.
- TOSCA, an exclusively groundwater area in the Molopo catchment.

Monitoring water allocation equity Management of the rollout of the water allocations process requires a monitoring system. However, it is important that this system monitors more than just the inequities in water allocations, but that it also outlines progress towards beneficial use in the public interest. This includes monitoring of equity in water use, efficient and productive water use, as well as the sustainable use of water.

SECTION 5 – WHERE TO FROM HERE?

This document is intended to initiate and carry forward a public participation process that will help the Department finalise the approaches to water allocations and water allocation reform. This public participation process will start with a National Consultative Workshop, in April 2005 where key stakeholders from all the water user sectors will contribute to the development of these approaches.

The public participation process will then continue with workshops in each of the provinces – aimed at getting comments from a wider range of regional stakeholders and is scheduled for completion in July 2005. Stakeholders comments will be incorporated into the proposed approaches, and will be used to finalise the approaches and procedures for water allocations.

Only once this has been completed will the formal process of water re-allocations start.

Your comment, please

The Department of Water Affairs and Forestry is keen to meet the challenge of water allocation through creative new ideas. Please use the comment sheet enclosed with this document to provide inputs on the principles and approaches to water allocation as outlined in this document, or to suggest alternative guidelines and approaches. Please return your comments by 27th May 2005.

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Department of Water Affairs and Forestry
A DRAFT PAPER FOR
WATER ALLOCATION REFORM IN SOUTH AFRICA
TOWARDS A FRAMEWORK FOR WATER ALLOCATION PLANNING

Invitation to comment

Please complete and return to the Department of Water Affairs Office by 30 September 2005

Feel free to use the language of your choice

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Please note that you need not provide contact details should you wish to comment anonymously

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COMMENTS: *(Please use separate sheets for additional comments)*

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We thank you for your participation

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