Strategic overview of the Water Regulatory Framework in South Africa

WSLG
Bakgatla Lodge
North West
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Purpose

• To update the sector on the progress made on the development of the water sector regulatory framework.
Introduction

• After three years we have reached common understanding on the need for Regulation in the water sector however we still differ on the Institutional Form/Model of the Regulator.

• **Triggers for reform** – We will only succeed where the triggers for regulation reform or crises is of a sufficient magnitude to warrant the pain involved in reforming institutions in any significant way.

• **Understanding the benefits** – need to visualise the benefits and picture how a regulated sector will look like.

• Phase 1 almost complete and presented at Policy Board in Oct 2007. (development of regulatory functions) now developing the Institutional Model. Water Resources still packaging regulation functions.

• Good opportunity for developing the regulatory model as Presidency has developed a generic framework for economic regulation (including water) in South Africa.

• National Sector Steering Committee established to provide input into developing the framework.
Why is water regulation important?

- Water has a social component - provision is included in the Bill of Rights.
- Water has an economic component - efficient and reliable provision is essential for economic growth.
- Water has many elements of monopoly – mostly impossible for a consumer to switch to another provider.
  - Water industry dominated by public sector monopolies with only few Private sector contracts (Nelspruit, Dolphin Coast,)
  - Annual turnover not accurately known (R10b??)
Evolution of the Water Regulatory Framework

- Define sector Vision/goals
- Specify regulatory objectives in support sector goals
- Specify regulatory domains/functions e.g. economic, social, environmental in support of regulatory objectives

Identify range of regulatory institutional models e.g. regulation by government, independent agencies, expert panels, regulatory contracts, hybrids, etc

Narrow range of options by eliminating those least likely to fit local political and institutional context

For each regulatory function, assess each regulatory model

- Will model enable best-practices in regulatory substance?
- Will model enable best-practices in regulatory governance?
- Is the level of regulatory discretion commensurate with capacity & commitment?

For each regulatory function select regulatory model that on balance enables best practice regulatory substance and governance and a level of regulatory discretion with best-fit to local context of regulatory commitment and capacity

Map evolutionary path with transitional models
Context: changing role of DWAF

- DWAF’s regulatory role is emerging in the water sector, and support will be aimed at supporting institutions to comply with existing regulations, institutional reforms have started and involves DWAF handing over functions to relevant institutions.
Complementary Strategies

**DWAF as enforcer**
- sets the standard
- reveals & audits performance
- creates incentives to perform
- sanctions non-performance

**DWAF as supporter**
- assists existing institutions to achieve compliance and improve performance

**DWAF as enabler**
- creates the platform for good performance

**Regulation Strategy**
- complementary strategies

**Institutional Reform & Alignment**

**Support Strategy**
Progress Made: Confirmed regulatory domains

<table>
<thead>
<tr>
<th>SOCIAL REGULATION</th>
<th>WATER RESOURCES REGULATION</th>
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</thead>
<tbody>
<tr>
<td>(Universal access to services)</td>
<td>(Wastewater discharges, licences)</td>
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</table>

- All citizens have access to an adequate water and sanitation service
- All discharges meet the specified minimum standards to protect the environment

<table>
<thead>
<tr>
<th>PUBLIC HEALTH REGULATION</th>
<th>ECONOMIC REGULATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Drinking water quality)</td>
<td>(Tariffs, contracts, Service quality and price)</td>
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</table>

- The water provided to consumers is safe to drink
- Services provided are efficient, sustainable and meet consumer quality needs
Progress Made

- Penultimate Draft on WS Regulation Strategy.
- Consultants appointed to draft the Water Resources component.
- Drinking Water Quality regulation started and electronic monitoring system developed and implemented.
- Assessment of Waste Water Treatment works started.
- Annual Consumer Satisfaction Survey conducted.
- Regulatory Performance Measurement System – piloted on 19 municipalities.
- Audit of WSA/WSP Contracts conducted.
- Enforcement Protocol developed and implemented.
- WSA/WSP and Citizens disputes are handled.
- Tariff analysis started.
- Regulatory Publication in progress.
- Citizens Voice Project started at Ekurhuleni Metro – slow in Msunduzi.
- Water Use Compliance & Enforcement Draft Strategy developed.
- Director Regulation Positions established in almost all regions.

**Note:** DWAF Regulator for Dam Safety for almost 21 years.
Challenges: Policy and legislation

- Initial focus was on water services.
- Water services and water resources policies and legislation have followed two parallel streams.
Constitutional, policy and legislative framework

Constitution informs all government policy and legislation

Cabinet approves policy

Policy informs legislation

Parliament passes legislation

Policy and legislation informs institutional arrangements

Strategies give practical effect to policy

Constitution

Water Services Policy

Water Resources Policy

Water Services Act

National Water Act

Water Services Institutions

Water Resources Institutions

IR, support, regulation

NWRS
The domain of water resources

Water resources

The water itself (the water resource)
• The water in the river and underground
• The transfer of water between catchments
• The availability of water, and locality of availability
• The quality of the water in the environment

The activities that affect the water resource
• Abstraction of water from the water environment
• Discharge of water back into the water environment
• Other water using activities (such as forestry)
• The building of dams, transfer pipelines

Regulatory tools
• Abstraction licenses, general authorisations
• Discharge licences
• Economic regulation of the infrastructure component (price)

Primary regulatory tool is the allocation of rights

This is a all inclusive
The domain of water services

Water services

The water itself
The water flowing through, and stored in a water services system, that is, treatment works, local storage reservoirs, reticulation networks, wastewater collection networks, wastewater treatment works, outfalls.

The management of the water services business
The management of the water services infrastructure, including Planning, capital investment, operations, customer management, Financial management etc. This needs to be managed as a business. (This a particular kind of industry commonly referred to as a Capital-intensive, networked, monopoly infrastructure industry)

Regulatory tools
Standard infrastructure regulatory tools apply
Same as for all network infrastructure industries (economic regulation of performance and price, standards regulation, regulation by contract)
The key interfaces

• At the point of abstraction
  – The water resource regulator allocates “the right to abstract” (quantity and location) and can include conditions on use

• At point of discharge
  – The water resource regulator regulates “the right to discharge” including location, quantity and quality.
Water resources regulation creates the context for this regulation.

Regulate abstraction
Regulate discharge

These two regulatory mechanisms influence how the business is run but do not get involved in the detail of the business itself.

Water services business

Non-reticulated systems (eg. on-site “dry” sanitation)

Management and customer interface and services

Re-use
The nature of water resources regulation is different ...

The catchment boundary is different to the water services provision area.

The key regulatory tools are different:
1. Allocation of rights between users (to abstract and to discharge)
2. Regulator or influence all activities which affect water quality and quantity.

The governance arrangements are different. The management of the resource is overseen by all stakeholders/users.
What then are we saying?

• Is it possible to have one Institutional Model for Water Regulation?

OR

• Are we looking at hybrid model?
Drinking water quality
areas where capacity and autonomy important

- Setting standards
  - DWAF doing this
- Information & reporting
  - WSA responsibility
    - DWAF oversight
- Assessments & audits
  - DWAF responsibility (capacity constraints?)
- Enforcement
  - DWAF huge capacity constraints

- Setting standards
- Information & reporting
- Assessments & audits
- Enforcement
Water resources Institutional Considerations

- Typically within government domain
- Intention to devolve to CMAs
- More robust enforcement needed for discharges especially (could be aided by greater regulatory independence)
- Require technical capacity
  - Audits and assessments
  - Information management / monitoring / reporting
  - This technical capacity is different in nature to the technical capacity required for DWQ
Economic regulation

• None of the water sector is currently subject to formal economic regulation (rate of return analysis, efficiency analysis, economic incentives).
• Application of economic regulation requires high level of financial, economic, technical expertise and experience. (requires discretion and autonomy)
• Economic regulation must be WSP specific. A national norms and standards route cannot work.
• WR and WS Infrastructure can be regulated by one economic regulator.
• Need a comprehensive, systematic and consistent approach across the full value chain:
  – Stakeholders have requested regulatory independence or autonomy to address this as they believe DWAF have a conflict of interest.
The Emerging Model

<table>
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<tr>
<th>Regulatory domain</th>
<th>Key</th>
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<tbody>
<tr>
<td>Social regulation</td>
<td>Small but potentially significant role</td>
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<tr>
<td>Drinking Water &amp; Technical regulation</td>
<td>Significant role</td>
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<tr>
<td>Environmental health regulation</td>
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<tr>
<td>Water resources regulation</td>
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<tr>
<td>Economic regulation</td>
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### Setting rules or standards, granting approvals

- **Social outcomes**
  - Pro-poor tariffs
  - Withdraw subsidy
  - Fines?
  - Direct intervention

- **Drinking water quality**
  - Direct intervention
  - Fines?

- **Construction and operation; Health practices**
  - Compliance with licence conditions

- **Compliance with licence conditions**
  - Fines;
  - Withdraw Licence.

- **Set social policy and allocate subsidies**
- **Set DWQ standard**
- **Define standard Approve technologies**
- **Set licence conditions; Allocate licences**
- **Set pricing rules Approve tariffs**

### Monitor, analyse, publish

- **Tariffs & performance**

### Enforce or intervene

- **Withdraw subsidy**
- **Fines? Direct intervention**
- **Fines? Direct intervention**
- **Fines; Withdraw Licence.**
- **Adjust prices. Direct intervention**
Minister of Water Affairs & Forestry

Increasing decision making rigour

Current Situation

Step 1

Ringfence regulation functions in DWAF

Step 2

Setup advisory panel

Increasing capacity

Consumer Watch Group

Independent Regulator

DWAF Environmental Regulation

Economic Regulation
NWRIA, WBs & WSAs

Technical Regulation
(Drinking Water Quality)

Social Regulation

Water Resources

Possible future

9 CMA’s Green Scorpions

CME
Environmental Regulations
Building Foundations

- Building a cadre of water regulators around the country:
  - Training – University of Cape Town
  - E-learning
- Strengthen our networks with AFUR
  - Sector visit to Zambian Water Regulator
- Economic regulation of water utilities
  - Using Amathola Learning Journey experience
The Department of Water Affairs and Forestry (DWAF), supported by the South African Local Government Association (SALGA), hereby makes a statement of its intention to intensify the regulation of water supply and sanitation services in South Africa.

Both DWAF and SALGA recognise that a critical point has been reached in the development of our democracy. It is time for the balance between supporting the development of local government institutions and regulating these institutions to shift in order to ensure the ongoing safety and security of our people, the sustainable management of our natural environment and the social and economic growth and development of our country.
Timeframes and Milestones

- Aug 08 : Draft doc on Water Resources Regulation & CME.
- Sept 08 : National Steering Committee Meeting
- Sept 08 : Draft Water Sector Regulatory Framework.
- Dec 08 : Final Draft Water Institutional Model.
Recommendations

• Sector to note the attached Statement of Intent prepared by DWAF & SALGA.
• Sector to note and debate the emerging Regulatory Model for the water sector.
Key Documents

- International Models of WS regulation and their relevance to SA, 2008, WRC.
- Nedlac administered prices study on economic inputs in the water sector, April 2007-unpublished.
- Institutional Options for WS Regulation, WRC- 2006.