GUIDE
TO THE NATIONAL WATER ACT

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PREFACE

The National Water Act, provides the legal framework for the effective and sustainable management of our water resources.

The Act was published in 1998 with the aim of fundamentally reforming the past laws relating to water resources which were discriminatory and not appropriate to South African conditions. Central to the National Water Act is a recognition that water is a scarce and precious resource that belongs to all the people of South Africa. It also recognises that the ultimate goal of water resource management is to achieve the sustainable use of water for the benefit of all South Africans. The Act aims to protect, use, develop, conserve, manage and control water resources as a whole, promoting the integrated management of water resources with the participation of all stakeholders.

Without public participation, the goals of water resource management cannot be achieved. As national government we have a critical responsibility to ensure the effective participation of all stakeholders in water resource decisions that affect them. Understanding our water law is one of the first steps towards effective participation.

This Guide aims to help provide that understanding. It describes in user-friendly language the purpose and principles of the National Water Act, as well as the strategies and institutions proposed to achieve its goals. It also outlines the measures contained in the Act that are designed to protect our water resources and to control water use. The guide intends to make the National Water Act accessible to both water users and those working in water resource management.

I encourage everyone who wants to participate in decision-making and management of our water resources to use this Guide to guide them.

Ronnie Kasrils

Minister of Water Affairs and Forestry

CONTENTS

Purpose of this guide

This guide is about the National Water Act (Act No. 36 of 1998). Like any law, the National Water Act is written in legal language that is difficult and not easily accessible to many readers. This guide explains what the Act says and what it means.

An important principle of the National Water Act is that all South Africans should be able to participate in water management. The purpose of this guide is to help users of water resources (rivers, streams, water in dams, groundwater, and so on) to understand the Act so that they can participate meaningfully in decisions on water matters that affect them.

Who should read this guide?

This guide provides information that will be useful to:

- water users;
- anyone who wants to know more about water management;
- anyone who wants to get involved in water management.

For more detailed information on a specific topic you should contact the nearest Regional Office of the Department of Water Affairs and Forestry. Contact details are listed on the back cover. A copy of the National Water Act can be obtained from the web at www.dwaf.gov.za

What is covered in this guide?

This guide does not cover every item in the National Water Act. It provides an overall guide to the Act as well as specific information about important parts of the Act, aimed at helping water users to participate in water resource issues. It explains how the Act ensures that:

- everyone has access to sufficient water;
- the water resource is protected, used, developed, conserved, managed and controlled;
- proper planning takes place to implement the objectives of the National Water Act;
- the costs of managing and developing water resources are addressed;
- water resource management institutions are established.

OVERVIEW OF THE NATIONAL WATER ACT

Why is the National Water Act important?

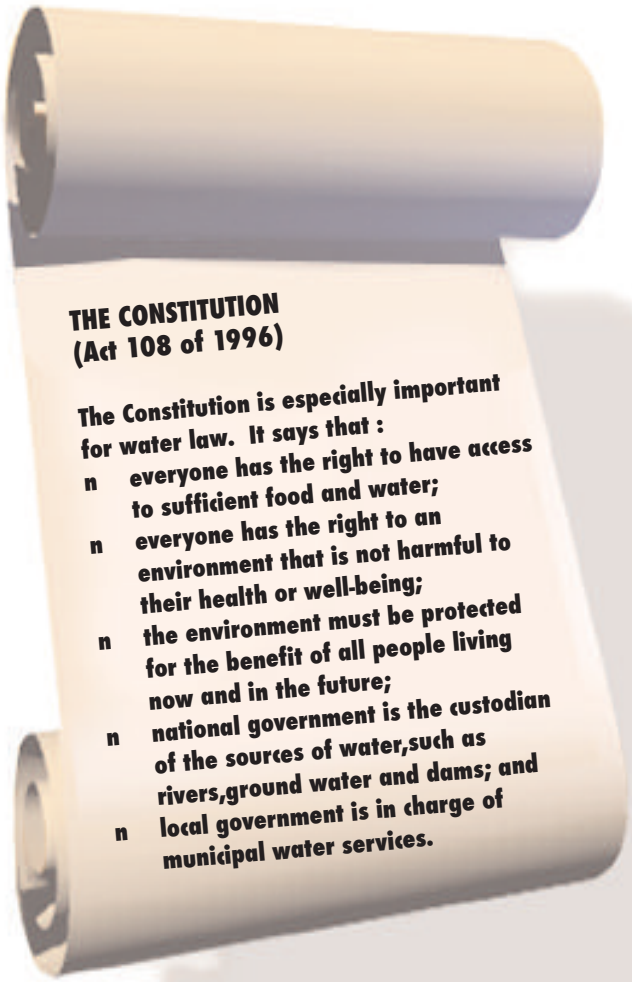
The National Water Act is important because it will put in place those things contained in the South African Constitution that are about water.

Water is fundamental for all life. Without water no person, plant, animal or living organism can survive. It waters the fields of farmers; it waters the crops and stock of rural communities; it provides recreation, it supports the environment, it supports towns and cities, mines, industry, and power generation. People need water for drinking, growing and cooking food, washing, and for health. Water is a critical part of social and economic development to alleviate poverty.

South Africa is a dry country, with a low average rainfall. Our rivers are small in comparison with other countries. A number of our larger rivers are shared with other countries. Many of our existing water resources have been over-used or significantly altered. Every day people and organisations have an impact on the quality of our rivers and streams, our groundwater, and wetlands.

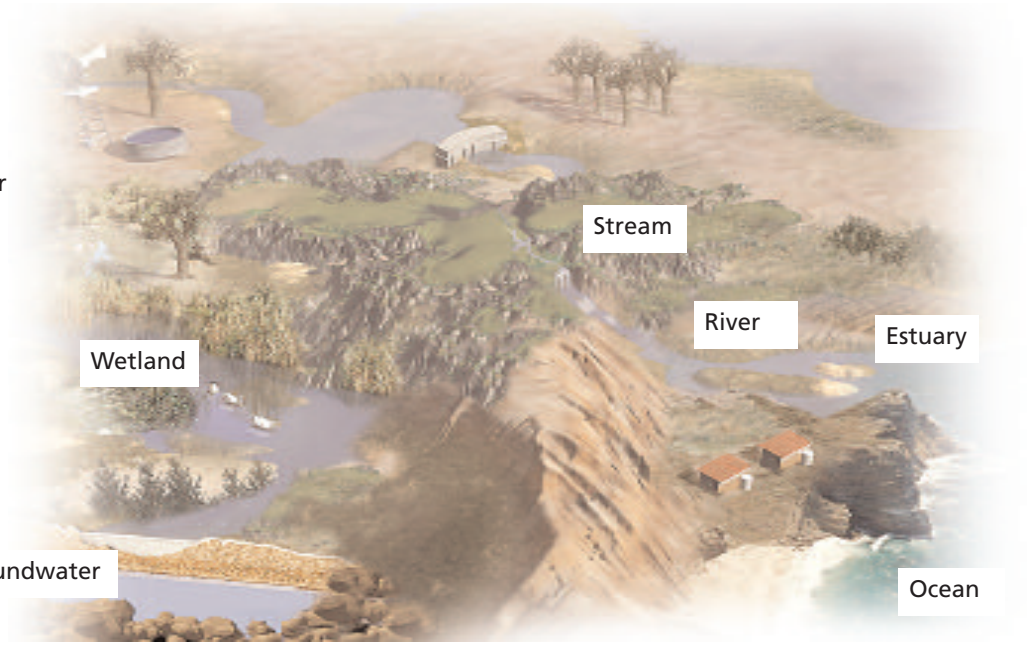
Many areas in the country are facing water shortages, where the requirements for water are greater than the available water. In these areas the environment is under stress and some people do not have access to potable (drinkable) water or do not get their fair share of water.

The National Water Act is important because it provides a framework to protect **water resources** against over exploitation and to ensure that there is water for social and economic development and water for the future. It is also important because it recognises that water belongs to the whole nation for the benefit of *all* people.



WHAT ARE WATER RESOURCES?

Water resources are water bodies such as rivers, streams, wetlands, estuaries and groundwater. 'Surface water' is water that is above the ground. 'Groundwater' is water that is under ground (for example in aquifers).



What is the difference between the National Water Act and the Water Services Act?

The Constitution clearly separates the powers of the different spheres of government. For example it states what powers national government has, what powers provincial government has and what powers local government has. All spheres of government should co-operate but they may not duplicate the functions of each other.

The Constitution allocates the management of water resources to National Government and the management of water and sanitation services for all citizens to municipalities (local government). This explains why there is an Act that deals with the sources of water (national responsibility) and an Act that deals with water services (local responsibility).

Water resources
National responsibility

NATIONAL WATER ACT

NATIONAL WATER ACT
(36 of 1998)
The **National Water Act** deals with the *water resource*. That is rivers, streams, dams, and ground water. It contains rules about the way that the **water resource** (surface and ground water) is protected, used, developed, conserved, managed and controlled in an integrated manner.

Water services
Local responsibility

WATER SERVICES ACT

WATER SERVICES ACT
(108 of 1997)
The **Water Services Act** deals mainly with **water services** or potable (drinkable) water and sanitation services supplied by municipalities to households and other municipal water users.
It contains rules about how municipalities should provide water supply and sanitation services.

Why the name National Water Act, 1998?

'National' means that it applies to the whole country. An 'Act' is a law passed by Parliament. The National Water Act is thus a law about water, which applies to the whole of South Africa. It was approved by Parliament in 1998.

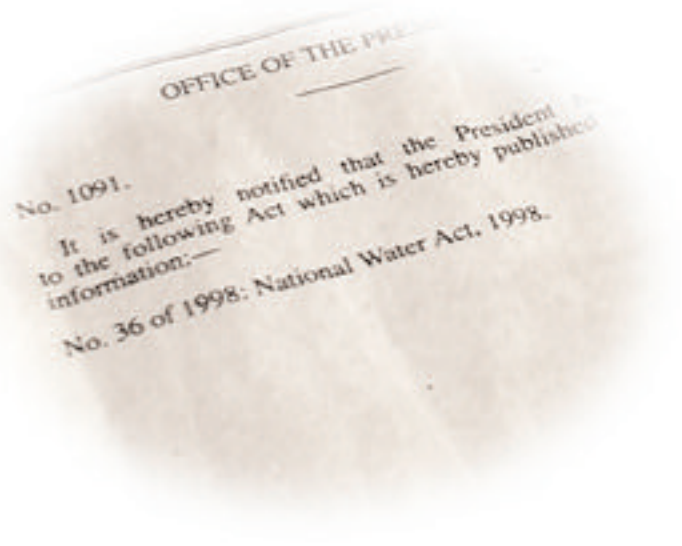
Benefits of the new National Water Act

The old Water Act (which is now repealed) was drafted in 1956. It tried to apply the water rules of countries in Europe to the South African situation. This was not appropriate because countries in Europe have a lot of water unlike South Africa, which is dry with limited water. The 1956 Act also ensured that water was mostly used by a small dominant group that had privileged access to land and economic power. Water as a basic human right was not recognised.

At the time when the old Water Act was drafted, the population was smaller and there was much less pressure on the environment and water resources. Agriculture was the most important focus of water policy. The old Water Act reflected this by giving the right to use water to those people who owned land (farms and other properties). Landowners could use ground water under their land and water from the rivers and streams on or next to their land. This was "private" water, over which the State had limited control. Private water meant that people who did not own land (being the disadvantaged majority population) did not have easy or assured access to water. In addition the old Water Act focussed on water use and the development of dams rather than on water protection, conservation and demand management.

Water belongs to all people

The new Water Act, called the National Water Act, was published in 1998. It manages, protects and allocates water differently. It recognises that water is a natural resource that belongs to all people in South Africa. Based on this principle it recognises the need for a more equitable (fair and equal) distribution of water. The only *right* to water is water for basic human needs (such as water for drinking, for food preparation and for personal hygiene) and water for the environment. The Act ensures that water for basic human needs and the environment is 'reserved' (set aside) before water is allocated for other uses.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No. 36 of 1998: National Water Act, 1998.

Participation

The old Water Act took an authoritarian (undemocratic), centralised approach where government made all the decisions. Because water is so important to people, the National Water Act says that people must participate in water resource management. It promotes the management of water resources at the lowest possible level. It does this through the establishment of new regional and local institutions, such as Catchment Management Agencies. These new institutions will be representative of and facilitate the involvement of communities and other stakeholders in decision making. This approach is in line with international trends towards integrated water resource management.

Water resources protected and managed as a whole

The National Water Act aims to protect, use, develop, conserve, manage and control water resources as a whole. Rivers, dams, wetlands, the surrounding land, groundwater, as well as human activities that influence them, will be managed as one cycle. This means that all water in the water cycle will be treated as part of the common resource.

Sustainable use for the benefit of all

The National Water Act does away with old apartheid ideals of privileged access. It promotes water use that is in the public interest and beneficial for the achievement of equitable and sustainable economic and social development. The National Water Act is a fundamental change in how water resources will be managed and accessed.

What is covered in the National Water Act?

There are 17 Chapters in the National Water Act

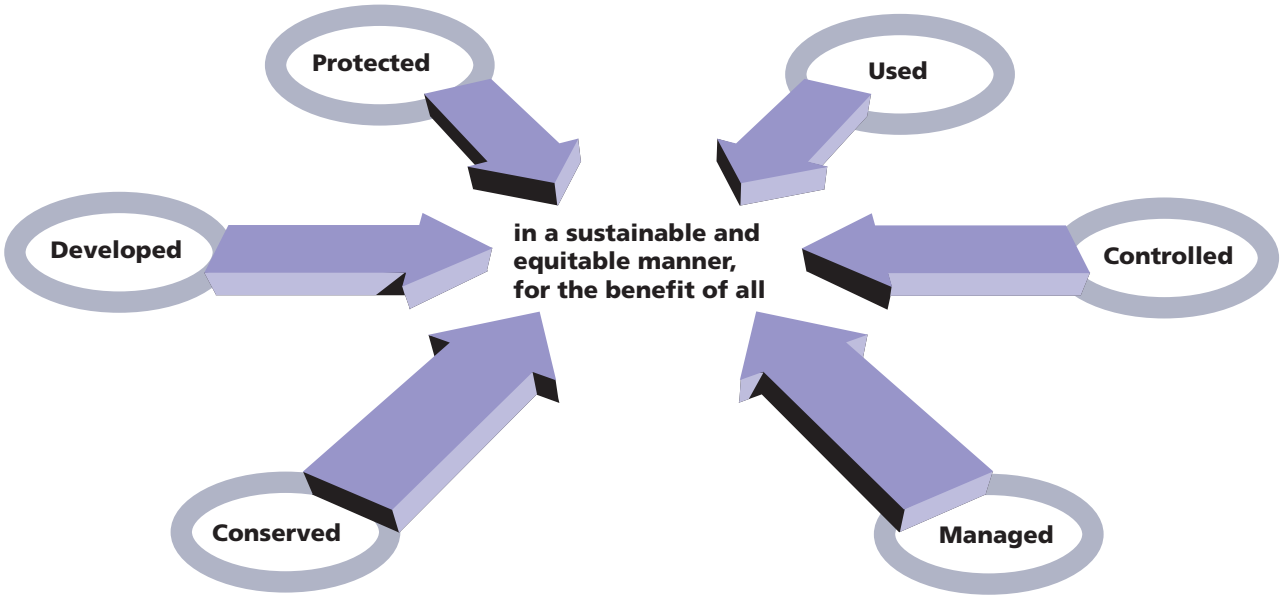
Chapter 1	**Interpretation and fundamental principles**	Principles
Chapter 2	**Water management strategies**	How water will be protected, used, developed, conserved, managed and controlled
Chapter 3	**Protection of water resources**	
Chapter 4	**Use of water**	
Chapter 5	**Financial provisions**	
Chapter 6	**General powers and duties of Minister and Director-General**	
Chapter 7	**Catchment management agencies**	Institutional arrangements
Chapter 8	**Water user associations**	
Chapter 9	**Advisory committees**	
Chapter 10	**International water management**	
Chapter 11	**Government waterworks**	Infrastructure and land issues
Chapter 12	**Safety of dams**	
Chapter 13	**Access to and rights over land**	
Chapter 14	**Monitoring, assessment and information**	Monitoring
Chapter 15	**Appeals and dispute resolution**	Mechanisms to address appeals, offences and remedies
Chapter 16	**Offences and remedies**	
Chapter 17	**General and transitional provisions**	General

PART 1

PURPOSE AND PRINCIPLES OF THE NATIONAL WATER ACT

What is the purpose of the National Water Act?

The purpose of the National Water Act is to ensure that the **nation's water resources are**:



Principles of the National Water Act

Sustainability, equity and efficiency are the principles that guide the protection, use, development, conservation, management and control of water resources.

Sustainability means promoting social and economic development and at the same time ensuring that the environment is protected both now and for the future. The environment needs to be protected because it is where water comes from. If there is a good balance between using and protecting water resources then current **and future** water needs can be met.

Equity means that everyone must have access to water and to the benefits of using water. Decisions to allocate water must be equitable (fair) to all people.

Efficiency means that water should not be wasted. Water must be used to the best possible social and economic advantage.

Sustainability, equity and efficiency recognise:

- the basic human needs of present and future generations,
- the need to redress (correct) past discrimination,
- the need to protect water resources,
- the need to share water resources with other countries,
- the need to promote social and economic development through the use of water,
- the need to establish representative water management institutions, and
- the need to ensure participation of stakeholders and users in decisions that affect them.

Who is responsible for the nation's water resources?

National government acting through the Minister of Water Affairs and Forestry is the **public trustee** of the nation's water resources.

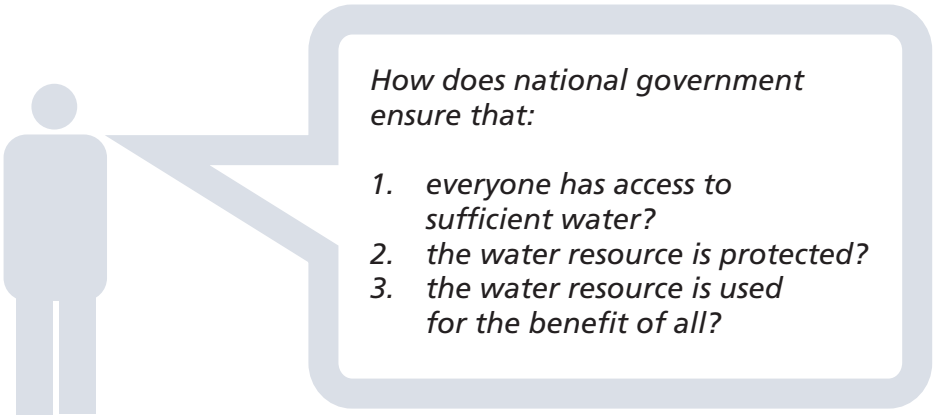
What does 'public trustee' mean?

Public trustee means that the Minister has authority over water throughout the country. Water is a natural resource that belongs to *all people*. As the public trustee of the nation's water resources, the Minister is responsible for public interest and must ensure that all water everywhere in the country is managed for the benefit of all people, including future generations.

National government through the Department of Water Affairs and Forestry (DWAF) must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner for the benefit of all persons.

The Minister is responsible to ensure that water is allocated equitably (fairly) and used beneficially in the public interest (especially towards those who have not benefited in the past), while also protecting the environment.

The Department of Water Affairs and Forestry, acting through the Minister has the power to regulate the use, flow and control of ***all water*** in South Africa.



How does national government ensure that:

1. *everyone has access to sufficient water?*
2. *the water resource is protected?*
3. *the water resource is used for the benefit of all?*

One of the main tools that national government uses for the protection, use, development, conservation, management and control of water resources is **water management strategies**.

PART 2

WATER MANAGEMENT STRATEGIES

National Water Resource Strategy

The Minister of Water Affairs and Forestry is responsible for ensuring that the National Water Resource Strategy is established. A summary of the strategy must be published in the *Government Gazette* and the full strategy or its parts (depending on its size) must also be made available to interested people. This is to ensure that the strategy is developed in consultation with all stakeholders and interested parties.

The National Water Resource Strategy binds all water institutions and water users. The Minister must update the National Water Resource Strategy at least every 5 years.

What is the purpose of the National Water Resource Strategy?

The purpose of the National Water Resource Strategy is to:

- facilitate the proper management of the nation's water resources,
- provide a framework for the protection, use, development, conservation, management and control of water resources for the **country as a whole,**
- provide a framework within which water will be managed at regional or catchment level, in defined water management areas,
- provide information about all aspects of water resource management,
- identify water-related development opportunities and constraints.

The National Water Act allows the Minister to develop this strategy over time (progressively) and also tells the Minister what to include in the strategy.

The National Water Resource Strategy needs to ensure that there will be water for basic human needs, and for socio-economic development both now and in the future.
Consultation and participation by stakeholders is critical to achieve these goals.

What issues must the National Water Resource Strategy address?

NATIONAL WATER RESOURCE STRATEGY

The National Water Resource Strategy must:

- Set out strategies, objectives, plans, guidelines and procedures for the overall management of the national water resource
- Determine how much water must be 'reserved' for basic human needs and for the environment (called the Reserve)
- Provide for international obligations (water resources shared with neighbouring countries through international agreements)
- Provide for future water needs
- Provide for water for strategic use (for example national power generation)
- Determine water management areas
- Determine how much water is available in each water management area
- Provide for transfer of water from water management areas that have surpluses to water management areas that are short of water
- Set principles for water conservation and water use
- Set targets for water quality for different water resources
- Provide for the establishment of water resource management institutions (for example catchment management agencies) and the inter-relationships between these institutions (co-operative governance).

These issues are dealt with in more detail in later parts of this guide

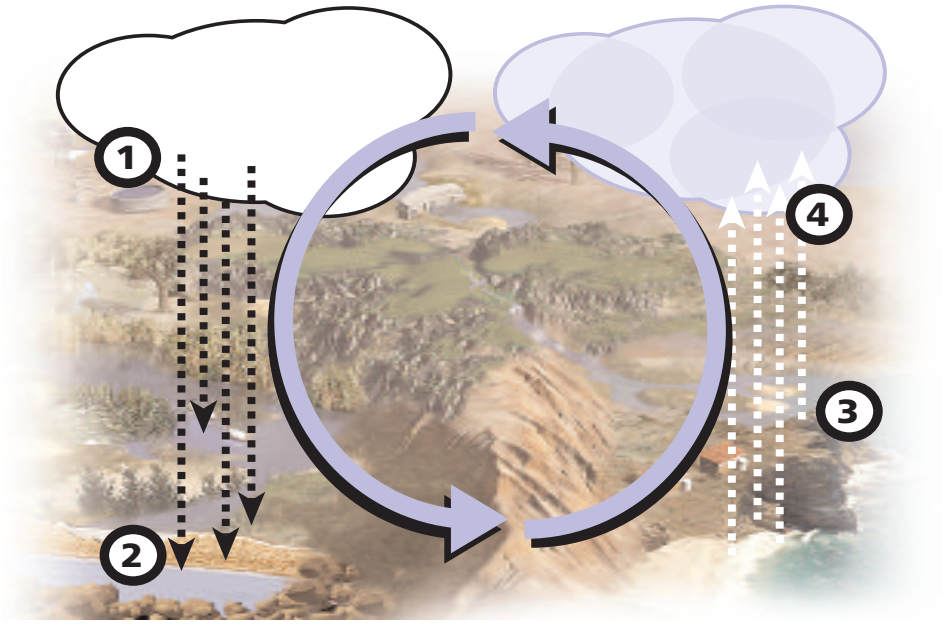
How does the National Water Resource Strategy address sustainability, equity and efficiency?

The Act recognises that to achieve sustainability, equity and efficiency, water resources need to be managed in an **integrated** manner. This is related to the hydrological cycle.

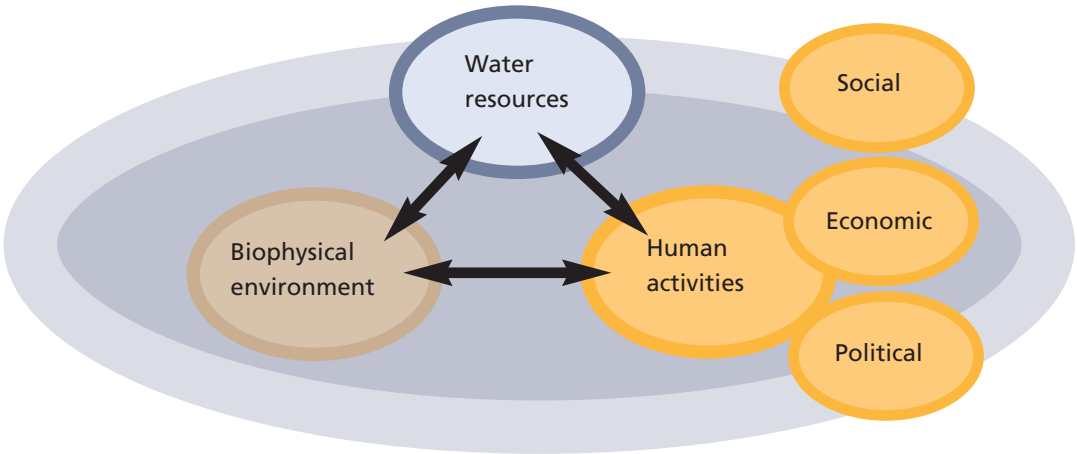
There is a natural cycle where water:

1. falls from the clouds onto the land as rain
2. seeps into underground aquifers or drains into rivers
3. eventually flows into the sea
4. evaporates which takes it up into the clouds where it again falls as rain.

This cycle is called the **hydrological cycle**.



The different water resources (rivers, wetlands, estuaries, groundwater) are all linked to each other by the hydrological cycle. Water resources are also affected by the surrounding biophysical environment (people, plants, animals) and human activities that impact on them.



Because all water resources are linked to each and are affected by the biophysical environment and human activities, water resources must be managed taking into account the *relationships* between water, the biophysical environment, social, economic and political factors. This requires *integrated management*.

What is integrated water resource management?

Integrated water resource management is a process for co-ordinated planning and management of water, land and environmental resources. It takes into account the amount of available water (surface and groundwater), water use, water quality, environmental and social issues as an integrated (combined) whole to ensure sustainable, equitable and efficient use.

Integrated water resource management is also about providing sufficient information about water resources for proper planning and informed decision making between water resources managers and development planners. It requires co-operation and co-ordination between planners, institutions and individuals where water-related planning takes place. A further key aspect of integrated water resource management is participation of people in decision making where decisions are decentralised.

Catchment Management Strategies

In its National Water Resource Strategy, national government has divided the whole country into 19 water management areas. The National Water Act requires that a strategy is developed for *each water management area (WMA)*. This strategy manages the water resources in the water management area and is called a **catchment management strategy(CMS)**.

Catchment management strategy (for water management area)

What is a 'catchment'?

A catchment means the land area from which rainfall will drain into the watercourse, through surface flow (for example a river) to a common point.

Who develops the catchment management strategy?

The National Water Act requires that a **catchment management agency (CMA)** be established for each water management area. The CMA is responsible for developing the catchment management strategy for its water management area. (For more information about CMAs see Part 7 of this guide.)

However it will take some time before all 19 CMAs are established. While there is no CMA established in a water management area, the Minister through the Department of Water Affairs and Forestry acts as the CMA.

What is the purpose of a catchment management strategy?

The purpose of the catchment management strategy is to:

- set principles for allocating water to existing and new water users
- provide the framework for managing water resources within the water management area
- ensure that water resources in the water management area are protected, used, developed, conserved, managed and controlled.

The catchment management strategy therefore specifies the catchment management agency's intention for the water resources in the water management area and the way in which these water resources will be managed.

Catchment management strategies must be in harmony with the National Water Resource Strategy and must take into account any relevant national or regional plans that have been prepared in terms of a law.

What issues must a catchment management strategy address?

A CMA is faced with many competing water users, for example municipal use, industrial, agricultural, mining, and so on. One of the big challenges faced by a CMA when developing its catchment management strategy is how to **allocate** water amongst these competing users. The way it allocates water should promote the social and economic development of all communities in the water management area with a special focus on women and disadvantaged individuals.

The National Water Act sets out what should be included in a catchment management strategy.

CATCHMENT MANAGEMENT STRATEGY

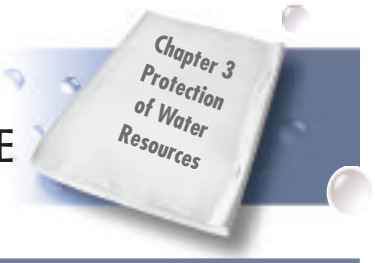
The catchment management strategy must:

- Take into account the classification of water resources and water resource quality objectives and the requirements of the Reserve and international obligations (see next part of this guide)
- Set out strategies, objectives, plans, guidelines and procedures for the overall management of water resources within the water management area
- Contain a **water allocation plan** according to a set of principles
- Take into account national and regional plans (prepared under any other law) including the water services development plans (WSDPs) of municipalities
- Enable public participation in managing the water resources in the water management area
- Take into account the needs and expectations of current users and potential users.

The catchment management strategy guides the way water management institutions in the water management area should perform their functions. The strategy also must indicate how the public will be enabled to participate in water resources management within the WMA.

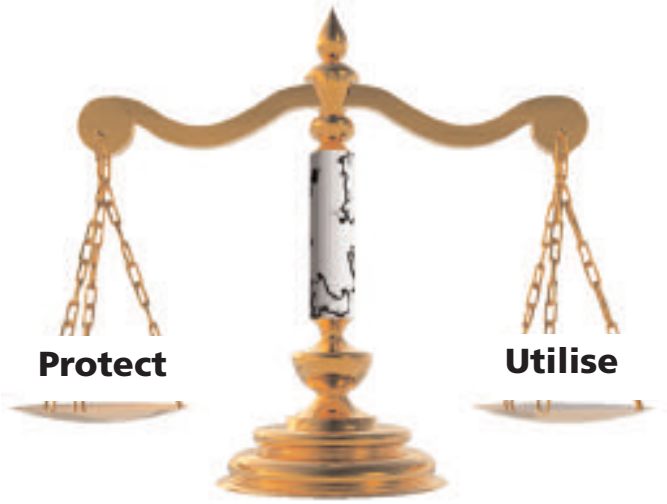
PART 3

PROTECTING THE WATER RESOURCE



Government is faced with the challenge of **protecting** water resources on the one hand and the need to **utilise** water for social and economic development on the other hand.

The National Water Act provides decision-making tools to achieve a balance between protecting and utilising water resources.



Protecting the health of the water resource

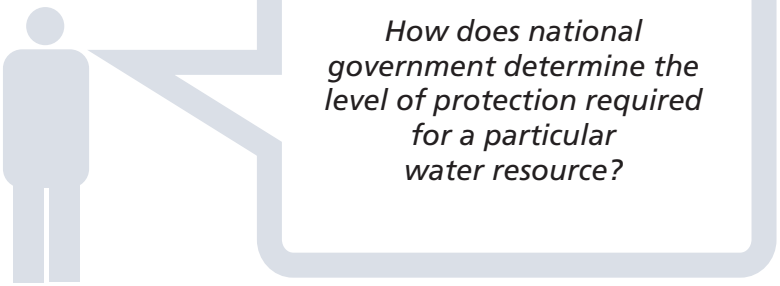
National government acting through the Minister and the Department of Water Affairs and Forestry is responsible for ensuring the protection of the water resource.

A water resource is an ecosystem. Ecosystems are made up of water, the earth, the sun's energy, plants, animals and small organisms. If the water in a water resource cannot support the water ecosystems, then the overall health (water quantity and / or water quality) of the water resource will decline. This will have a negative impact on the amount of water of an acceptable quality for current and future use.

The aim of protecting water resources is to ensure that water is available for current and future human use. This is achieved by leaving enough water of a certain quality in the water resources to maintain the overall ecological functioning of the rivers, wet lands, groundwater and estuaries. Protection of the water resource is therefore about the **quantity** and **quality** (overall health) of the nation's water resources.

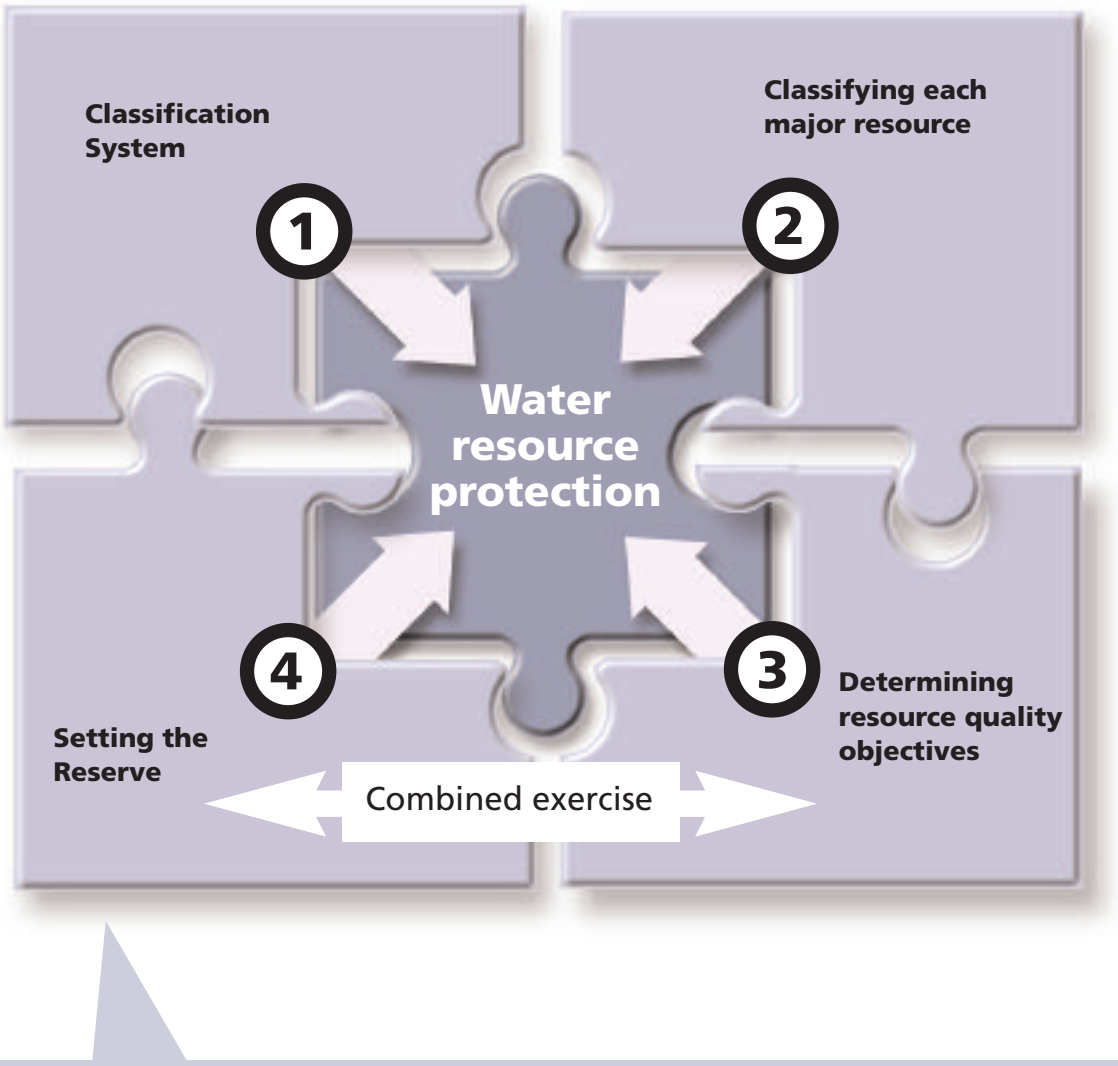
Some water sources are already overused. Their water is polluted, the available water is already taken, and the surrounding environment is in a poor state. Other water sources are hardly used and the dependent environment is still in a natural state.

However, we have very few water sources that are in a natural state and therefore our water resources require protection. Water in South Africa is not only scarce but is also unevenly distributed throughout the country. It is thus clear that different water resources require different levels of protection.



How does national government determine the level of protection required for a particular water resource?

The National Water Act specifies a series of measures which together are intended to ensure the comprehensive protection of all water resources:



These measures are designed to protect the *health* of the water resource. They look after the quality of water, quantity of water, the animals that live in the water resource, and the vegetation (plants) around the water resource. All these must be healthy for the water resource to function properly and to provide water.

These measures are called **resource directed measures**. Resource directed measures is a strategy developed by the Department of Water Affairs and Forestry to ensure protection of water resources as outlined in Chapter 3 of the Act. These measures are to be developed progressively within the context of the national water resource strategy and catchment management strategies.

One of the major challenges of sustainable water resource management is to assess as accurately as possible how much water can be taken out of the system before its ability to meet social, ecological and economic needs is reduced. The classification system and the determination of the resource quality objectives are two mechanisms that can be used to try and balance protection and development.

National system for classifying water resources

The classification system provides the guidelines and procedures for classifying different classes of water resources.

Each class in the classification system needs to state what kind of impacts on the water resource are acceptable and what kinds of impacts are not acceptable in order to protect the resource. The class also needs to state how much water can be used from the water resource.

The classification system must satisfy the water quality requirement of users without significantly altering the natural water quality characteristics of the water resource. It must also take into account the use of water for particular activities that need to be controlled in order to protect the water resource.

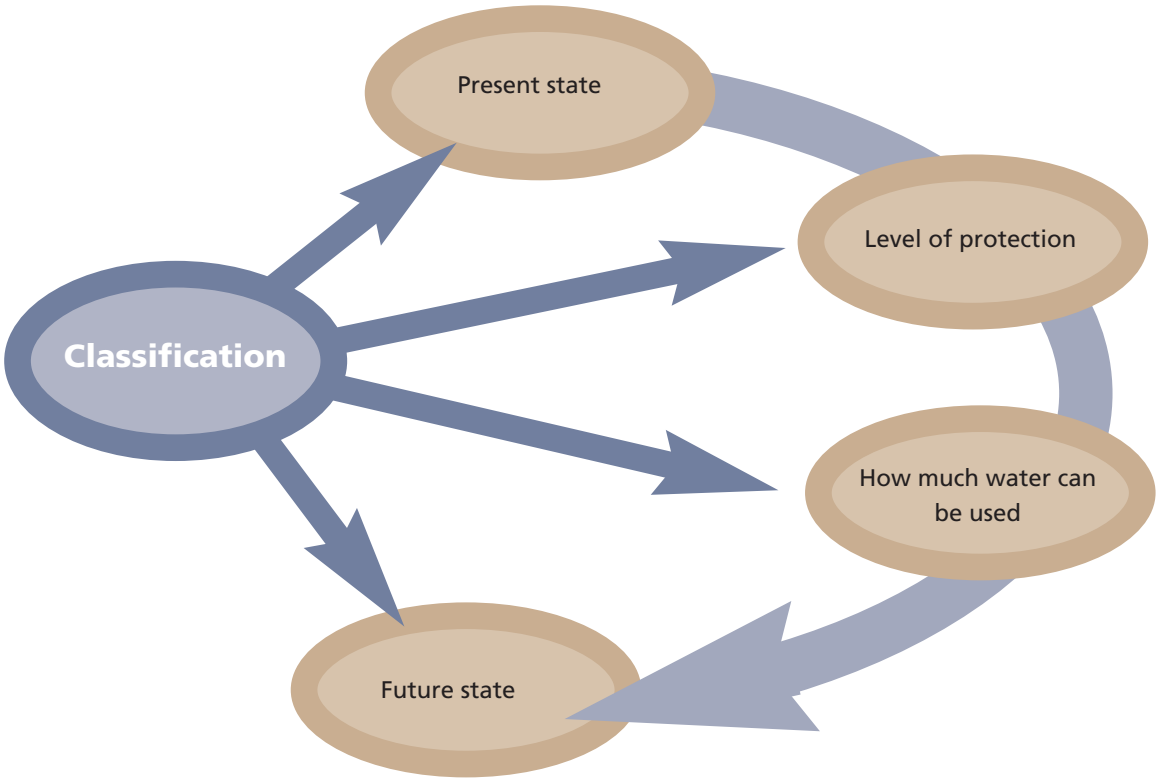
The classes allow national government to group water resources from those that are in a very good state to those that are in a very poor state.

Each class represents:

- a different **level of protection** that is required for the water resource, and
- the **extent to which the water can be used**.

Classification is used in two ways:

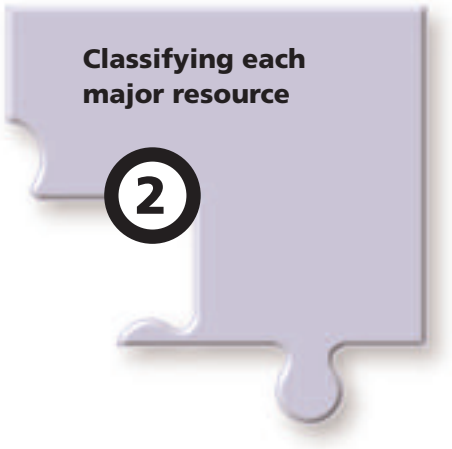
- To define the **present** status of the water resource
- To define the state towards which the water resource needs to be managed sustainably (**future** state).



The management class of a water resource is thus a statement of intent. It states the current state of the resource and it states the vision for the future state of the water resource.

Once the national classification system is established, the next step is to classify each water resource according to the system.

Determining the class for each water resource



This step involves determining the class of each significant water resource in the country, for example a river.

- What is the present state of the river?
- Is the water clean or polluted?
- Is the riparian vegetation (vegetation on the river bank) unspoilt or is it badly degraded?

Stakeholder participation and consultation is very important when determining the desired future class for a water resource.

Water users should help decide what they would like their water resources to look like in the future, so that water management can improve the health of the water resource over time.

Once each major water resource is classified, national government through the Minister needs to determine how the water resource will be protected and used. This is called determining the **resource quality objectives** and setting **the Reserve** for each water resource. Determining resource quality objectives and setting the Reserve for a water resource happens as a combined (integrated) exercise because the Reserve is a component of the resource quality objectives. In other words, *the Reserve is captured in the resource quality objectives*.

Determining resource quality objectives

Targets or objectives are set for each water resource *in terms of the level of protection the water resource requires*.

These objectives provide statements about:

- what the **quantity** of the water should be (water level, pattern, timing)
- what the water **quality** should be (physical, chemical and biological
- what the condition of the instream and riparian (river bank) habitat should be
- what the condition of the aquatic (water) animal and plant life should be.

These objectives are known as the **resource quality objectives**. The resource quality objectives are a statement about how the water resource should be.

Since resource quality objectives determine the level of protection for the resource they must be published as a notice in the *Government Gazette* and must also state:

- the geographical area to which the objectives apply
- what must be done to achieve the objectives, and
- the date on which the objective must be achieved.

The Minister is assisted by the Director-General and the Department of Water Affairs and Forestry to classify and set resource quality objectives for each major water resource. According to the National Water Act, the Minister is ultimately responsible for the classification and resource quality objectives and must personally approve the final Reserve and sign the notices that are published in the *Government Gazette*.

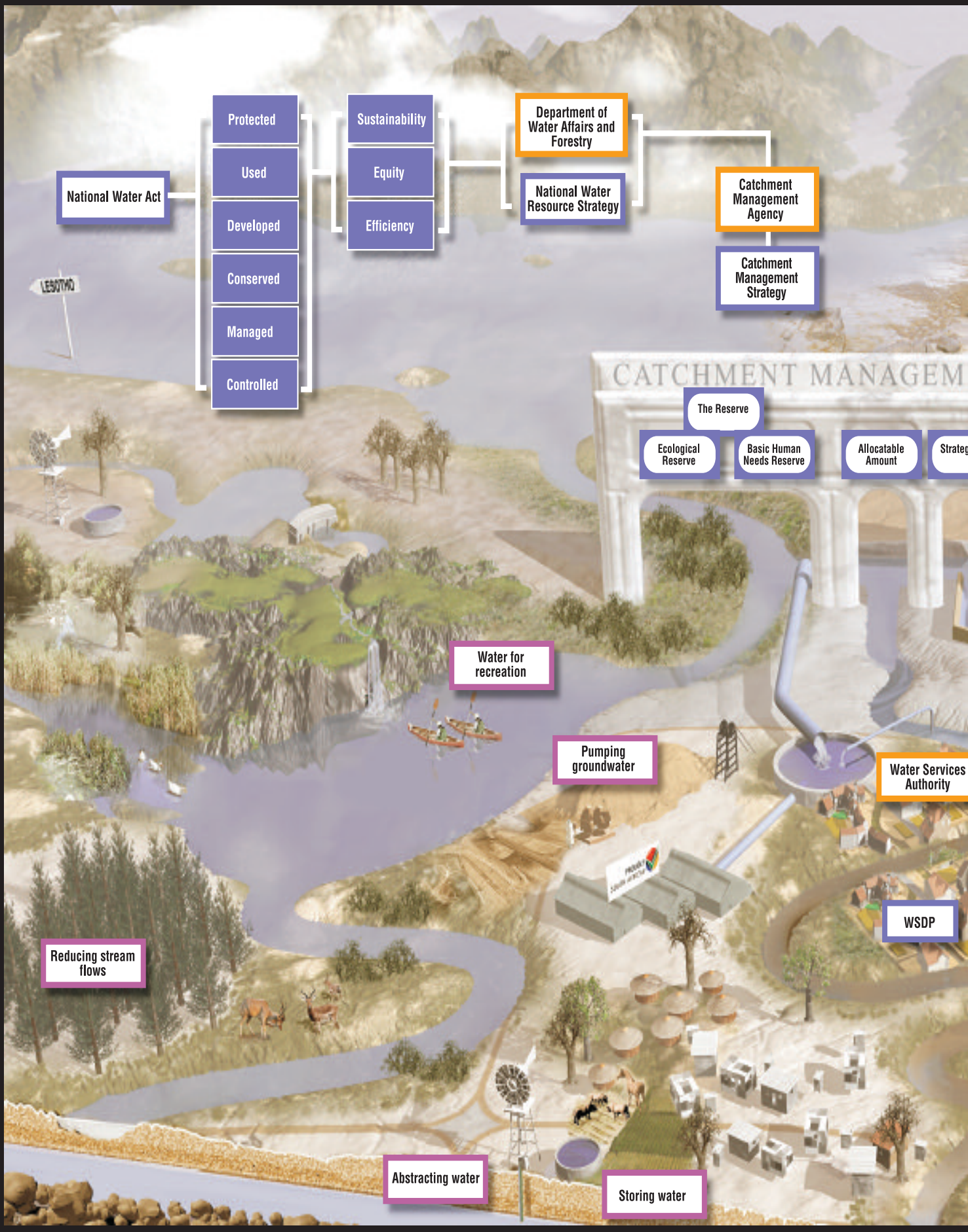
Setting the Reserve

The Reserve is an integral part of the resource quality objectives and should be set as soon as the class is determined for each water resource. The requirements of the Reserve and all other demands on the water resource are covered by the determination of the resource quality objectives.

The Reserve is part of the national water resource within each water management area that is under the direct control of the Minister. It is water that is 'set aside' to:

- provide for basic human needs, and
- protect water ecosystems (sustain healthy ecosystems).

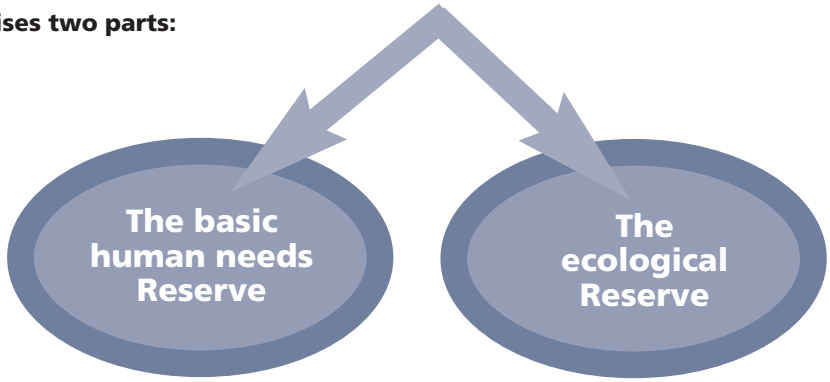
WATER RESOURC



CES MANAGEMENT

The Reserve is the only *right* to water in the National Water Act. It therefore has priority over all other water use. In other words the amount of water required for the Reserve must be met before water resources can be allocated to other water users.

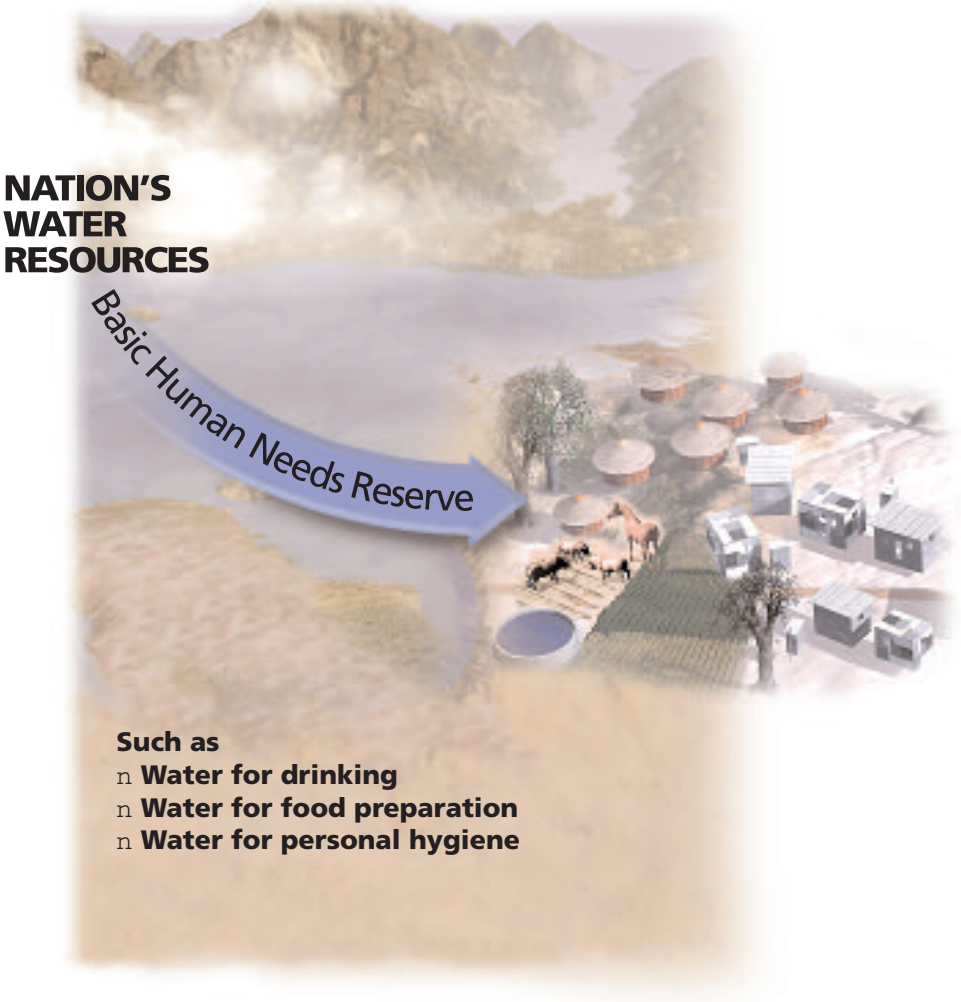
The Reserve comprises two parts:



Basic Human Needs Reserve

It would be a serious problem (and against the Constitution) if economic activities such as agriculture, industry and mining, used so much water that there was not enough water for basic human needs such as drinking, food preparation, and health and hygiene purposes.

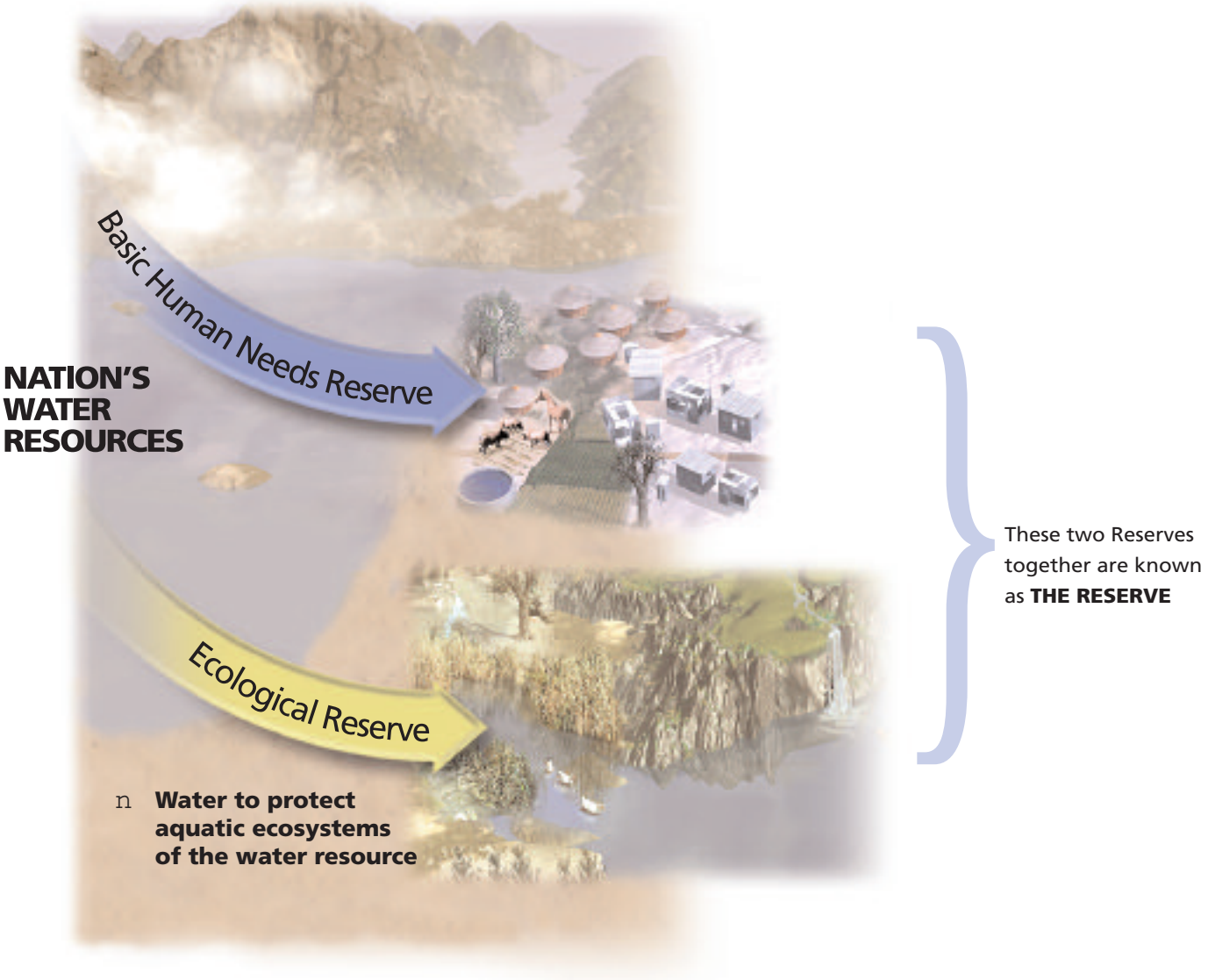
The National Water Act ensures that **everyone** has access to sufficient water by setting aside a certain amount of water to meet everyone's basic needs. This amount of water set aside for basic human needs is called the **basic human needs Reserve**.



Ecological Reserve

In order to ensure that there is sufficient water of an acceptable quality for future water use, the National Water Act makes provision for the **ecological Reserve**. The ecological Reserve is the water that is necessary to protect the water ecosystems of the water resource. It must be safeguarded and not used for other purposes. The ecological Reserve specifies both the **quantity** and **quality** of water that must be left in the national water resource.

The ecological Reserve is determined for all major water resources in the different water management areas to ensure sustainable development.



Who sets the Reserve?

The Minister of Water Affairs and Forestry must set the **Reserve**. The Reserve is determined for ***every significant water resource or part thereof***. In other words, the Minister must set the amount of water and quality of water that must remain in the water resource for basic human needs and for ecological needs.

Note: Because the determination of quality objectives is a complex matter, the Minister may make preliminary determinations of the class and resource quality objectives of water resources before the formal classification system is established.

Pollution prevention

Pollution prevention is part of protecting water resources. Chapter 3 of the National Water Act deals with pollution prevention, particularly where a water resource may become polluted or has become polluted because of activities on land. The Act states that the person who owns, controls, occupies or uses the land is responsible for preventing pollution of water resources and is also responsible to remedy (correct) the effects of the pollution. If the person responsible does not take measures to prevent pollution, the catchment management agency (or the Minister if there is no catchment management agency in place) may take steps to prevent pollution or to address the effects of pollution. The person or persons responsible for the pollution is also responsible for paying the costs to address the effects of the pollution.

Emergency incidents

Emergency incidents refers to water resources being polluted as a result of an emergency incident. For example, an accident where a harmful substance finds its way into the water resource is an emergency incident. The person who is responsible for the incident or accident is also responsible for addressing the effects of the pollution. (The responsible person may either be the person who owns the substance involved in the incident, or may be the person who was in control of the substance when the incident took place.)

Any person who knows about the accident or incident must as soon as possible report it to the Department of Water Affairs and Forestry, the South African Police Service, or the relevant fire department or the relevant catchment management agency.

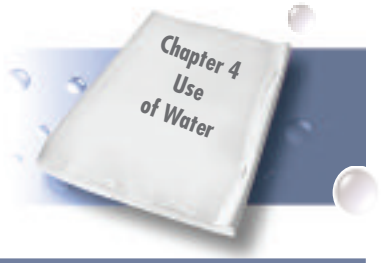
The responsible person, or any other person involved in the incident must take all reasonable measures to:

- contain or minimise the effects of the incident;
- undertake cleanup procedures, and
- remedy the effects of the incident.

If that person does not address the problem, the relevant catchment management agency may take the necessary steps to correct the problem and may recover the costs from the responsible person or persons.

PART 4

WATER USE



What does water use mean?

Water use means any one of the following:

- taking water from a water resource (abstraction)
- storing water
- activities which reduce stream flow (for example commercial forestry)
- discharging waste or water containing waste into a water resource
- controlled activities (activities which impact detrimentally on a water resource, for example irrigating land with water containing waste, or power generation activities which alter the flow of a water resource)
- changing the physical structure of rivers and streams (altering a watercourse, obstructing or diverting the flow of water in a watercourse)
- removing underground water
- using water for recreational purposes.

Water use refers to doing something that has an **impact** on the water resource, for example:
a) the **amount** of water in the resource
b) the **quality** of water in the resource
c) the **environment** surrounding the resource.

A municipality that builds a dam in the river, or who pumps water from a river, or a borehole, or who discharges waste water back into a river is thus engaging in water use. So is a farmer or Eskom or a water board or any other person who takes water directly from the resource.

Even if water is not being removed, but a weir is built in a river to farm trout, or a new bridge is built that disturbs the flow of water, there is still an impact on the water resource and therefore such activities are also seen as water use. Using water for recreational purposes, such as boating, is also water use.

A special type of use is commercial forests.
Forests don't actually take water out of the river, but the trees reduce the amount of water flowing into the river. This type of water use is called **streamflow reduction**. Trees have been likened to wooden windmills that pump water into the air (evapotranspiration).

Using water to dispose of waste is also water use because it has an impact on the quality of the water resource. This has an impact on the quality of water for other users and for water ecosystems.

What are the priorities for water use?

As outlined in Part 3, providing water resources of sufficient quantity and quality to meet the requirements of **the Reserve** (basic human needs and ecological Reserves) is the first priority. But there are other priorities that need to be met before water can be allocated in water management areas.
In order to meet these priorities a portion of water in each water management area is placed under the direct control of the Minister.

These other priorities include:

- **Water to meet international rights and obligations**

South Africa has international agreements with its neighbouring countries in terms of developing and managing shared water resources. The Minister needs to ensure that sufficient water is set aside to fulfil these international agreements.

- **Water use of strategic importance**

Water use that is considered to be of critical national importance is called water use of strategic importance and is authorised by the Minister. This includes water use for the **generation of electricity**, which is fundamental to the overall functioning of the country and the economy.

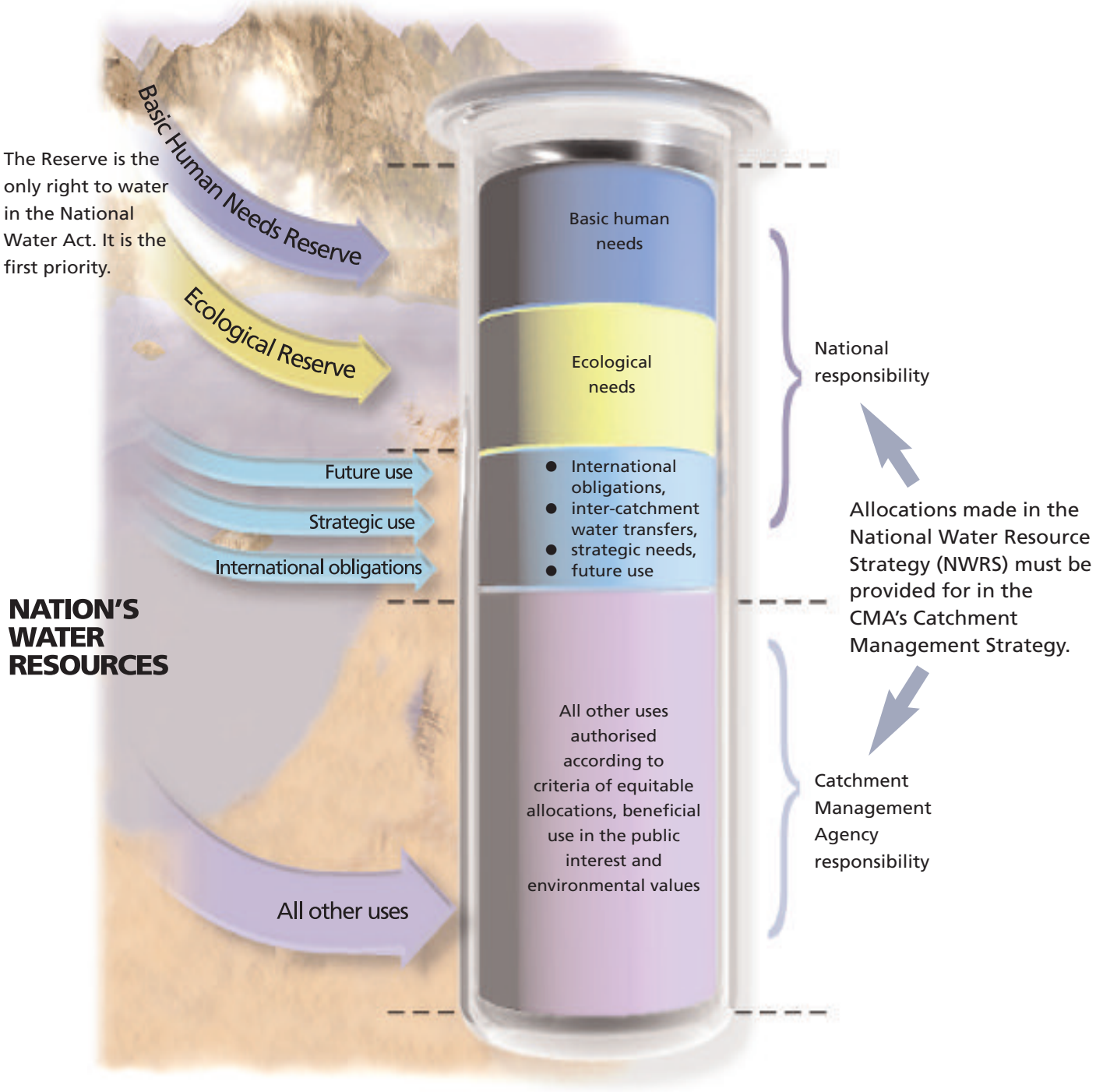
- **Inter-catchment water transfers**

Another water use that is of critical national importance is ensuring sufficient water in each of the water management areas. Some water management areas do not have sufficient water to address water use requirements whilst other water management areas have a surplus of water. The Minister may authorise the transfer of water allocations between water management areas. This is called **inter-catchment water transfers** between surplus water management areas and deficit water management areas.

- **A contingency to meet projected future water needs**

This may include water that is reserved for use outside a water management area or for specific large projects within it to increase future water availability.

The National Water Resource Strategy must provide for all these priorities. The diagram below shows how water allocation is prioritised in the National Water Resource Strategy.



Who are water users?

How does the Minister achieve sustainability of the nation's water resources in the interests of all water users?

The main way that the Minister can achieve the purpose of the National Water Act is to control water use. By controlling water use the Minister is able to ensure that everyone has access to sufficient water, that the environment is protected, and that water is reallocated to advance the previously disadvantaged communities.

For this reason the National Water Act only allows a person to use water under certain conditions.

How is use of water controlled?

Water use is controlled through **regulating** the way water can be used. The National Water Act regulates water use through **registration** of water use and through different types of **authorisations**. These are explained below.

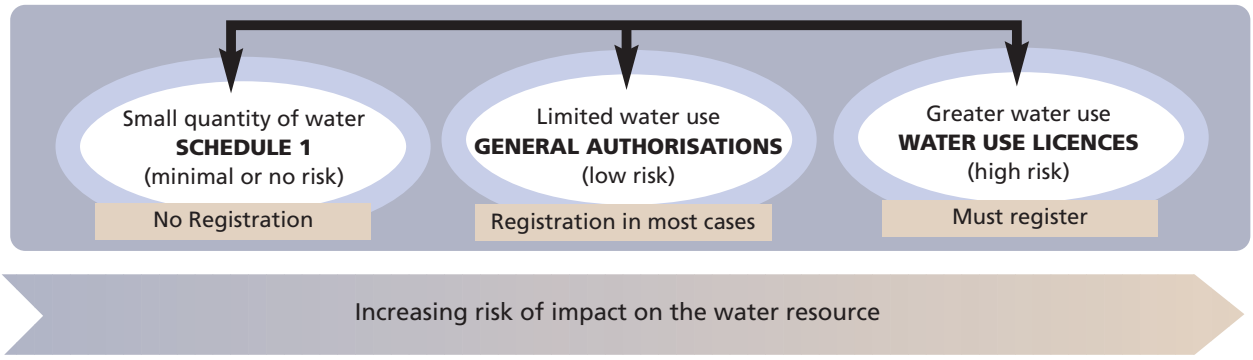
Registration of water use

In order to control water use, the Department of Water Affairs and Forestry needs to know what water use is taking place and how much water is being used from the different water resources. To find out this information, existing lawful water users are required to register their water use if they are taking and storing water, or if they cause streamflow reduction (commercial forestry). Currently, existing lawful water use is registered at the appropriate Regional Office of the Department of Water Affairs and Forestry. The Department may check that the existing use is legal and may check the quantity of the use. This is called **verification**. Water users who do not register their water use risk losing their existing water entitlements.

Different types of water use authorisations

The different types of authorisations determine those water use activities which require a licence and those activities which do not require a licence.

There are three types of water use authorisations



Each of these types of water use authorisations is explained below.

Water use which does not require a licence

Water use with small impact on the water resource (Schedule 1 of the Act)

Schedule 1 of the National Water Act outlines **permissible use of water** where a licence is not required. The type of activities outlined in Schedule 1 are activities that have a **very small impact on the water resource**. These activities include:

- taking water directly from any water resource for domestic use in your household if you have lawful access to that water
- storing and using run-off water from a roof
- small gardening that is not for commercial use
- watering animals for subsistence use
- using the water surface or surrounding land for recreational use (for example boating)
- using water for emergencies for example for human consumption or firefighting.

These uses are called **Schedule 1 use**. Schedule 1 uses do not have to be registered. Schedule 1 applies to all river catchments throughout the country.

Continuation of existing lawful use

If a person was already using water legally before the National Water Act came into operation then that person may register that use and continue using the water without having to apply for a licence. This is a transitional measure that the National Water Act allows so that existing lawful water users can continue using water under the same conditions until the water use is formally licensed.

General authorisations

General permission has been granted by the Minister for other slightly larger uses from certain less-stressed sources. This permission has been given by means of **general authorisations** published in the *Government Gazette*. These authorisations allow a user to use water without a licence provided that the water use is within the conditions of the general authorisation. Examples of general authorisations include storing a limited amount of water in a dam, or abstracting a limited amount of water from certain rivers, or from ground water sources (boreholes). A general authorisation is only applicable to specific rivers or catchments and is not applicable to the whole country.

Water use which requires a licence

A user must apply for a **licence** for any **new water use** that is not listed in Schedule 1 or that is not covered by a general authorisation. Water licences are therefore used to control water use that exceeds the limits outlined in Schedule 1 and allowed for under general authorisations.

Water use licences give existing or new water users formal authorisation to use water for productive and beneficial purposes, and specify the conditions under which the water can be used. Only a 'responsible authority' can issue a licence to use water. A responsible authority may be the Department of Water Affairs and Forestry or a catchment management agency.

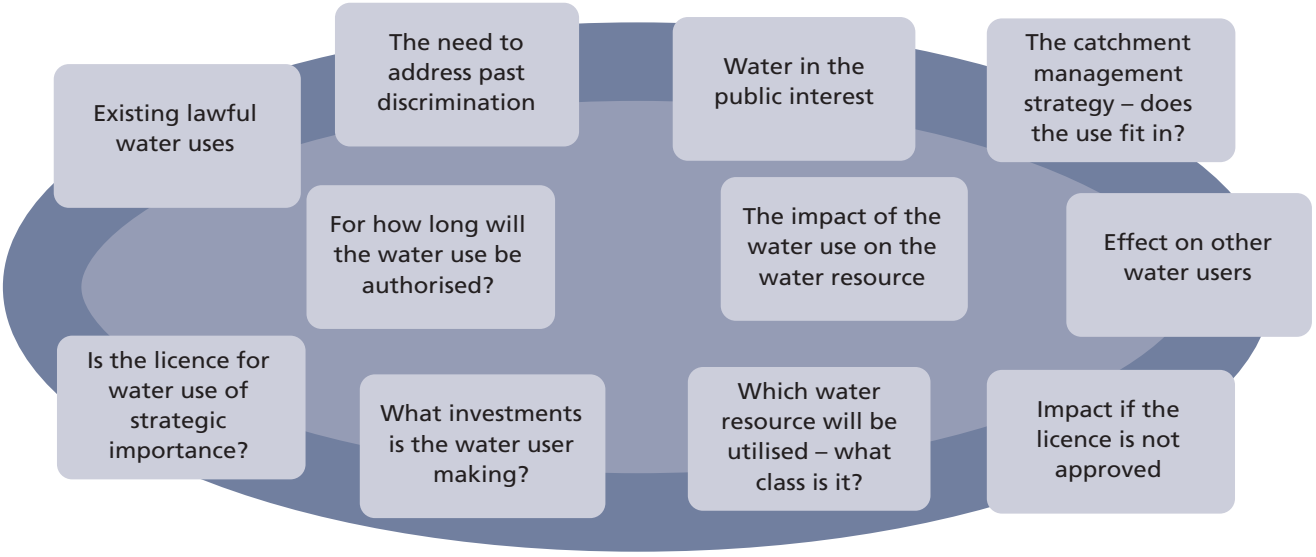
Currently potential users must:

- **apply** to the appropriate Regional Office of the Department of Water Affairs and Forestry **for a licence**; or
- **register** their water use with the Regional Office.

In future some of these functions will be delegated to catchment management agencies.

How are licence applications evaluated?

All licence applications are evaluated against a number of factors which are outlined in the National Water Act. The authority that evaluates a licence application must take into account the following:



What conditions apply to licences?

All licences will be issued with **licence conditions**. These conditions will be negotiated with the water user wherever possible. One of the most important conditions of a licence is the period of time for which the licence applies. The licence conditions are to ensure that the water use that is authorised by the licence does not have a negative impact on the water resource or other water users.

If necessary, the authority that has issued the licence may change the conditions of a licence before it expires. For example if water requirements become greater than the available water, the authority may reduce the amount of water authorised for use in the licence. Changes to licences must be undertaken in an equitable manner. This means that the conditions of a person's licence can only be changed if all other licences for similar water use or from the same water resource are also changed. The length of time for which a licence is valid cannot be changed, but it can be extended by the length of a review period, with a maximum of five years.

All water users are required to comply with the conditions set out in their water use licence. If a user does not comply with the conditions, the authority may issue a notice instructing the user to correct any failure to comply. If the user does not comply with the notice the authority may withdraw the licence and can also prosecute the user.

What is compulsory licensing?

At some stage the Minister may publish notices in the *Government Gazette* requiring *all* existing and potential water users, except for Schedule 1 users and users under General Authorisations, to apply for licences. This is called **compulsory licensing**.

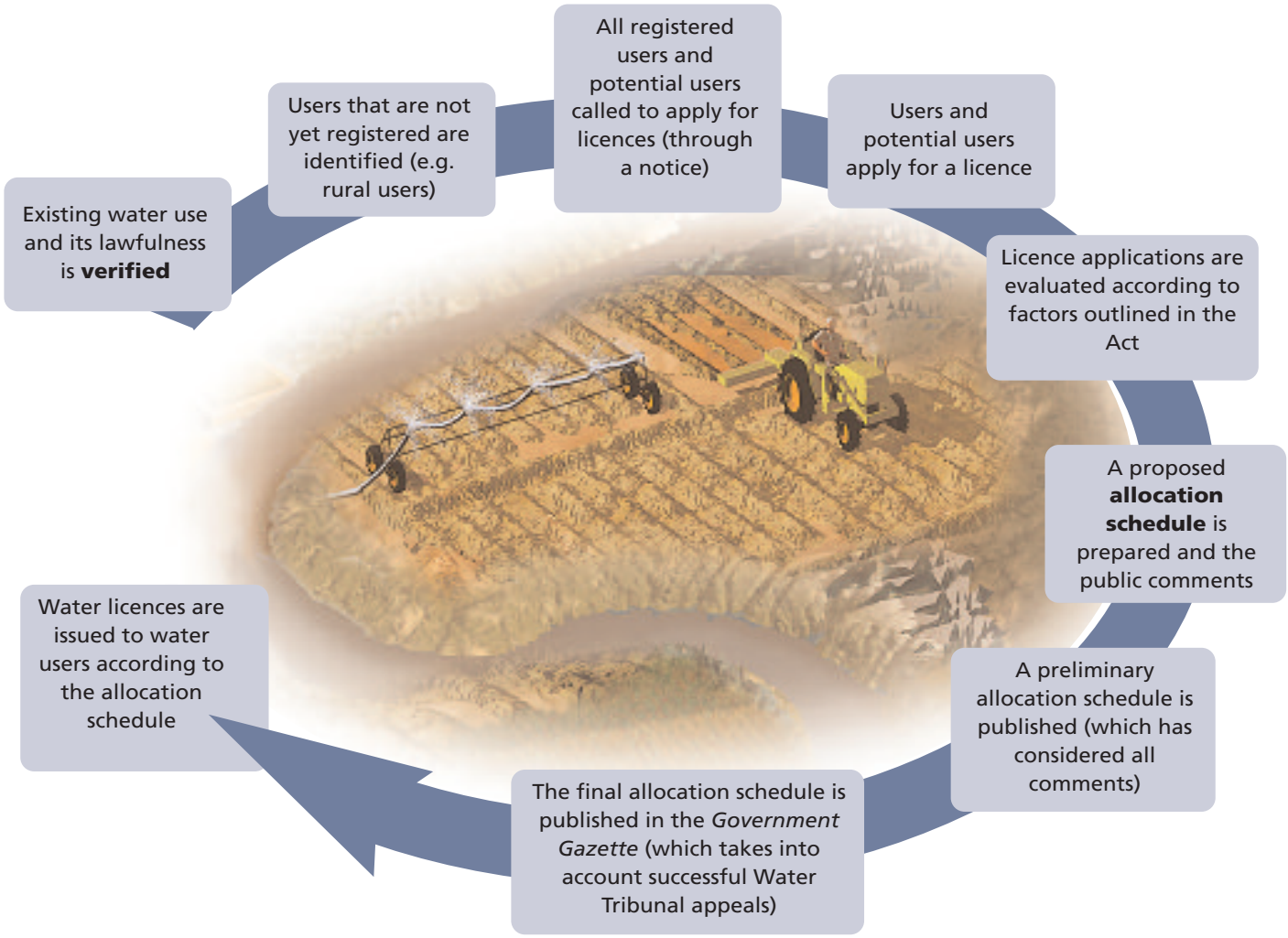
Compulsory licensing may eventually be used everywhere to license water use, but the priority areas for compulsory licensing will be areas of water shortages (where current or future demand exceeds supply) or where pollution is severe (stressed catchments). The compulsory licensing process may also be used where it is required to assist historically excluded people to gain access to the resource as well as to:

- achieve a fair allocation of water from stressed water resources,
- improve the efficient use of water in the public interest, and
- ensure efficient management of the water resource, and
- to protect water quality.

It is important that users register their existing use so that their existing use is taken into account during compulsory licensing.

What is the process for compulsory licensing?

The diagram below outlines the different steps in the compulsory licensing process.



Regulations on Water Use

The National Water Act provides the broad legal framework for water resources management. The requirements of the Act have to be implemented. Details about implementation are outlined in regulations that are issued by the Department of Water Affairs and Forestry and published in the *Government Gazette*. There are two sets of regulations on water use thus far:

- Government Notice No. 704, 4 June 1999, National Water Act, 1998 (No. 36 of 1998): Regulations on the use of water for mining and related activities aimed at the protection of water resources.
- Government Notice No. 1352, 12 November 1999, National Water Act, 1998 (No. 36 of 1998): Regulations requiring that a water use be registered.

Other regulations that are in preparation, or are being considered in the near future will deal with:

- Limiting or restricting water use that impedes or diverts the flow of water in a watercourse; or alters a watercourse (bed, banks, etc. of the watercourse); and using water for recreational purposes.
- Management practices for waste treatment
- Transactions in respect of authorisations to use water (trade).

The National Water Act provides for the Minister to make regulations on a wide range of water use issues.

PART 5

PAYING FOR WATER

There is a cost involved in developing and managing the water resource so that it is protected and conserved for beneficial use. These costs will generally be recovered from the water users by means of **water use charges**.

How are water use charges determined?

The National Water Act allows the Minister of Water Affairs and Forestry, with the approval of the Minister of Finance, to develop a strategy for calculating water use charges. This strategy is called a **pricing strategy**.

What is the pricing strategy?

The pricing strategy is established by a notice in the **Government Gazette**. It is the overall strategy to set water use charges to fund the following:

- water resource **management** which is all the activities to monitor, allocate, control, protect and conserve water resources
- water resource **development** which is all the activities and associated costs to plan, design, construct, operate and maintain water works
- **use of water works** which is the costs of distributing water.

In addition, charges can be set for:

- the achievement of **equitable and efficient allocation** of water.

PRICING STRATEGY

The pricing strategy addresses the following:

- the way in which different water areas, water use and water users are categorised to **ensure equity**
- **charges** to be paid by water management institutions and consumers (and the basis for these charges)
- provision for **rebates** (partial refunds) when water is returned to the water resource
- provision for some **charges to be waived** for specific users on an equitable basis (i.e. not having to pay certain charges)
- ways to **promote efficient and beneficial use** of water
- ways to **minimise harmful impacts** on water resources
- ways to **prevent wastage** of water
- ways to **support municipalities** who are water services authorities to establish **tariffs** for water services provision.

The pricing strategy applies only to:

- the use of raw (untreated) water / the use of a water resource
- charges that are set by the Department of Water Affairs and Forestry and other water management institutions established in terms of the Act (for example CMAs).

The pricing strategy does not address treated water supplied in bulk and distributed to households. Treated water is dealt with in the Water Services Act, 1997.

The way the pricing strategy differentiates between different types of water **uses** and water **users** is very important as it affects the charges for different uses and users. This is the way that the pricing strategy achieves **equity**. For example if one user is using good quality water and another user is using poor quality water, the pricing strategy can establish different charges for the good quality water and the poor quality water. Or if one user is discharging waste that has a high impact on the water resource and another user is discharging waste that has little impact on the water, the pricing strategy can set different charges for different types of waste discharge.

How is water use differentiated?

Water use is differentiated based on the following:

- how it is taken from the resource
- how it is supplied
- how it is discharged or disposed of
- the reliability of the supply that is being used
- the quality of the water
- the impact of returned water on the resource
- the water resource that is being utilised.

How are water users differentiated?

Water users are differentiated based on the following:

- the amount of water that the user is using
- the quantity of water that the user is returning to the resource
- the economic circumstances of the user.

The Minister has already published part of the **pricing strategy** in the *Government Gazette*. The National Water Act allows the Minister to change it from time to time.

The following objectives were used to formulate the new pricing strategy:

- Social equity
- Ecological sustainability
- Financial sustainability
- Economic efficiency.

Water use charges are used to fund the direct and related costs of water resource management, development and use, and may also be used to achieve an equitable and efficient allocation of water.

Types of water charges

The current pricing strategy allows for three types of water charges.

Water resource management charge

The water resource management charge is a charge to fund the costs of managing and regulating the water resource. This includes the cost of activities such as registering users, issuing licences, setting the Reserve, measuring the flow in the rivers, testing the quality of the water, pollution control and water conservation management.

All registered and licensed water users will be billed a water resource management charge. The charge may differ between different types of users and between different water management areas. Currently, the water resource management charges are less for irrigation water than for domestic and industrial water.

Water resource development charge

The water resource development charge is a charge to fund the costs of planning, designing, constructing and operating and maintaining water supply schemes, such as the dams, canals, tunnels, and so on that are used to store or supply water.
The water resource development charge includes the **capital costs** associated with constructing the water scheme and also the **operating costs** which are the annual running costs.
Government will only bill users for the water resource development charge if the users are supplied water from a Government Water Scheme. However private developers of schemes, such as water user associations may also levy this charge on users to whom they supply water in order to recover their own costs.

Charge for achieving efficient allocation of water (economic charge)

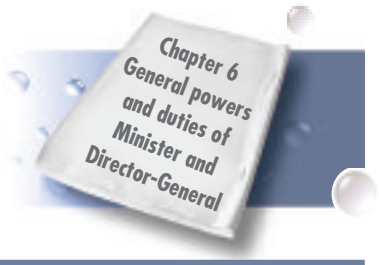
This charge may be levied where there is a high demand to promote water conservation and enhanced productive use of water (for example irrigation of high value crops).

Charge for discharging waste

The **charge for discharging waste** is a charge for discharging waste water or water containing waste into a river and is based on the "users and polluters pay" principle. The strategy for setting this charge is currently being developed and will form part of the pricing strategy.

PART 6

POWERS OF NATIONAL GOVERNMENT



The National Water Act outlines the powers and duties of National Government acting through the Minister of Water Affairs and Forestry in terms of ensuring that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons.

The Minister

The Minister, as the public trustee of water resources on behalf of the National Government, has overall responsibility for all aspects of water resources management in South Africa. However, the Act allows the Minister to delegate most of his or her powers and duties to departmental officials, water management institutions, advisory committees, and water boards.

The powers and duties of the Minister and national government (Department of Water Affairs and Forestry) are addressed throughout the National Water Act. However the Act also addresses 'general' powers and duties of the Minister and Director-General of Water Affairs and Forestry which are addressed in Chapter 6.

One of the purposes of this chapter of the National Water Act is to establish and clarify the powers of the Minister and to indicate the *limitations of those powers*. The powers given to the Minister through the Act are to enable the Minister to achieve the objectives of the Act. The Act also outlines the duties of the Minister when exercising this power, for example the duty to consult when making regulations, and to submit regulations to Parliament for review. This is an important activity because it means that the public has an opportunity to provide comments to proposed regulations, and Parliament has a role in the development of legislation concerning water resources. If Parliament rejects any regulations, the Minister must withdraw or amend the regulations to address the concerns raised by Parliament.

The general powers and duties of the Minister addressed in the Act include items such as:

- the power to delegate
- the power to expropriate (purchase) property
- requirements that need to be met when making regulations
- fulfilling the functions of a catchment management agency where no catchment management agency has been established
- assigning powers and duties to catchment management agencies.

The Department of Water Affairs and Forestry

At present the Department of Water Affairs and Forestry is responsible for administering all aspects of the Act on the Minister's behalf. As CMAs and other regional and local water management institutions are established the Department will over time delegate or assign water resource management responsibilities to these institutions.

In the longer term the Department's role will mainly be to develop national policy and a regulatory framework to govern the way other institutions manage the water resources. The Department will also maintain general oversight of these institutions' activities and how well they perform.

PART 7

CATCHMENT MANAGEMENT AGENCIES (CMAs)

The National Water Act provides for establishing **catchment management agencies** for water management areas.

What is a CMA?

A catchment management agency is a statutory body. This means that it is established by a government notice. A CMA has a governing board, which is appointed by the Minister. This board must represent all stakeholders (including current and potential user groups) and their interests in the water management area. The area of operation of a CMA is a defined water management area.

CMAs are the institutions to which the Minister acting through the Department of Water Affairs and Forestry delegates water resource management to the regional or catchment level. The aim of national government is to establish a CMA in each of the 19 water management areas. The Department of Water Affairs and Forestry Regional Offices will act as the CMA in water management areas where CMAs have not been established.

What is the purpose of a CMA?

The primary purpose of establishing a CMA is to involve local communities in water resource management. This is in line with the international trend to give effect to principles of participation to achieve integrated water resource management. A CMA manages water resources within its defined water management area according to its catchment management strategy.

Public participation in water resource management is one of the basic principles of catchment management. Catchment management agencies must ensure that all interested and affected stakeholders including poor communities that have been disadvantaged and marginalised are able to participate in the consultation processes and decisions of the CMA.

What are the functions of a CMA?

When a CMA is established it has the following functions, which are called 'initial functions':

- to investigate and advise on the protection, use, development, conservation, management and control of the water resources in its water management area
- to develop a catchment management strategy for its water management area
- to co-ordinate the activities of water users and water management institutions within its water management area
- to promote co-ordination between implementation of its catchment management strategy with implementation of water services development plans by water services authorities (municipalities)
- to promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

The Minister of Water Affairs and Forestry can delegate (entrust) additional functions to a CMA. This means that the CMA fulfils the additional functions on behalf of the Minister. Once the CMA has shown that it is able to effectively fulfil these additional functions, the Minister can assign these additional functions to the CMA, which means that the functions have been fully transferred to the CMA.

Additional functions that can be delegated or assigned to a CMA are:

- general management of water resources in the water management area;
- acting as the 'responsible authority', relating to water use and allocation of water;
- other powers and duties that the Minister can delegate (but not assign).

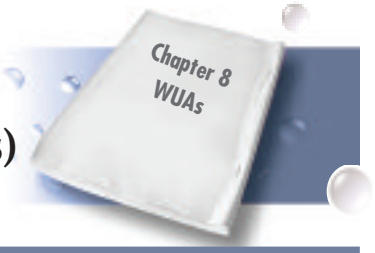
Catchment management agencies may also form **catchment management committees**, and forums to promote community participation in its water management area.

A separate guide has been prepared on water management institutions, which deals with Catchment Management Agencies, catchment management committees and forums in more detail.

The National Water Act also provides for other water management institutions besides catchment management agencies. One type of water management institution is the water user association.

PART 8

WATER USER ASSOCIATIONS (WUAs)



The National Water Act provides for establishing **water user associations**.

What is a WUA?

A **water user association** is a statutory body established by the Minister. It is a grouping of water users who wish to work together because of a common interest. The water users 'co-operate' in undertaking water-related activities at the local level for their mutual benefit. For example a water user association would be formed if a group of farmers wanted to build a common canal or dam for mutual benefit, or a group of emerging farmers wished to co-operate.

Existing irrigation boards, water boards for stock watering purposes and water control boards that look after ground water use (subterranean water control boards) will all be transformed into water user associations. This may involve extending the area of jurisdiction of these institutions to include other users or other water resources.

A water user association may be a single sector or multi-sector association. **A single sector** association comprises a group of similar users, for example emerging farmers, and acts in the interests of those farmers. **A multi-sector** association comprises a group of different users, for example industry, farming, mining and so on, and acts in the interests of the different users.

What is the purpose of a WUA?

The purpose of a WUA is to enable water users to co-operate and pool their resources (financial, human resources and expertise) to more effectively carry out water-related activities. WUAs have an important role to play in respect of poverty eradication and providing food security.

Most WUAs are former irrigation boards and focus on irrigation. WUAs may also be established:

- for stream flow reduction activities such as afforestation
- for the treatment and disposal of effluent and waste
- to control the use of water for recreational and/or environmental purposes

What are the functions of a WUA?

The functions of a WUA depend on its approved constitution and the purpose for which it was established. The constitution of a WUA could provide for the following the functions to be performed by the WUA:

- To prevent water from any water resource being wasted
- To protect water resources
- To prevent any unlawful water use or acts that negatively impact on the water resource
- To generally supervise the water resources
- To regulate the flow of any watercourse
- To investigate water quality and water use
- To construct and operate and maintain waterworks for draining land or supplying water.

The National Water Act regulates the functioning of a WUA. A WUA may only exercise management powers and duties if these powers and duties have been delegated to it by the CMA or the Minister.
The establishment of water user associations simplifies the work of the Minister (and the Department of Water Affairs and Forestry) and of the Catchment Management Agencies because they can deal with organised groupings (the water user associations) rather than with many individual users.

A separate guide has been prepared on water management institutions, which deals with Water User Associations in more detail.

PART 9

OTHER PROVISIONS IN THE ACT

Advisory Committees

The Act empowers the Minister to establish advisory committees. These committees can be established for different purposes and with different functions. Although these committees are primarily advisory in nature, the Minister may delegate certain powers to advisory committees.

Advisory committees are responsible to the Minister. The Minister may make regulations concerning advisory committees in terms of the following:

- the committee's terms of reference
- membership
- powers
- duties, and
- operation.

The Act obliges the Minister to establish an advisory committee to make recommendations on the composition of the governing board of a catchment management agency.

International water management

The National Water Act provides for the establishment of bodies to implement international agreements for the management and development of water resources that are shared with neighbouring countries.

The governance, powers and duties of these bodies is determined by the Minister in accordance with the relevant international agreements. The Minister must consult Cabinet when establishing institutions to implement international agreements.

A separate guide has been prepared on water management institutions, which deals with International Water Management Institutions in more detail.

Government waterworks

Government is not only involved in the management of the water resource.

The National Water Act also allows Government to build, own or even buy dams and other waterworks (infrastructure), if it is in the public interest.

Government can allocate water from its own dams and waterworks in the same way that it allocates water from the resource. Government can also let people use the water surface or the land around the waterworks for recreational and other uses.

Government recovers some or all of the cost of the government waterworks by charging people for the use of water from the water works. It sets the price for water use (water charge) in accordance with a National Pricing Strategy, which was published in the *Government Gazette*. (See section above on National Pricing Strategy)

Although the Department of Water Affairs and Forestry has been involved in infrastructure it aims to transform itself into a policy, regulating and auditing body. It therefore aims to establish other institutions to deal with certain aspects of infrastructure or to transfer infrastructure responsibilities to existing water management institutions (for example water user associations). In particular, alternative ways are being considered to manage the national water infrastructure.

Safety of dams

The National Water Act contains a range of control measures to improve the safety of new and existing dams that have a safety risk.

Large dams can pose a serious risk for people and the environment. Dams that are not properly designed or which are allowed to deteriorate through improper maintenance are a particular hazard.

A dam failure can suddenly release a flood of water with the possibility of causing loss of life and property. The failure of even a small farm dam could release silt and cause damage to the environment.

For this reason the National Water Act puts certain measures in place to ensure that the risk of a major dam failure is minimised. A dam with a safety risk generally means a dam which stores more than 50 000 cubic metres of water and which has a wall higher than 5 metres.

No person may build a dam that poses a safety risk without a licence.

The National Water Act ensures that only appropriately qualified people (**approved professional persons**) are allowed to design and inspect dams that pose a safety risk.
The National Water Act classifies dams with a safety risk and also sets out the responsibilities of these approved professional persons.

The National Water Act requires that regular safety evaluations are undertaken of every dam that poses a safety risk.

A dam safety office has been established within the Department of Water Affairs and Forestry to administer the provisions within the Act relating to dam safety. In addition the Department is preparing new regulations related to the safety of dams.

Monitoring, assessment and information

Monitoring, recording, assessing and making information about water resources available are critical to ensuring that the main purpose of the National Water Act is achieved.

Monitoring is regular checking of the water quality and flow in a river, dam, wetland or underground resource. Monitoring information feeds into the information system.

Information systems are used to store information on water resources, so that it can be easily used and understood by water managers and decision-makers.

Although the Department has always monitored water resources, Chapter 14 of the National Water Act formally requires the establishment of national monitoring and information systems, for all aspects of water resources. The monitoring systems must provide for the collection of data and information so that the following can be assessed:

- water quantity
- water quality
- the use of water
- rehabilitation of water resources
- compliance with water resource quality objectives
- the health of aquatic ecosystems, and
- atmospheric conditions which may influence water resources.

The Act also requires that mechanisms and procedures be established to co-ordinate monitoring of water resources.

The Constitution guarantees that everyone has the right of access to any information held by the State and that national legislation must give effect to that right.

The National Water Act accordingly requires the Minister to establish national information systems for water resources information as soon as possible.

These national information systems should contain information on:

- Hydrology (rainfall and flow in rivers);
- Water quality;
- Groundwater; and
- Water use licences and other water use authorisations.

The information systems will be used to provide data and information for a number of purposes including developing and implementing the National Water Resource Strategy, for other planning, for managing disasters, and for public safety.

Water Tribunal

The National Water Act provides for the establishment of a Water Tribunal to hear appeals against certain decisions or directives given by responsible authorities or water management institutions, such as Catchment Management Agencies. The Water Tribunal is not a water management institution in terms of the Act, it is an independent body.

A water user may appeal to the Water Tribunal against a number of different types of decisions made by water management institutions, including decisions relating to:

- Claims for costs;
- Water allocation schedules;
- Decisions relating to licence applications and licence conditions;
- Verification of existing lawful use; and
- Compensation.

The Water Tribunal was established in October 1998. The Tribunal has jurisdiction everywhere in the country, and it may hold hearings in the areas where the cause of action arose. The Tribunal's operations are funded from the National Treasury.

Procedural rules for the Tribunal are approved by the Minister and are published in the *Government Gazette*. A person who is not satisfied with the Tribunal's decision may, on a question of law, appeal against the decision to a High Court.

Offences and Remedies (Penalties)

The National Water Act lists all the things that are offences under the Act as well as the associated penalities.

Offences

Offences include both acts (activities) and omissions:

- An act which is an offence is any activity that is not permitted in terms of the Act, for example unlawfully tampering with a waterwork, or unlawfully polluting a water resource
- An omission is a failure to do something that is required by the Act, for example failing to register an existing lawful water use, or failing to comply with the conditions that apply to the permitted water use.

Any person who contravenes (does not comply with) the Act is guilty of an offence and can be prosecuted in a court of law.

Remedies

The National Water Act also gives the courts and water management institutions certain powers to remedy problems when a person has been prosecuted for an offence, for example the power to remove the cause of a stream flow reduction.

Compensation for damages

If a person suffers harm or loss because of the offences (wrongful acts or omissions) of another person, the Act allows the courts to determine the damages caused and to compensate the person who has suffered the damages.

Compensation can be made in a number of different ways; it can be in the form of:

- a payment for loss or harm suffered
- the accused (person who committed the offence) having to pay for the costs of fixing the damage caused
- the accused or relevant water management institution having to fix the damage caused.

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