



**DEPARTMENT: WATER AFFAIRS AND FORESTRY
REPUBLIC OF SOUTH AFRICA**

Stream Flow Reduction Activities

Combined licensing and authorisation guidelines

October 1999

Published by

Department of Water Affairs and Forestry
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Pretoria, 0001
Republic of South Africa

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This report should be cited as:

Department of Water Affairs and Forestry. October 1999. Stream Flow Reduction Activities: Combined licensing and authorisation guidelines. Pretoria

Status of Document: Final Draft

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1. INTRODUCTION

This document embodies and includes, but is not limited to, the requirements of three government organisations having three processes running concurrently; namely the Department of Water Affairs and Forestry (DWAF), various Provincial and National Environmental Authorities and various Provincial and National Agricultural Authorities. Department or responsible authority in these guidelines refers to DWAF and the proposed future Catchment Management Agencies (CMAs).

These guidelines describe the requirements applicable to a water user for the submission of an application for the licensing of a stream flow reduction activity (SFRA). A stream flow reduction activity is "... any activity ... [that] ... is likely to reduce the availability of water in a watercourse to the Reserve, to meet international obligations, or to other water users significantly" under Section 36(2) of the National Water Act (Act No. 36 of 1998) (NWA). The Department interprets this to include the cultivation of any particular crop or other vegetation. By implication, the definition of a SFRA is limited to land-based activities.

Although only commercial plantation forestry is currently identified in the NWA as a SFRA (section 36 (1)(a)), others may be added to this list.

The need for licensing SFRAAs is based on the fact that within any one Water Management Area as defined by the NWA, SFRAAs are among several kinds of water use that must all be assessed fairly in the process of allocating and licensing water use.

2. ASSESSMENT PROCEDURE

The licensing procedures set out by the NWA form the basis for the procedure for regulating SFRAAs. The information that follows describes the procedure for assessing applications for SFRAAs. It spells out how applications will be assessed, as well as the obligations that an applicant must meet.

Decisions on land-based development in any area are strongly influenced by development strategies and plans for those areas.

Statutes determining these strategies can include, but are not limited to: the Local Government Transition Act (Act No. 61 of 1995), the Development Facilitation Act (Act No. 67 of 1995), the Environment Conservation Act (Act No. 73 of 1989), the Conservation of Agricultural Resources Act (Act No. 43 of 1983), the National Environmental Management Act (Act No. 107 of 1988) and the National Forests Act (Act No. 84 of 1998). These may vary in accordance with Provincial legislation and requirements.

Consequently, anyone proposing a change in land-use, such as that involved in a SFRA, needs to satisfy a diverse range of statutes in order to obtain permission for this activity.

For applications for SFRA's involving areas less than 10 hectares, or for activities which do not cover more than one percent of the surface area of a separately registered property, a shortened process is followed by the Department or responsible authority to assess this type of application. Licence conditions will still be imposed in accordance with relevant statutes. Permission is also required from the relevant Provincial or National Department of Agriculture, should virgin land be broken, steep land be afforested or flood plains be affected by the proposed activity (according to regulations 2, 3, 7 or 8 of the Conservation of Agricultural Resources Act). Permission is also required from the relevant Provincial Environmental Authority to undertake a change in land use.

The duration of a water-use licence will be for a maximum of 40 years (section 28(1)(e) of the NWA). In certain cases, the procedure and requirements may vary, where the duration will be determined by the nature of the crop or relevant SFRA and the case made by the applicant (section 27(1)(k) of the NWA). Licences will be reviewed every five years within the entitlement period, taking into account considerations in section 27(1) of the NWA and section 2 of the National Environmental Management Act. This review will be a fair mechanism to determine continuance with the SFRA, or to terminate a SFRA plantation regeneration, should a particular situation require so, on expiry of the licence.

Assessment Process

The administration and assessment process for a SFRA water-use license involves a number of steps, which are detailed below. The “boxed” sections generally indicate the functions carried out by national and/or provincial government organisations.

Step 1: Enquiry and Preliminary Assessments

- The prospective applicant enquires at the Regional Office of the Department or responsible authority for assistance and advice on how to proceed. The request for assistance and advice by the applicant may be conveyed by telephone, letter, facsimile, e-mail, and/ or the two parties can meet.

The Department or responsible authority will:

- conduct a preliminary hydrological assessment of the potential impact on the water resource (section 41(2) of the NWA) and on the allocation plans (section 9(e) of the NWA) or schedules (section 45 of the NWA) and advise the applicant of the way this might influence the licence.

- advise the applicant on possible provincial and national environmental constraints, including other possible statutory constraints.

The Department or responsible authority thus provides information on the potential impact on the water resources in the catchment area in which the application site arises. Any other information that might be of relevance to the application may also be provided.

If no significant statutory constraints are identified, the applicant may proceed to the next step. However, this is not a guarantee that the application will be approved.

If significant statutory constraints are identified, the applicant may still proceed to the next step, at his/her discretion.

- Should the applicant wish to proceed, the various application forms (referred to as the omnibus of SFRA application forms) are made available to the applicant from the Regional Office of the Department or responsible authority, for completion.

The applicant may withdraw the omnibus of SFRA application forms at any stage during the process, but must notify the Regional Office of the Department or responsible authority of this in writing.

Step 2: Submission of the omnibus of SFRA application forms

- The applicant may be required to pay a non-refundable processing fee (section 41 of the NWA).
- The applicant may also be required to provide security (section 30 of the NWA) to cover any obligation or potential obligation arising from a licence or for the eventuality of becoming insolvent or abandoning the stream flow reduction activity, or for any other similar reason. The amount required for security will depend on the merits of each case. The amount of security will be determined at the end of the recommendation phase (Step 5).

The following uncertainties, *inter alia*, require security:

- If the long-term sustainability of the activity cannot be guaranteed;
- If the long-term integrity of mitigation measures cannot be guaranteed;
- If the credibility of the applicant is questionable and if the applicant cannot guarantee the completion of the activity to the planting plan

specifications.

- The applicant completes the prescribed application form (no. LWU ?), consisting of Part 1 and Part 2, together with a Preliminary Environmental Questionnaire and an application form for the Provincial Environmental Authority and an application form for the Agricultural Authority included in, and making up, the omnibus of SFRA applications.
- The Preliminary Environmental Questionnaire, to be completed by the applicant, requires information relevant to criteria to be applied in considering applications, also including indicative information on environmental impacts and a comparison of alternatives. Appendices must contain these details.

The omnibus of SFRA application forms incorporates:

Part 1 of form no. LWU ? which contains the particulars of the applicant and of the property

Part 2 of form no. LWU ? which contains the information relevant for the proposed SFRA

The Environmental application form which is required for an activity listed in terms of section 21 of the Environment Conservation Act (Act No. 73 of 1989)

The Agricultural application form which is required, should virgin land be broken, steep land be afforested or flood plans be affected.

The Preliminary Environmental Questionnaire.

- The omnibus of SFRA application forms are submitted by the applicant to the Regional Office of the Department or responsible authority and must include the following:
 1. Completed application form (Part 1 and Part 2) for the Department or responsible authority.
 2. Completed application form for the Provincial/ National Environmental Authority.
 3. Completed application form for the Provincial/ National Agricultural Authority.
 4. Completed Preliminary Environmental Questionnaire for the Provincial/ National Environmental Authority.

5. Letter of consent from the registered owner, if not the applicant.
6. Copy of the property's title deeds.
7. Surveyor General Diagram.
8. Copy of either a 1:50 000 topographic map or a 1:10 000 orthophoto indicating the following:
 - Map name and number.
 - Farm boundaries, including all sub-divisions.
 - Areas already planted, not to scale.
 - Proposed SFRA, not to scale.

Step 3: Initial Assessment and Screening

Information obtained in Step 2 will be utilised for further rigorous assessments of the expected hydrological and environmental impacts.

- These assessments determine whether the applicant may proceed to the next step.

The Department or responsible authority makes use of empirical models to comprehensively determine the reduction in flows in a specific quaternary sub-catchment, or in macro or micro catchments.

In order for the Environmental Authority to screen the application to determine the need for further Scoping and Assessment, a copy of the application, together with the results of the hydrological assessment and comments by the Department or responsible authority are forwarded to them. After screening, the Environmental Authority may request a Plan of Study for Scoping, which must include:

- ◆ a brief description of the activity to be undertaken
- ◆ a description of all tasks to be performed during scoping
- ◆ a schedule setting out when such tasks are to be completed
- ◆ an indication of the stages at which the Environmental Authority will be consulted
- ◆ a description of the proposed method of identifying the environmental issues and alternatives.

- The results of the assessment and screening are communicated through the Department or responsible authority to the applicant, who is then advised on how to continue with the omnibus of SFRA applications.

Additional information may be requested at any stage during the process.

Step 4: Scoping

- The applicant (or the consultant appointed by the applicant) must publicise the proposed activity as prescribed in terms of section 41(4) of the NWA and section 26 of the Environment Conservation Act (Act No. 73 of 1989), e.g. by advertising in one local and one national newspaper or any effective alternative medium (such as local radio, notices at local gathering places, etc.).
- The applicant/consultant must inform owners of neighbouring properties of the proposed activity by registered letter. The applicant/consultant may be required by the Environmental Authority to conduct wider public participation, consultation and communication.

Written objections to the proposed activity must be submitted to the Regional Office of DWAF or the responsible authority (CMA) within the prescribed time period, who will forward these objections to the applicant/consultant and Environmental Authority, for their information.

Public participation, consultation and communication requirements also apply to cumulative (collective) applications submitted for SFRAs by heads of communities, Communal Property Associations and/ or Forestry Companies (on behalf of communities) involving areas less than 10 hectares or for activities which do not cover more than one percent of the surface area of a separately registered property.

Prior to the site visit the applicant/consultant must provide the Regional Office of the Department or responsible authority, including the relevant authorities and affected parties, with the following documentation, within a pre-determined time period:

1. Original clipped advertisements or proof of medium used.
2. Copies and proof of registered letters to neighbours with a 1:50 000 topographic or 1:10 000 orthophoto scale map identifying such neighbours.
3. A provisional planting plan, to a scale of preferably 1:50 000 (topographic) or a 1:10 000 (orthophoto), indicating:
 - Current afforestation: area and species.
 - Proposed afforestation: area and species.
 - Other existing land uses: areas and types.

- Proposed and existing infrastructure, such as roads, dams, etc., if required by the Regional Office of the Department or responsible authority.
- Other existing natural landscape features, such as vleis, rivers, etc., if required by the Regional Office of the Department or responsible authority.

4. The applicant may at this stage be requested to undertake a reconnaissance level soil survey to determine the potential of the proposed area to be afforested. In certain circumstances the applicant may be exempt from undertaking a reconnaissance level soil survey.

➤ The consultant/ Regional Office of the Department or responsible authority co-ordinates an inspection site visit with the applicant, which is attended by the Advisory Committee members or their delegated representatives and identified Interested and Affected Parties.

The Advisory Committee comprises of both government and non-governmental organisations having a legitimate and vested interest in the SFRA.

The site visit allows the relevant parties to discuss the proposed development, including the possible mitigation of potential impacts and alternative activities.

➤ If no reconnaissance level soil survey has been undertaken at this point, the applicant could be required to do so. In certain circumstances the applicant may be exempt from a reconnaissance level soil survey.

➤ Following the site visit, a draft scoping report and revised planting plan is compiled by the applicant/ consultant, also incorporating comments/ requirements from the various relevant authorities and other Interested and Affected Parties. In certain instances these requirements may be waived. This draft scoping report is submitted to the Regional Office of the Department or relevant authority.

➤ The applicant/ consultant revises the draft scoping report in the light of further comments received and submits it as a final scoping report to the Regional Office of the Department or relevant authority, firstly for approval by the Environmental Authority before distribution to each member of the Advisory Committee or for inspection by any Interested and Affected Parties.

➤ The final scoping report is distributed to the members of the Advisory Committee, and is available to Interested and Affected Parties, on request.

Step 5: The Recommendation Process

The Advisory Committee convenes to effectively and transparently assess applications, once every four to six weeks.

The Advisory Committee reviews the final scoping report (and EIA where applicable), determining whether information contained in the report is sufficient or not to make an informed recommendation to the Department or responsible authority and the Environmental Authority.

- If it is deemed necessary that the final scoping report be supplemented by an Environmental Impact Assessment, the Advisory Committee shall request the applicant to commission an impact assessment as required in terms of the Environment Conservation Act (Act No. 73 of 1989). The applicant must submit a Plan of Study for Environmental Impact Assessment to the Environmental Authority. The Environmental Authority, through and with the assistance of the Advisory Committee, will advise the applicant on the scope of the Environmental Impact Assessment to be undertaken. The Advisory Committee considers the Environmental Impact Assessment as soon as the applicant/consultant is able to have it completed. Not all applications will require Environmental Impact Assessments, but may necessitate further investigation of requirements.

The Environmental Authority may request a Plan of Study for Environmental Impact Assessment, which must include:

- ◆ a description of the environmental issues that may require further investigation and assessment
- ◆ a description of the feasible alternatives that may be further investigated
- ◆ an indication of additional information required to determine the potential impacts of the SFRA on the environment
- ◆ a description of the proposed method of identifying these impacts
- ◆ a description of the proposed method of assessing the significance of these impacts.

Step 6: The Decision and Appeal Process

The delegated officer in the Department or responsible authority reviews the recommendation made by the Advisory Committee, in light of the principles of all the appropriate legislation, and is subsequently guided whether or not to allocate a licence for the water use.

The relevant Environmental Authority reviews the application and all associated information and makes a decision, in light of the legislation and principles of integrated Environmental Management, whether or not to issue an Environmental Authorisation. If the decision is positive, an Environmental Authorisation is issued in the form of a Record of Decision. This is forwarded to the Regional Office of the Department or responsible authority, with a certified copy of the Environmental Authorisation to the applicant (for possible appeal).

The relevant Agricultural Authority reviews the application and all associated information and makes a decision, in light of Agricultural policy and legislation, whether or not to issue Directions and Consents. If the decision is positive, Agricultural Directions and Consents are issued. These are forwarded to the Regional Office of the Department or responsible authority.

The Department or responsible authority will inform the applicant on either the success or failure of the SFRA application. In either case, a full explanation of the reasons for the decision will accompany the record of decision (section 42 of the NWA) issued by the Department or relevant authority.

- The applicant/ consultant will publicise the record of decision, obtained from the Department or relevant authority, and inform all Interested and Affected Parties of the conditions regarding the proposed activity. Written confirmation of publicising and informing Invested and Affected Parties will have to be provided by the applicant/ consultant to the Department or relevant authority.
- In terms of section 148 of the NWA, an appeal may be lodged by the applicant or objector(s) with the Water Tribunal within 60 days from the date on which the record of decision was issued.
- In terms of section 35 of the Environment Conservation Act (Act No. 73 of 1989), an appeal may be lodged by the applicant or objector(s) with the relevant Environmental Authority within 30 days from the date on which the record of decision was issued.

Step 7: Issuing of a Licence

The licence is issued, if there are no appeals, subject to conditions of approval, together with the Environmental Authorisations and Agricultural Directions and Consents.

Monitoring and Evaluation

The Regional Office of the Department or responsible authority undertakes periodic inspections. If there is lack of compliance, the Regional Office of the Department or responsible authority agrees with the licensees on a rectification plan. If such a plan is not implemented, the licensee may be prosecuted or the licence withdrawn, or both.

Review of the Licence

The Advisory Committee reviews the licence and its conditions every five years. The Advisory Committee applies (but is not limited to) the criteria for water-use licensing.

Table of Expected Time Frames (given in consecutive days)

Due to the various organisations that are involved in the process, this timetable does not include time frames outside of the competency of the Department or responsible authority. Should further independent assessments and surveys be required and undertaken, time frames would be dependent upon factors beyond the control of the Department or relevant authority.

Process description	Minimum	Extended
1. Enquiry and Preliminary Assessments	1	1
2. Submission of the omnibus of SFRA application forms	1	2
3. Initial Assessment and Screening	1	20
4. Scoping: <ul style="list-style-type: none"> • Inviting public comment 	0	66
Scoping report: <ul style="list-style-type: none"> • Site-inspection • Submission of reports • Scoping report: assembly and distribution 	21 21 21	60 26 32
5. The Recommendation Process: <ul style="list-style-type: none"> • Review by the Advisory Committee • Recommendation to the Department or responsible authority 	1 5	32 15
6. The Decision and Appeal Process: <ul style="list-style-type: none"> • Record of decision • Appeal period 	10 60/30	15 80
7. Issuing of a Licence: <ul style="list-style-type: none"> • Issue of license 	5	21

Total expected time period to issue a licence	⊕ 230	⊕ 450
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Figure 1. Basic outline of phases in the administration of SFRA water-use licensing, before the establishment of CMAs.

Phases in the administration of the SFRA licence application								
Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Monitoring and Evaluation	Review of the Licence
Enquiry and Preliminary Assessments	Submission of the omnibus of SFRA application forms	Initial Assessment and Screening	Scoping	The Recommendation Process	The Decision and Appeal Process	Issuing of a Licence		
Enquiry (Applicant) Preliminary Assessments of impacts on allocatable water and on the water resource, including environmental and other statutory constraints (Regional DWAF) (Environmental Authority)	Submission of the omnibus of SFRA application forms and additional documentation (Applicant)	Further Assessment (Regional DWAF) (Environmental Authority) Plan of Study for Scoping (Environmental Authority) Additional information (Applicant)	Publicising proposed activity (Applicant) Public Participation (Applicant) Pre-site visit documentation and recce level soil survey (Applicant) Site visit (Advisory Committee representatives) Draft scoping report (Applicant) Final scoping report (Applicant)	Formulate recommendation on the application (Advisory Committee) Plan of Study for Environmental Impact Assessment (Environmental Authority)	Decision on the recommendation (DWAF) (Environmental Authority) (Agricultural Authority) Record of Decision Publicised (Applicant)	Licence is issued, if there are no appeals (DWAF) Environmental Authorisations (Environmental Authority) Agricultural Directions and Consents (Agricultural Authority)	Monitoring and Evaluation (Regional DWAF)	Review of the licence (Advisory Committee)
Receipt of omnibus of SFRA application forms (Applicant)								

Technical and administrative support from Regional Office and Head Office of DWAF

