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Water allocation for productive use: policy and implementation – A case study in the Breede-Gouritz Water Management Area

South Africa's National Water Act, Act 36 of 1998 (NWA) is lauded internationally as one of the most robust and comprehensive instances of water legislation. Redress for past injustices is an overarching objective, and the NWA provides that water allocations are to be granted at the discretion of the relevant authorities, taking into account, inter alia, the need to transform and redress the results of past racial and gender discrimination. The major focus of the National Water Resource Strategy 2 (NWRS-2) is equitable and sustainable access and use of water by all South Africans, whilst sustaining the water resource and ensuring that water is made available to previously disadvantaged groups. However, practical implementation of South Africa's water legislation has proven difficult. A Water Research Commission (WRC) study explored the case of black emerging farmers in the Breede-Gouritz Catchment Management Agency in the Western Cape, by identifying and analysing the legal and institutional difficulties experienced by black emerging farmers in accessing water use for productive purposes. This research was of significant benefit to the CMA in that it generated data which supported the CMA in reviewing its water allocation strategy; and could contribute to the national and local debate on the reform of water governance to ensure equitable water allocation.

Introduction

It has been argued that there has been, and continues to be, greater inequality in access to water than to land in South Africa. The inequalities of apartheid were and continue to be starkly reflected in the management of water, in relation to both racially skewed access to basic water and sanitation services, and access to water for economic activities.

As a result, the overhaul of water policy and legislation by the first democratic administration placed great emphasis on equity and redress. The resulting 1998 National Water Act placed ownership of water in the hands of the people, held in trust by the state. It put principles and mechanisms in place for re-allocating water to rectify the effects of past racial and gender discrimination.

A system of water use licencing was introduced for regulating the use of water. The management of water resources was decentralised to Catchment Management Agencies in order to improve participation, transparency and accountability.

However, over 20 years' experience in implementing the National Water Act is exposing some serious difficulties in giving effect to its transformation-related aspects. Water allocation reform targets for historically disadvantaged individuals were set in the 2008 Water Allocation Reform strategy, but are not close to being met.

One of the causes put forward to explain the slow pace of transformation, especially as measured through re-allocation of water for productive use (such as irrigation), focuses on the extent to which the complex legislative framework and its attendant bureaucracy is failing new entrants into the system. This research project therefore set out to explore the role of the bureaucracy and law in enabling or impeding transformation objectives, with a focus on the experiences of black emerging farmers within the jurisdiction of the Breede-Gouritz Catchment Management Agency (BGCA) in the Western Cape.

Approach and results

The research was undertaken by means of a case study in the Breede-Gouritz Water Management Area and entailed

a combination of methods including in-depth interviews, observations and document analysis. Interviews were conducted with black emerging farmers, officials within the BGCMA and Department of Water and Sanitation (DWS), and various independent experts.

Results indicated that the black emerging farmers were frequently frustrated by a lack of information and support from the regulators on requirements for water use authorisation. They found the process confusing and the bureaucracy difficult to access and non-responsive. This contrasts with the experience of established commercial farmers, who are able to rely on support from institutions such as Water User Associations or pay for the services of skilled consultants to mediate on their behalf, and as a result experienced fewer challenges. The result is a distrust in DWS by many of the black emerging farmers to successfully drive a transformation agenda.

Officials voiced their frustration with the lack of guidance and uncertainty pertaining to the interpretation and application of the legislation and policy. Heavy workloads, lack of institutional memory and absence of dedicated specialists were strong driving forces affecting officials' ability to be more responsive to users' needs.

Independent experts pointed to a lack of quality leadership and understanding of the principles and the intent of the water legislation, which contributed to the continued uncertainty and failure to implement legislation and policy. Institutions such as CMAs were not established as planned, and Irrigation Boards dating back to the previous dispensation are perceived to continue to operate unfettered. These collectively contribute to the water use process, and hence transformation, being frustrated.

Contributing factors identified as impeding transformation included weak alignment and coordination within water sector institutions and across sectors; delays in the establishment of and delegation of functions to CMAs; backlogs in processing of water use licence applications by DWS; constant amendment of plans and strategies; and lack of leadership and understanding of the intent of water legislation.

Many emerging farmers first got to know about requirements for water use authorisation through a department other than DWS, often when asked for proof of authorisation to use water when they applied to access funding via the departments responsible for agriculture or land reform. This confirms the observation of the second National Water Resource Strategy that the significant

challenges that have hampered the progressive realisation of equity goals include "weak internal coordination and integration and poor external alignment with other reform programmes".

Despite government openly acknowledging that coordination, integration and alignment with other reform programmes is crucial to the equitable allocation and re-allocation of water, this research project and others have shown that this has been difficult to achieve in practice.

Implications and Recommendations

The research points to gaps and challenges experienced by users and officials alike as they navigate the water use system to access or retain water use. The study highlights that the policy intent of a more equitable sharing of water is often not being translated into reality at ground level within the current institutional landscape.

A compounding factor is the lack of sufficient integration between processes for water reform and land reform. Unless these are addressed, the targets set in the Water Reform Strategy for re-allocation of water will continue to be missed. The findings of this research study will be of particular relevance to the BGCMA, given its legislative mandate for stakeholder engagement and supportive role in water use licencing, as well as DWS.

They will also be a valuable input into future conversations around accelerating transformation of local water management institutions and re-allocation of water, and the pending revision of the National Water Act. In order to address the observed gaps and challenges, the study recommends that:

- DWS and CMAs invest the necessary training and support to empower officials to fulfil their transformation-related mandate consistently and competently;
- DWS and CMAs invest in demystifying water use licencing, including dissemination of information to potential water users, with particular emphasis on new entrants into the water use regulatory system;
- DWS and CMAs improve the user-friendliness of the water use authorisation system in order to facilitate the passage of new entrants through the system, including making the relevant institutions and officials more accessible and responsive to water users;
- Improve coordination between departments, officials and processes responsible for land, agrarian and water reform; and

- Accelerate the establishment of the remaining CMAs and transformation of local water resource management institutions in order to stabilise institutional arrangements for decentralised water resource management.

Conclusion

The study concludes that that water governance should receive urgent attention, as water institutions and users alike struggle with the challenges and consequences of incomplete implementation of the legislative and policy framework. The consequences for equity and redress of not

doing so are particularly severe. Previously disadvantaged farmers are still struggling to access water whilst commercial farmers continue to enjoy vastly greater access to water for productive use, and the economic benefits derived from this use. It is crucial that these aspects be given particular attention in order to bring about the progressive realisation of the spirit and intent of the Constitution and the National Water Act.

Further reading:

To order the report, *Water allocation for productive use: policy and implementation. A case study of black emerging farmers in the Breede-Gouritz Water Management Area, Western Cape, South Africa (2530/1/18)*, contact Publications at Tel: (012) 761-9300, Email: orders@wrc.org.za or Visit: www.wrc.org.za to download a free copy.