



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

BRIEFING TO THE PORTFOLIO COMMITTEE ON THE RIPARIAN AND RELATED HISTORICAL USE OF WATER AND ITS IMPLICATIONS ON THE CURRENT ALLOCATIONS

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02 NOVEMBER 2016**

PRESENTATION OUTLINE

- Background
- Water Policy Principles underpinning the National Water Act
- Departing from Riparian Principle into the National Water Act
- Sunset Provisions of the National Water Act
- Measures to expedite the eradication of historical rights
- Verification of water use to determine historical water rights
- Compulsory Licensing

BACKGROUND

- In terms of the Water Act 54 of 1956, water users enjoyed riparian rights on water found in the streams located within or adjacent to their properties;
- The effect of this is that water users not located near the rivers were at the mercy of the residual water after uptake by the riparian users;
- The adverse result of this was that water could not be conveniently allocated or matched with the developmental needs;
- The principle conferred a permanent right and by default ownership of water by riparian users to the exclusion of other people wanting to use water ;
- Management of this water use was less stringent and did not take into account the basic environmental consideration of resource sustainability;
- Due to the lack of transformation and other inefficiencies of this system, the 1997 Water Policy spelt the departure from the 1956 Water Act.

WATER POLICY PRINCIPLES UNDERPINNING THE NATIONAL WATER ACT

Principle 2

- All water, wherever it occurs in the water cycle, is a resource common to all, the use of which shall be subject to national control. All water shall have a consistent status in law, irrespective of where it occurs.

Principle 3

- There shall be no ownership of water but only a right (for environmental and basic human needs) or an authorisation for its use. Any authorisation to use water in terms of the water law shall not be in perpetuity.

Principle 4

- The location of the water resource in relation to land shall not in itself confer preferential rights to usage. The riparian principle shall not apply.

Principle 7

- The objective of managing the quantity, quality and reliability of the Nation's water resources is to achieve optimum, long term, environmentally sustainable social and economic benefit for society from their use.

...WATER POLICY PRINCIPLES UNDERPINNING THE NATIONAL WATER ACT ...

Principle 8

- The water required to ensure that all people have access to sufficient water shall be reserved.

Principle 9

- The quantity, quality and reliability of water required to maintain the ecological functions on which humans depend shall be reserved so that the human use of water does not individually or cumulatively compromise the long term sustainability of aquatic and associated ecosystems.

Principle 10

- The water required to meet the basic human needs referred to in Principle 8 and the needs of the environment shall be identified as “The Reserve” and shall enjoy priority of use by right. The use of water for all other purposes shall be subject to authorisation.

...WATER POLICY PRINCIPLES UNDERPINNING THE NATIONAL WATER ACT...

Principle 11

- International water resources, specifically shared river systems, shall be managed in a manner that optimises the benefits for all parties in a spirit of mutual co-operation. Allocations agreed for downstream countries shall be respected.

Principle 12

- The national Government is the custodian of the Nation's water resources, as an indivisible national asset. Guided by its duty to promote the public trust, the National Government has ultimate responsibility for, and authority over, water resource management, the equitable allocation and usage of water and the transfer of water between catchments and international water matters.

Principle 14

- Water resources shall be developed, apportioned and managed in such a manner as to enable all user sectors to gain equitable access to the desired quantity, quality and reliability of water. Conservation and other measures to manage demand shall be actively promoted as a preferred option to achieve these objectives.

DEPARTING FROM THE RIPARIAN PRINCIPLE: NATIONAL WATER ACT

- **Section 3** of the National Water Act which explains the public trusteeship of our water resources confers the management of our water resources to the Minister;
- **Section 6** which provides the contents of the Water Resources Strategy which has amongst others have the requirements for reserve, cross boundary shared water obligations;
- **Section 16,17 and 18** makes provision for the determination and giving effect to the reserve which ensures that there is consideration for both the basic human needs of water and environmental considerations. Riparian rights did not make consideration for these aspects;
- **Section 43-48** which relates to compulsory licensing that is undertaken to amongst others, better management of the resource, beneficial use of water in the public interest and to achieve equity in allocation of water.

SUNSET PROVISIONS: NATIONAL WATER ACT

- **Section 32** of the national Water Act which defines and recognizes particular historical water uses as existing lawful water use;
- **Section 33** of the National Water Act which makes declaration as existing lawful use of particular water uses that previously did or did not take place;
- **Section 34** of the National Water act that grant historical water users to continue to use water as a recognized form of historical entitlement until its replacement with the water use licence;
- **Section 35** which provides for the verification of existing lawful water use which is nothing than the confirmation of the historical allocation as to whether it complies with the definition as provided for in s32 of the Act;
- **Section 25(2)** of the National Water Act although using the word entitlement instead of a right, it however entrenches the ownership of water in the sense it allows the holder of un-used water to keep the water use in the event the authorisation that the surrender is in favour of , is not approved.

MEASURES TO EXPEDITE THE ERADICATION OF HISTORICAL RIGHTS

- Policy review necessary to close gaps and deal with impediments and unintended consequences in the current water policy and legislation and to facilitate the water legislative review process.
- The 12 policy positions were approved by the Cabinet in Dec 2013

Policy positions

- Application of a “use-it or lose-it” principle with regard to water use;
 - Verification and Validation
 - Compulsory licensing
- Water trading between authorized water users;
 - Compliance and enforcement
 - Licensing: 205 licenses allocated to HDI’s, with a total volume of 42 million m3 in the last three years and 12,3 million m3 in 2016/17
 - Surrender for reallocation

MEASURES TO EXPEDITE THE ERADICATION OF HISTORICAL RIGHTS

- Prioritising social and economic equity in the re-allocation of water;
 - Prioritize applications that address past racial and gender imbalances 12 million m3 (15-16)
 - 1348 resource poor farmers were supported during 2016
 - General Authorizations issued where water is readily available
 - Water set aside –water is ringfenced for equity and productive use e.g.
 - Western Cape water Supply System ,10 million m3 were set asides of which all allocated to HDI
 - Lower Orange 4000 ha set aside, 3527 ha taken by HDI's
 - Thukela 2000 ha set aside, 200 ha taken by HDI's
 - Mvoti Umzimkulu 726 ha and 500 ha been taken by HDI's
 - Reviewing of pricing strategy to subsidize HDI's
- Multiple water use approach in planning infrastructure;
 - Multi purpose infrastructure refers to infrastructure that provides water to all water users, agriculture, domestic, industrial,
 - De Hoop, Berg River Dam, Mooi Mgeni
 - Development of the master water sector plan to ensure plans are integrated
 - More water made available from re-use of effluent
 - Re-use of acid mine drainage (SWPN)



VERIFICATION OF WATER USE AS AN INSTRUMENT TO ELIMINATE HISTORICAL WATER USE ENTITLEMENTS

WHAT IS VALIDATION AND VERIFICATION OF WATER USE

VALIDATION: IS A PROCESS TO CONFIRM THE EXTENT OF WATER USE THAT TOOK PLACE DURING THE QUALIFYING PERIOD

VERIFICATION: DETERMINES LAWFUL USE BASED ON THE LAWS THAT WERE IN FORCE PRIOR TO PROMULGATION OF THE NWA 1998.

EXISTING LAWFUL USE (S32 OF NWA)

EXISTING

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LAWFUL

That has taken place any
time during 2 years
before commencement
of the Act
("qualifying period")

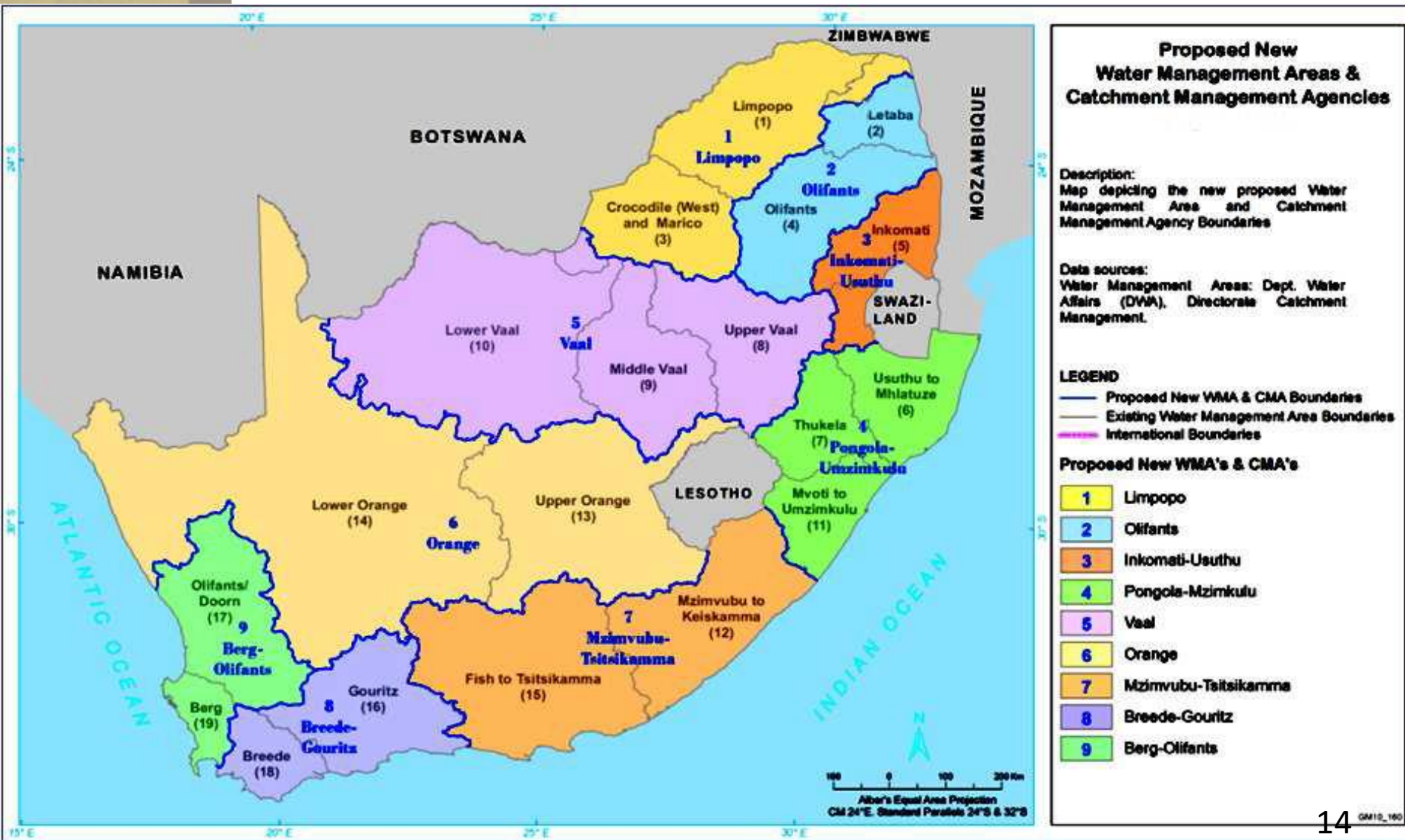
Authorized under any law
in place before date of the
commencement of the Act

"took place lawfully"

Surface water
1 Oct.1997 to 30
Sept. 1999

Groundwater
1 Oct. 1996 to
30 Sept. 1998

WATER MANAGEMENT AREAS COVERED BY V&V



IMPORTANT FACTORS ABOUT VERIFICATION OF WATER USE

- Validation and Verification of water use is meant to determine the current lawful status quo of water use;
- Validation and Verification confirm both the existing lawful use (use in the qualifying period) and the current use. The difference between the existing lawful use and current use is critical since it influences the water reallocation to HDI

VALIDATION AND VERIFICATION PLAN OF ACTION

2016/17 -2017/18

CATCHMENT/WMA	2016/17	2017/18
BERG-OLIFANTS	COMPLETE VALIDATION	COMPLETE VERIFICATION
MZIMVUBU- TSITSIKAMMA	COMPLETE VALIDATION	COMPLETE VERIFICATION
PONGOLA- MZIMKULU	COMPLETE VALIDATION	COMPLETE VERIFICATION
INKOMATI - USUTHU	COMPLETE VERIFICATION INKOMATI AND INITIATE USUTHU	COMPLETE VERIFICATION USUTHU
ORANGE	INITIATE VALIDATION	COMPLETE VALIDATION
VAAL	INITIATE VALIDATION	COMPLETE VALIDATION
LIMPOPO	INITIATE VALIDATION	COMPLETE VALIDATION

IMPACT OF VALIDATION AND VERIFICATION PROCESS

- Promote balance between supply vs demand
- The amount of water made available as a result of V&V could be used to meet the Reserve and possibly allocate to HDIs (depending on the amount of water made available)
- Provide certainty to existing lawful users across the country
- Provide basis for planning, compulsory licensing and water allocation
- Update WARMS database
- Efficient revenue management

UNDER REGISTERED WATER USE IDENTIFIED

The table below depicts a total of **102, 895,159.6** volumes in cubic meters that has been added to the registered amount of water from water users who under declared their volume and/or late registrations as at 28/09/2016.

In the Berg- Olifants and Olifants WMA V and V has just commenced, as a result the information is not readily available

TABLE 1: VOLUME OF WATER RECOVERED

WMA	TOTAL VOLUME IN CUBIC METERS
BERG-OLIFANTS	-
BREEDE-GOURITZ	13, 975, 448
INKOMATI-USUTHU	1,040, 804
LIMPOPO	23, 691,178
MZIMVUBU-TSITSIKAMMA	4 ,315,852
OLIFANTS	-
ORANGE	51, 013, 354.5
PONGOLA-UMZIMKULU	2, 228, 451
VAAL	6, 630, 072.67
Grand Total	102, 895,159.6

UNLAWFUL WATER USE IDENTIFIED

The table below depicts a total of 89,085,886.48 registered volume in cubic meters from closed registers due to verification in WARMS. The registers do not qualify as an existing lawful water use

TABLE 2: CLOSED WATER USES DUE TO VERIFICATION

WMA	REGISTERED VOLUME
BREDE-GOURITZ	80
LIMPOPO	9,643,568
MZIMVUBU-TSITSIKAMMA	3,143,490
OLIFANTS	1,648,073
ORANGE	4,808,244
PONGOLA-UMZIMKULU	120,000
VAAL	25,179,488.24
TOTAL	89,085,886.48

VERIFIED VOLUME OF WATER IN EACH USE

WMA	TABLE 3: WATER USE PER USE		
	AGRICULTURE: AQUACULTURE	AGRICULTURE: IRRIGATION	AGRICULTURE: WATERING LIVESTOCK
BERG-OLIFANTS		2 437 296	
BREDE-GOURITZ		28 611 035	37009
INKOMATI-USUTHU	21588	10 788 182	19892.5
LIMPOPO	228195	393 817 540	1180647
MZIMVUBU- TSITSIKAMMA	3285	21 061 759	212090
OLIFANTS		144 798 887	
ORANGE		232 587 090.3	44288
PONGOLA- UMZIMKULU		13 943 473	37580
VAAL		282 381 262.8	301689
GRAND TOTAL	253068	1,130,426,525	1833195.5

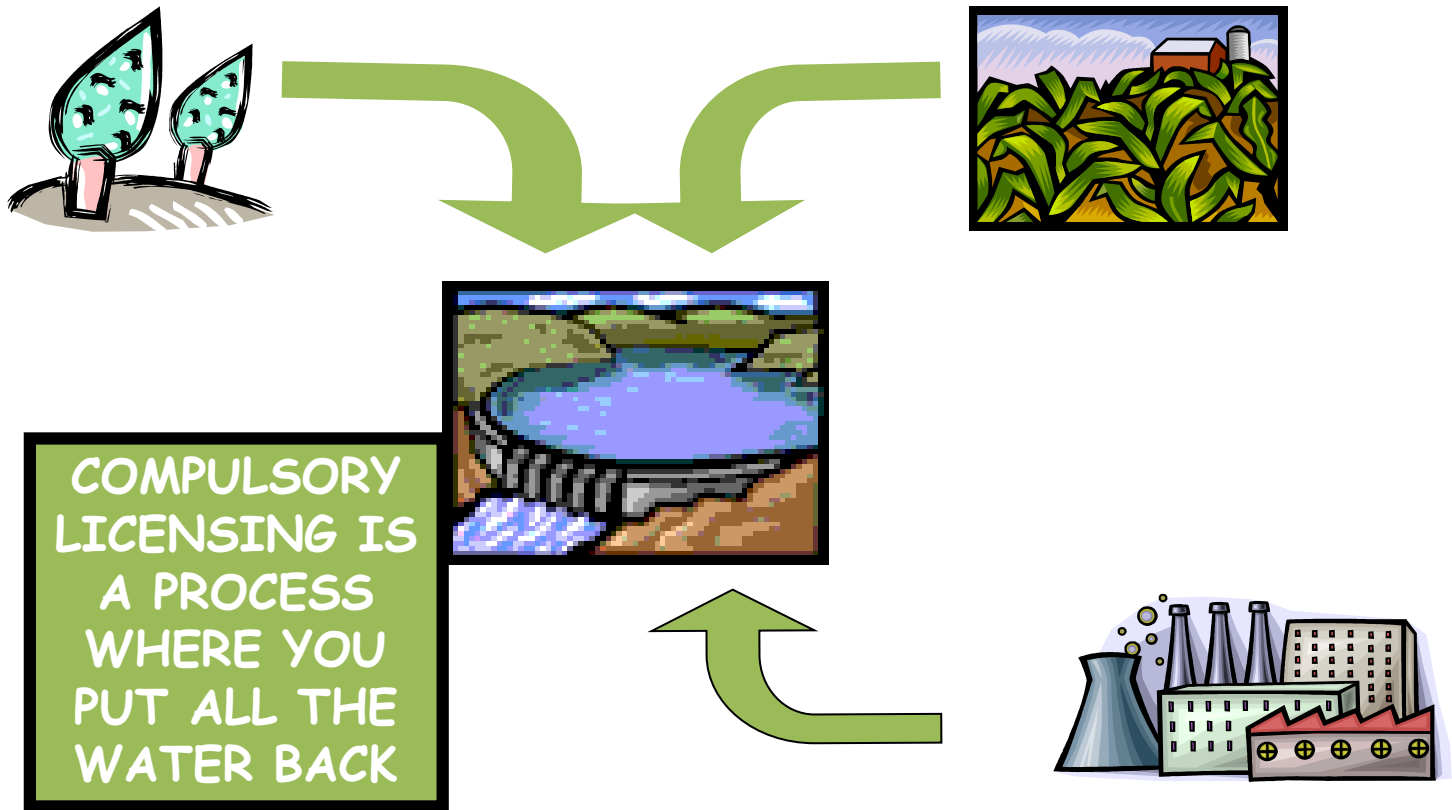


COMPULSORY LICENSING (CL)

WHAT IS COMPUSORY LICENSING?

- It is a process that allows the Department to review how water is allocated and used in a catchment and to reallocate water if necessary to achieve certain objectives
- Once all the properties under verification have been finalised, they will be subjected to compulsory licensing
- Compulsory licensing on these properties will be conducted in 2018/2019 performance year

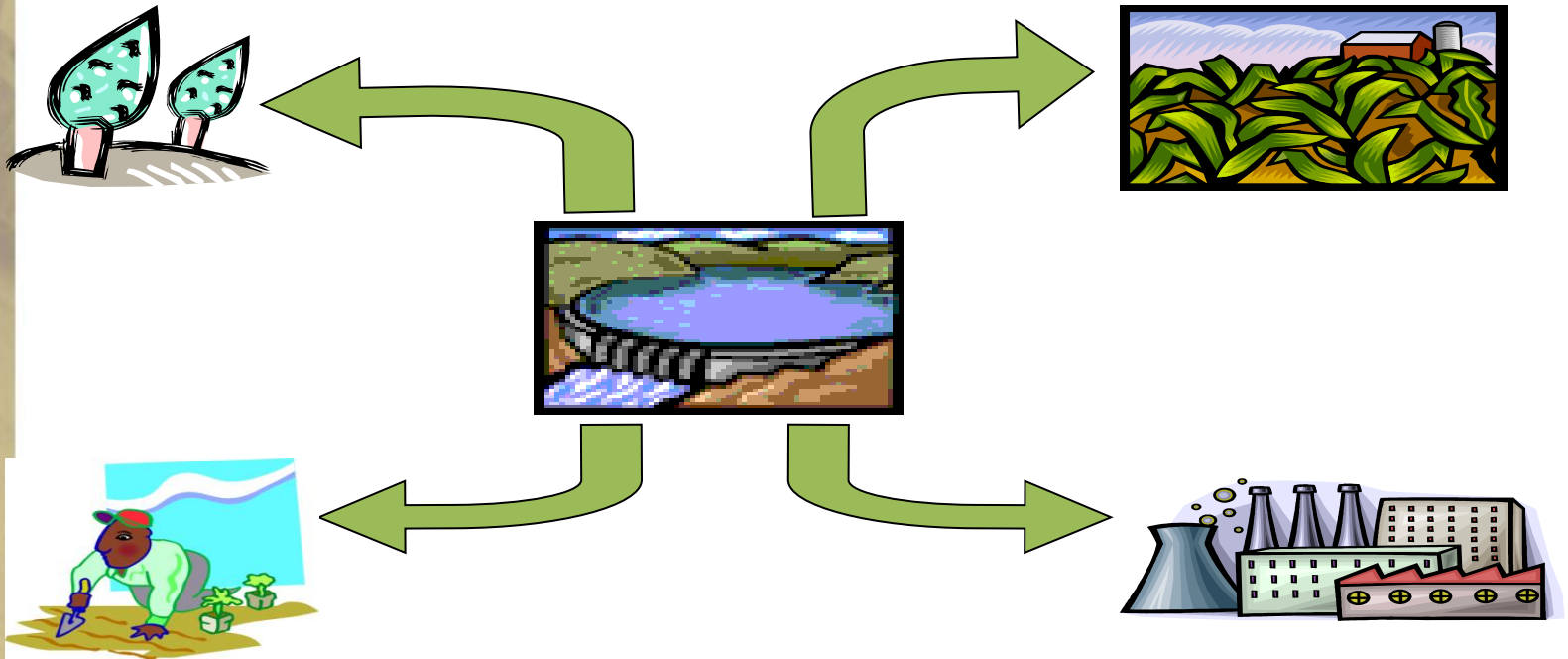
...WHAT IS COMPULSORY LICENSING?...



...WHAT IS COMPULSORY LICENSING?

Set aside some for the Reserve, Strategic and International requirements and

Then divide the rest more fairly in the best interests of all South Africans (locally, regionally & nationally)

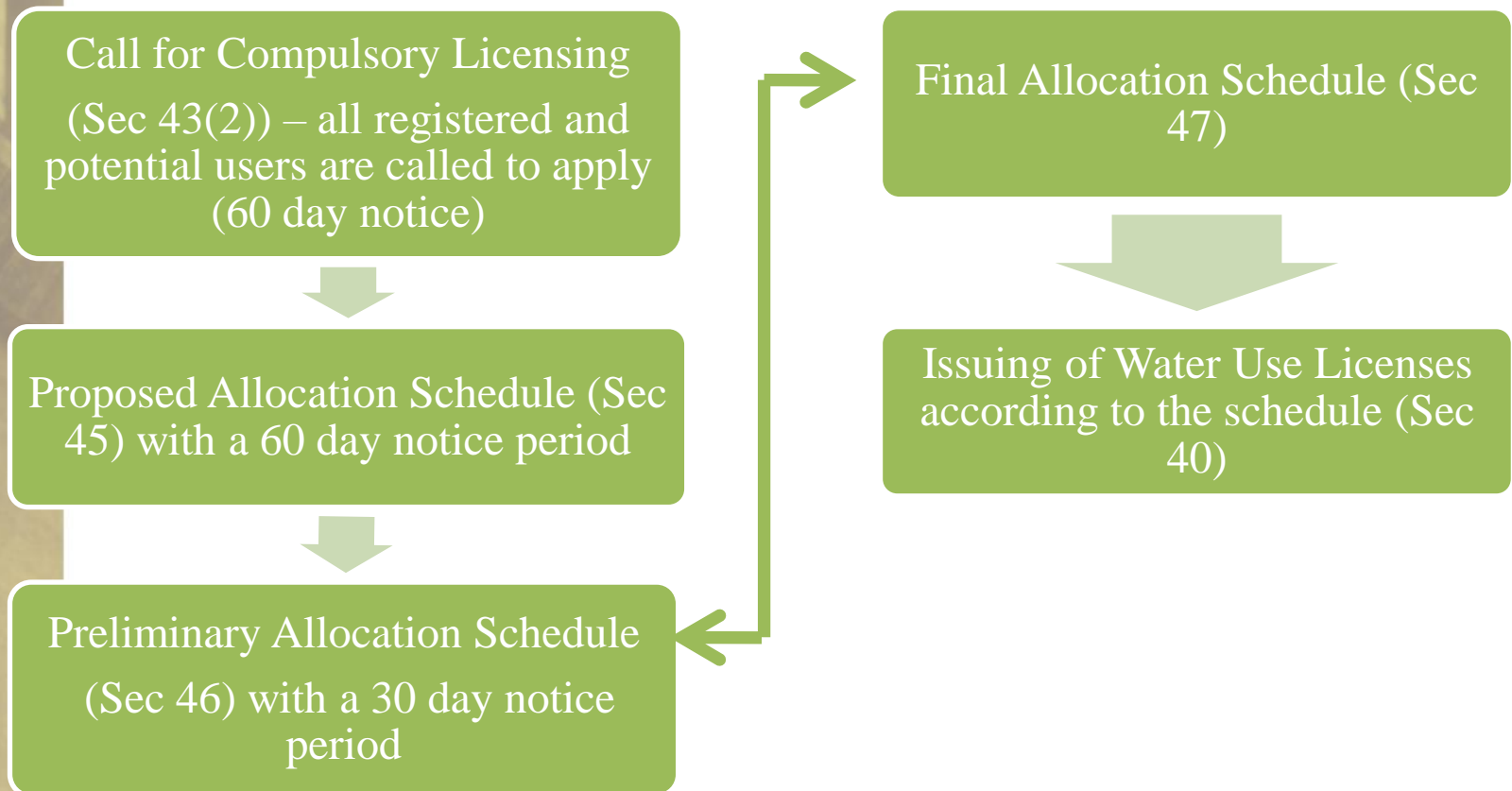


WHY DO WE CONDUCT COMPULSORY LICENSING?

- To achieve fair allocations in stressed catchments
- To review current water use to achieve equity
- To promote the beneficial use of water
- To facilitate management and protect quality
- To level the playing fields (equity for all)
- Align water allocations with other planning and socio-economic development processes
- Gives security to all users

HOW DO WE CONDUCT COMPULSORY LICENSING...

Legislative Provisions



Summary of Tosca Allocation

WATER USE SECTOR	HDI	NON HDI	TOTAL (WATER)	% HDI PER SECTOR
	Cubic Metres	Cubic Metres	Cubic Metres	
IRRIGATION	2 616 581	6 983 827	9 600 408	28%
MUNICIPAL	340 870	N/A	340 870	100%

Summary of Jan Dissel Allocation

WATER USE SECTOR	HDI	NON HDI	TOTAL (WATER)	% HDI PER SECTOR
	Cubic Metres	Cubic Metres	Cubic Metres	
IRRIGATION	2 422 238	1 763 185	4 185 422	58%
MUNICIPAL AND INDUSTRIAL	373 565	71 155	444 720	84%
STORAGE	590 590	608 850	1 199 440	49%

Summary of Mhlathuze

WATER USE SECTOR	HDI	NON HDI	TOTAL (WATER)	% HDI PER SECTOR
	Cubic Metres	Cubic Metres	Cubic Metres	
IRRIGATION	29 433 843	73 609 635	103 043 478	29%
FORESTRY	34052	19448	53500	63%

Legislative review roadmap

Activity	Date
Cabinet Memo to DG and Minister	Quarter 3 of 2016
Presentations to Clusters	Quarter 3 of 2016
Minister presents Bill for gazetting for public comment	Quarter 4 of 2016
Public consultation 90 days	Quarter 1 of 2017
Certification by State Law Advisors	Quarter 2 of 2017
Ministers presents to Cabinet to submit to Parliament	Quarter 3 of 2017
Submission of Bill to Parliament	Quarter 3 of 2017

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THANK YOU