South Africa's New Water Policy and Law

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Abstract

South Africa's water policy is going through a period of rapid changes, following the country's radical political changes of the early 1990s. The paper describes the principal aspects of these changes, which are based on the new National Water Law of 1998. The law divides the country into 19 Water Management Areas, and prescribes processes by which strategies and management institutions will evolve for these Water Management Areas, using the principle of stakeholder participation to ensure that each such area can develop its institutional and management systems to satisfy its own specific situation. The institutional roles of Catchment Management Agencies, Catchment Management Strategies, and Water Users' Associations are explained in this context.

1. Introduction

Change is not always so exciting. Often change is a scary concept that brings with it uncertainty and fear of the unknown. However, change has become part and parcel of South Africa and, in many ways, its people see a bright future amidst all the changes that have swept across this beautiful land. Certainly, these changes will provide improvements to the lives of present and future generations of South Africans.

The National Water Policy, the National Water Act (Act 36 of 1998) and the Water Services Act (Act 108 of 1997) are transformational masterpieces that will not only redress the problems of the past, but will also help to build a better future. This is very much embodied in the purpose of the National Water Act, which is to ensure that the nation's water resources are protected, used, developed, conserved, managed, and controlled in ways that take into consideration such factors as, inter alia, meeting the basic human needs of present and future generations, promoting equitable access to water, redressing past discrimination, facilitating social and economic development, and protecting aquatic and associated ecosystems.

The slogan of the Department of Water Affairs and Forestry (DWAF) is "Viva water pure and clean, Viva forests rich and green". The statement "Viva water pure and clean" celebrates the meaning of water to life and the importance of water to South Africa; however, whilst celebrating, we have to consider carefully how we use this precious resource, how we ensure that everyone has access to this and how we ensure that future generations can also shout "Viva water pure and clean."

This paper looks at aspects of the National Water Policy and National Water Act and how the goals of efficiency, equity and sustainability can be achieved.

2. Policy and legal context

The far-reaching political and social changes that swept across South Africa during the early 1990s only added to the tension caused by the chasm between outdated policy and the realities of resource management. With time it had become very clear that the approaches of the 1956 Water Act, that of water resource development and riparian rights, were not sufficient to meet the rapidly changing political, social, and economic environments. Furthermore, our understanding of the importance of ecological integrity and the role this plays in maintaining resource quality demanded new approaches. It was therefore, high time for policy and legislation that was integrative, flexible and more dynamic.

The White Paper on National Water Policy (DWAF, 1997) set out new integrated policy positions for protection, use, development, conservation, management and control of South Africa's water resources. It did this in plain English and explained how this would be implemented. This remains a remarkable document.

The National Water Act is often described as an "enabling" piece of legislation. It provides little in the way of regulatory procedures, standards and tools which will be used for the integrated approaches that were emphasised in the National Water Policy. The strength of this approach is that it enables the flexibility that is required in regulating a dynamic world.

The framework for the integrated management of water resources is provided in the National Water Act via water resources strategies.

3. Water resource strategies

The National Water Act provides a two-tier approach to the development of strategies to facilitate the management of water resources.

At the national level, the Act provides for the Minister to progressively develop a National Water Resource Strategy (NWRS). This strategy must set out the objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources. The NWRS provides the framework within which water will be managed at regional or catchment levels, in 19 defined Water Management Areas (WMA) that were established in October 1999. It provides this framework as follows:

The ecological component, via:

- the Reserve (the water required to maintain ecological sustainability);
- setting out of water conservation and water demand management principles; and
- stating objectives for water quality to be achieved.

The social and economic component, via:

- the Reserve (the water required for basic human needs);
- international rights and obligations;
- estimates of present and future water requirements;
- stating WMA surpluses and deficits;
- stating the quantity of water available in each WMA; and
- providing for inter-catchment transfers.

Integrated management, via:

- objectives for the establishment of institutions;
- determination of the inter-relationships between institutions involved in water resource management; and
- promoting the management of catchments in a holistic and integrated manner.

At a regional level, the NWA provides for the progressive development of Catchment Management Strategies. The Catchment Management Strategy (CMS) must be in harmony with the NWRS and in developing the CMS, the co-operation and agreement of stakeholders and interested persons must be sought with regard to water related matters.

The CMS must set out the strategies, objectives, plans, guidelines and procedures for the protection, use, development, conservation, management and control of water resources in the WMA. As with the NWRS, the CMS also addresses the ecological, social and economic imperatives as well as making provision for integrated approaches, as follows.

The ecological imperatives, via:

- the class of the water resources, the resource quality objectives and the requirements of the Reserve; and
- taking into account the geology, climate and vegetation.

The social and economic imperatives, via:

- considering international obligations;
- taking into account demography, land use and waterworks;
- water allocation plans; and

- taking into consideration the needs and expectations of existing and potential water users.

Integrated management, via:

- taking into account any relevant national or regional plans prepared in terms of any other law;
- enabling the public to participate in managing water resources; and
- setting out the institutions to be established.

Often, when these strategies are discussed, it is said that they can be summarised as working towards equity, efficiency and sustainability. In a complex way the various components do. But, to try and make the picture simpler, these strategies are about finding a balance between socio-ecological needs for resource protection and socio-economic needs for resource development and utilisation, by involving stakeholders via various institutional arrangements.

4. Water management institutions

The National Water Act provides for the establishment of a variety of water management institutions. The aim of establishing these institutions is to delegate water resources management to more regional and localised levels, to involve stakeholders in water resources management and thereby give effect to integrated water resources management.

4.1 Catchment Management Agencies

These agencies will be established progressively throughout the country, within the Water Management Areas defined by the National Water Resource Strategy. Whilst certain water resource management functions may be assigned or delegated to these agencies, there are initial functions that all Catchment Management Agencies must perform upon establishment. These include, amongst others:

- Playing a co-ordinating role regarding water-related activities and water management institutions;
- Developing and implementing a Catchment Management Strategy;
- Encouraging public participation.

A range of organisational models for these agencies will be required to suit the differing needs of the various Water Management Areas. Furthermore, the organisational structure will depend largely on the functions that are assigned or delegated to it. Certainly, the structure will need to be sustainable in terms of both human and financial resources. The aim is for Catchment Management Agencies is to be focussed and responsive and not to be bureaucratic hurdles.

The Governing Board of the Catchment Management Agency will be accountable to the Minister for the Agency's performance, and will be primarily responsible for setting the vision, mission and strategic direction. This Board will reflect the relevant sectoral, demographic and gender profiles, as well as possess the appropriate expertise and experience.

The Governing Board will ultimately be responsible for implementing the Catchment Management Strategy. Therefore, this Board will be responsible for ensuring that the balance between socio-ecological protection and socio-economic development is maintained in the Water Management Area. This will mean that the Governing Board will have to ensure, via the staff of the Catchment Management Agency, that stakeholders have their say with regard to resource protection and resource development and that the strategy reflects their needs and requirements.

4.2 Catchment Management Committees

The National Water Act provides specifically for the establishment of committees by the Catchment Management Agency "to perform any of its functions within a particular area or to advise it." It also provides for powers to be delegated to Committees. Catchment Management Committees provide an important means by which Catchment Management Agencies can broaden their management and technical capacity. They also provide a mechanism through which a broader range of stakeholders can be included in water resource management.

4.3 Water User Associations

A Water User Association (WUA) is a statutory body established by the Minister in terms of the National Water Act. WUAs are, in effect, co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit.

The broad role of a WUA is to enable people within a community to pool their resources (money, person-power and expertise) to carry out water-related activities more effectively. The establishment of a WUA must also assist in achieving the purposes of the Act. WUAs, firstly, enable members to benefit from addressing local needs in terms of local priorities and resources. Secondly, they provide a mechanism through which a CMA (or the Minister) can devolve the implementation of aspects of the Catchment Management Strategy to the local level.

WUAs will normally operate at a localised level. However there will be exceptions, such as when the length of a river managed by a WUA is so long that it relates more to a regional than a local interest. A WUA may be concerned with a single purpose, such as controlling recreational activities on a river or providing water for emerging farmers. Alternatively, a WUA may be multi-sectoral, dealing with a variety of water uses within its area of operation. WUAs may derive their functions through a process of delegation from the Minister or the CMA. The WUA is accountable, for exercising a delegated function, to whoever gave the specific delegation.

The DWAF has for some time been busy with a process of transforming Irrigation Boards which, constituted under the auspices of the 1956 Water Act, were essentially exclusive in their nature. Typically, these Boards did not include the participation of previously disadvantaged groups in the management of the water resources, and also had limited human and financial support. The transformation and establishment of these WUAs with regard to the participation of previously disadvantaged groups have certain constraints and difficulties that need to be overcome. One of many issues that need to addressed is ensuring that the historically disadvantaged become empowered sufficiently to have their say and not be overpowered by those who are economically stronger. Much is to be done, also, in bringing people together so as to learn and understand each other's needs and requirements. It is strongly believed that institutions such as WUAs can play an important role in ensuring that water resource management becomes more integrated.

4.4 Institutional linkages

Naturally one of the questions that arises when looking at these various Water Management Institutions is, how do they relate to each other and who is responsible for what? For sound, and maybe obvious, reasons the relationship between a CMA and DWAF is likely to be a very close one. DWAF is responsible for the development and implementation of the National Water Resources Strategy, whereas the CMA will be responsible for the development and implementation of the CMS within its Water Management Area. The Minister is ultimately accountable for the management of the nation's water resource. He or she must therefore ensure that CMAs carry out their functions effectively.

A WUA, together with other water management institutions and water services institutions, will be responsible for executing the Catchment Management Strategy at a local level.

Therefore, the establishment of these water management institutions will provide a more effective conduit for stakeholders to voice their needs and requirements for socio-ecological protection and socio-economic development.

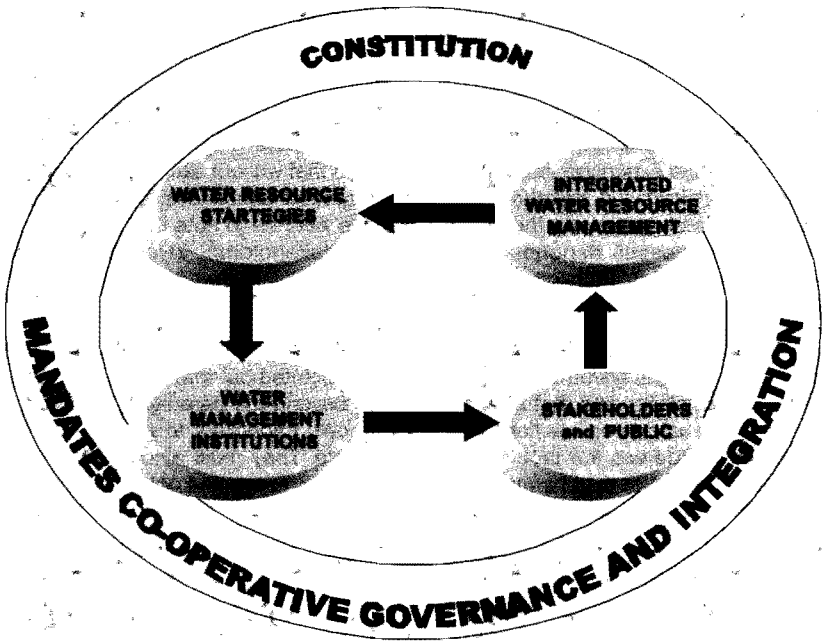
5. Co-operative governance and public participation—a road to sustainability

CMAs will manage activities impacting on the water resources of their WMA. In doing so they will have to actively work with these various water management institutions as well as other national departments, provincial and local government, non-governmental organisations and so on. Co-operative governance will have to be the order of the day to enable successful integrated water resource management.

The various dimensions of integration present an exciting challenge to water management institutions as South Africa's environmental, water and land-use legislation and administration is typically characterised by fragmentation (Görgens et al, 1998). However, the Constitution provides that all spheres of government and all organs of the state must co-operate with each other in mutual trust and good faith by co-ordinating their actions and legislation with each other (DWAF, 1997).

Therefore, co-operative governance is not only a policy matter, it is in fact constitutionally mandated (see Figure 1).

Figure 1: The constitution mandates co-operative governance and integration, and this is carried through into the National Water Act



Dent (2000) made the pertinent observation that successful integrated water resource management will require interaction between individuals, organisations and disciplines, thereby enabling the collective, timeous, wise and cost-effective assessment of proposed, present and past actions. Therefore, integration is also about interaction and therefore, the need for co-operative governance and public participation is carried through to the NWA via the water resource strategies.

The NWA provides a number of legal requirements for public participation in a number of sections throughout the Act. Words often used include: *co-operation and agreement; public to participate; consult with any persons or organisation; co-operation and consensus;* and *community participation.* However, despite the legislative requirement, integrated water resource management will not be achieved without public participation and, therefore, it should not be seen as regulatory "add-ons". This is supported by Jendroska (1998) who contends that

> *"public control, enhanced by transparency, is not only considered important; it is, in relative terms, the least expensive of all instruments for implementing environmental policies and enforcing environmental legislation."*

Water resource issues are complex and large amounts of technical information are often required to assist the process. Further, due to the complexity of issues many stakeholders are typically involved. Some of these stakeholders are lay people, some are experts. Often these people see things very differently. Certainly the public participation and stakeholder involvement processes have to take into account these dynamics (DWAF, 2000). The processes may be awkward, time-consuming and expensive, but Behr (1999) noted that without exception all models indicate that involving stakeholders achieves greater consensus about methods for appropriately managing the environment. He went on to note that the success of these processes depends on identifying stakeholders, involving them in informational and decision-making processes, and ultimately implementing programmes in co-operation with community groups.

However, the responsibility for the success of this approach does not just lie at the door of central government. Zazueta (1995) pointed out that civil society also has a responsibility and that it needs to move beyond the paradigm of criticising government action, or inaction, and build its own capacities to propose viable options that address the problems they articulate. They must also learn how to work together better to generate a broader range of choices and options for people to assess as participatory democracies evolve.

It is, therefore, the policy of the Department of Water Affairs and Forestry to strive for integrated water resource management arm-in-arm with its stakeholders; both aware of each other's importance. For without each other we will not be able to ensure that our water resources are managed in a manner that is sustainable, both in terms of the environment and of process. If we ensure that the sustainability of the resource is ensured by means of Resource Quality Objectives, and if we ensure that the approaches of involving stakeholders in water resource management are also sustainable, then as a "team" we can work towards ensuring that the allocatable water resources of South Africa are used equitably and efficiently.

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