



Submission to the Minister of Water Affairs and Forestry

WATER RESOURCE MANAGEMENT ISSUES THAT NEED TO BE ADDRESSED

Introduction

This submission is premised on the understanding that the effective and sustainable management of water resources and all those services that draw upon water, is of critical importance to sustainable development and the overall well being of our society as a whole. Further, within SALGA we recognise that poor management of our country's water resource will result in major constraints for socio-economic development and consequently constraints on our efforts to deliver services and reduce poverty. We are therefore committed to finding solutions that will result in both sustainable water resource management and the delivery of sustainable water services.

Purpose of this submission

The purpose of this submission is to outline SALGA's concerns in terms of how water resource management, a function of national government, impacts on the ability of municipalities to effectively perform their water services constitutional obligations.

Problem Statement

In terms of the Constitution, municipalities have executive authority for water services. This means that they have a universal service obligation to ensure the

provision of water services to all persons within their areas of jurisdiction. Clearly municipalities can only meet this universal service obligation if they have access to sufficient water resources to meet basic needs and to improve service levels over time (which is referred to as “stepping up the ladder” in the Strategic Framework for Water Services as adopted by Cabinet in September 2003). However, despite this obligation, municipalities have *no authority* over the management, development or allocation of water resources. Water resource management, and specifically the allocation of water resources is a national government function and is performed by the Department of Water Affairs and Forestry in terms of the National Water Act No. 36 of 1998.

Before raising our specific concerns, I think it is useful to briefly remind ourselves of the overall objectives of local government as enshrined in the Constitution, as well as highlight some of the clauses in the Constitution that provide a framework for consensus and co-operative governance between the different spheres of government. These extracts from the Constitution support our position that there should be greater *consensus* between the Department of Water Affairs and Forestry and SALGA on matters that impact on local government.

Local government and the Constitution (No. 108 of 1996)

Section 152 of the Constitution states that the objects of local government are:

- To provide democratic and accountable government for local communities;
- To promote social and economic development;
- To ensure provision of services to communities in a sustainable manner;
- To promote a safe and healthy environment; and
- To encourage the involvement of communities and community organizations in the matters of local government.

The Constitution also places specific obligations on local government to give priority to the basic needs of the community and to participate in the national and provincial development programmes, when undertaking its developmental duties. These obligations require co-operative governance between local government as a sphere of government with other spheres of government. The notion of co-operative government and respect for the constitutional status and powers and functions of local government is also addressed in the Constitution in section 41. Of particular significance (in terms of our issue concerning water resource management) is section 151, which states “*The national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.*” The Constitution goes further in section 154 to state “The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.”

It is within the spirit of the Constitution and specifically the points highlighted above that we raise the following issues in relation to water resource management that we would like to take forward with your Department.

Setting the Reserve

Whilst the National Water Act ensures that water for basic human needs (and for ecological purposes) is 'reserved' before water is allocated for other uses, the manner in which the Reserve is set does not allow for sufficient consensus between the Department of Water Affairs and Forestry and local government. The Reserve is critical to meeting the water needs of municipalities' constituencies, yet the only obligation on the Minister when setting the Reserve is a *general* consultation process. Local government has no influence over *how* water required to meet basic human needs will be guaranteed as a right.

A further problem related to the Reserve is the length of time it is taking the Department of Water Affairs and Forestry to complete the Reserve determinations. In the meantime, licenses to discharge effluent are being delayed. As a consequence, developers (including municipalities) are not being issued with authorisations to commence projects, which has an economic impact in terms of job creation and continued pollution of the environment from informal housing developments.

Establishment of 19 Catchment Management Agencies

We are not convinced of the need to establish a catchment management agency (CMA) for each of the catchment management areas. The cost of establishing and managing 19 separate institutions is clearly very high and we are concerned as to how these costs will be covered in the longer term. We note that R500 million has been earmarked for the establishment of 5 CMAs, however, is there any 5 year forecast on these budget line items or on the cost of providing support to these institutions? Is the establishment of 19 institutions (bearing in mind the associated institutional costs) the best strategy for achieving the sustainable and equitable protection, use, development, conservation, management and control of our water resources? Has the Department of Water Affairs and Forestry considered alternative options such as rationalising the number of CMAs to be established? Will the necessary human resources to adequately staff the CMAs be available, and at what cost?

The establishment of any institution always coincides with a spike in operational expenditure. What will the impact of this operational expenditure be on local government, being one of the major water users across the country?

We would like know the financial implications of the roll out of establishing all 19 CMAs, both for the national fiscus and for local government. We would also like to understand what alternatives were considered and why these alternatives were not deemed appropriate or feasible, particularly given capacity and resource constraints within the water sector.

Municipal Representation on CMAs

It is recognised that participation by all stakeholders is essential for successful water resource management and thus water resource management institutions and associated processes need to be structured and designed to facilitate participation of the different types of stakeholders. In addition, to facilitate participation of water users, water resource management needs to be decentralised to the lowest most appropriate level. In our context CMAs are the institutional structure designated to facilitate local level management of water resources.

The need for municipal representation on the boards of CMAs is recognised in the Act, however the Act does not specify the extent to which municipalities should be represented. Rather the Act states “the Minister must, from time to time, determine the extent to which relevant local governments should be represented on the governing board of each catchment management agency”. Further there is insufficient guidance provided to Advisory Committees that make recommendations in terms representation (in terms of institutions and interests to be represented) on the boards of CMAs.

While it is recognised that the Governing Board of a CMAs should reflect all the stakeholders within a water management area, the Advisory Committee making recommendations to the Minister needs to take into account that the *various roles of local government* so that these different roles can be represented on the Governing Board. These different roles played by local government *cannot be represented in one seat*. There are three primary roles that local government represents all of which must be represented on the Governing Board of CMAs. Firstly, local government acts as the democratically elected institution for its area. This means that within a water management area, the various municipalities are the official representatives of a number of stakeholders and ordinary individuals who may be affected by the CMA process. Secondly, municipalities that are water services authorities have a duty to ensure access to water services. This means that they must operationalise the basic human right of access to water. In order to fulfil this constitutional duty, municipalities must be represented on the boards of CMAs in their capacity as water services authorities. Thirdly, local government is a water user where it extracts water and discharges wastewater as part of its water services function. This function has implications in the management of the resource by the CMA, therefore local government representation is critical. The fourth role of local government is that of agencies for local integrated development planning. Through the Municipal Systems Act, municipalities are responsible for integrated development planning within their areas of jurisdictions. Integrated planning encompasses other activities that may have an impact on the water resources, e.g. spatial development. This role of local government should be recognised on the board of the CMA.

Local government therefore fulfils a number of roles, namely as a representative of stakeholders within their areas of jurisdiction, as authorities for water services, as water services providers and as agents for local integrated development planning. Each of these diverse roles are critical to developmental local

government and to the provision of sustainable water services and thus the adequate and full representation of local government on the boards of CMAs is vital. Given that the issue of local government representation on CMA governing boards is *currently unclear*, as well as the issue of whose interests local government should represent, this matter must also receive *urgent* attention.

Raw Water Pricing Strategy and Tariff Increases

Whilst the Raw Water Pricing Strategy is based upon very important objectives (namely social equity, ecological sustainability, financial sustainability, and economic efficiency) the financial impact of the new charges within the strategy remains unknown. Municipalities are also not aware what the intention of the Department is in terms of the timeframe to implement each of these charges and when the Department plans to achieve full recovery of water resource management costs.

Many Municipalities are currently facing financial difficulties as a result of a number of factors: improved free basic service delivery (through addressing backlogs in previously disadvantaged areas); poor credit control and increasing bad debt provisions; rising operational costs; and a general lack of capacity. Any increases in costs, will have to be passed onto the consumers in the case of higher levels of service or subsidized from equitable share in the case of basic services. This raises a number of concerns. Equitable share is already under pressure and is estimated to be insufficient to cover projected increases in operating costs as a result of rolling out basic infrastructure – further demands on equitable share are not feasible. Increasing tariffs is likely to increase bad debts due to the general lack of affordability.

Local government cannot currently absorb price increases without severely weakening their current financial position. Increases in costs as a result of the new water pricing strategy should be phased in over a number of years to avoid any tariff spikes to the end consumers.

The issues outlined above illustrate the need for a co-operative arrangement between the Department of Water Affairs and Forestry and SALGA in terms of the Raw Water Pricing Strategy. Yet, the Department's authority in respect of tariff increases, is unfettered and it has little or no obligation to consider the affordability, sustainability, viability, quality, quantity, planning and continuity of supply at municipal level. (The provisions of the Local Government: Municipal Finance Management Act No. 56 of 2003, to a certain extent, tempered the discretion in respect of tariffs by requiring the Department to consult SALGA and the National Treasury on tariff increases and to table these increases in Parliament.

Although SALGA recognises that in order to achieve financial sustainability and economic efficiency in water use, the true cost of water resource management needs to be determined and recovered (and enforced through regulation) this strategy can only be effective if local government is properly consulted about the costs and consensus is reached about the charges.

Recommendations

In accordance with the principles of co-operative governance entrenched in the Constitution and towards addressing the concerns outlined above we propose the following:

- that legislation governing water resources and the National Water Resource Management Strategy be reviewed so that they give effect to the *executive authority* of municipalities in terms of water services, and give effect to the status of municipalities in terms of being a *sphere of government* and not simply another water resource user;
- that the Department of Water Affairs and Forestry ensures that it exercises its water resource management functions in a manner that does not encroach on the functional or institutional integrity of municipalities;
- that the Department of Water Affairs and Forestry undertakes to report on the sustainability of the establishment of 19 CMAs and the long term financial impact on local government;
- that the Department of Water Affairs and Forestry provide mechanisms whereby support for meeting water resource imperatives and participation in resource management may be enhanced;
- that legislation provides for municipalities to appoint their own representative on the boards of CMAs in addition to board members to be appointed by the Minister of Water Affairs and Forestry;
- that all activities, including the promulgation of regulations, that may impact on the financial viability and sustainability of municipalities must be agreed to with SALGA and must address financial support to be made available;
- that catchment management strategies must support the objectives of municipalities' integrated development plans and water services development plans (WSDPs);
- that national government's conduct should take into account the interests of municipalities and towards this end it must consult and reach agreement with SALGA on critical matters to be identified. An intergovernmental forum as proposed in the draft legislation on Intergovernmental Relations should be established for this purpose.