

## APPENDIX 2.1 FUNDAMENTAL PRINCIPLES AND OBJECTIVES FOR A NEW WATER LAW IN SOUTH AFRICA

(Source: Appendix 1, White Paper on a National Water Policy for South Africa, 1997. The Introduction by Professor Kader Asmal, MP, Minister of Water Affairs and Forestry, has been omitted)

### Legal Aspects of Water

#### **Principle 1**

The water law shall be subject to and consistent with the Constitution in all matters including the determination of the public interest and the rights and obligations of all parties, public and private, with regards to water. While taking cognisance of existing uses, the water law will actively promote the values enshrined in the Bill of Rights.

#### **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.  
The Water Cycle

#### **Principle 5**

In a relatively arid country such as South Africa, it is necessary to recognise the unity of the water cycle and the interdependence of its elements, where evaporation, clouds and rainfall are linked to groundwater, rivers, lakes, wetlands and the sea, and where the basic hydrological unit is the catchment.

#### **Principle 6**

The variable, uneven and unpredictable distribution of water in the water cycle should be acknowledged.  
Water Resource Management Priorities

#### **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.

#### **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.

#### **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.

### Water Resource Management Approaches

#### **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 13**

As custodian of the Nation's water resources, the National Government shall ensure that the development, apportionment, management and use of those resources is carried out using the criteria of public interest, sustainability, equity and efficiency of use in a manner which reflects its public trust obligations and the value of water to society while ensuring that basic domestic needs, the requirements of the environment and international obligations are met.

**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.

**Principle 15**

Water quality and quantity are interdependent and shall be managed in an integrated manner, which is consistent with broader environmental management approaches.

**Principle 16**

Water quality management options shall include the use of economic incentives and penalties to reduce pollution; and the possibility of irretrievable environmental degradation as a result of pollution shall be prevented.

**Principle 17**

Water resource development and supply activities shall be managed in a manner which is consistent with the broader national approaches to environmental management.

**Principle 18**

Since many land uses have a significant impact upon the water cycle, the regulation of land use shall, where appropriate, be used as an instrument to manage water resources within the broader integrated framework of land use management.

**Principle 19**

Any authorisation to use water shall be given in a timely fashion and in a manner which is clear, secure and predictable in respect of the assurance of availability, extent and duration of use. The purpose for which the water may be used shall not arbitrarily be restricted.

**Principle 20**

The conditions upon which authorisation is granted to use water shall take into consideration the investment made by the user in developing infrastructure to be able to use the water.

**Principle 21**

The development and management of water resources shall be carried out in a manner which limits to an acceptable minimum the danger to life and property due to natural or manmade disasters.

## Water Institutions

**Principle 22**

The institutional framework for water management shall as far as possible be simple, pragmatic and understandable. It shall be self-driven and minimise the necessity for State intervention. Administrative decisions shall be subject to appeal.

**Principle 23**

Responsibility for the development, apportionment and management of available water resources shall, where possible and appropriate, be delegated to a catchment or regional level in such a manner as to enable interested parties to participate.

**Principle 24**

Beneficiaries of the water management system shall contribute to the cost of its establishment and maintenance on an equitable basis.

## Water Services

**Principle 25**

The right of all citizens to have access to basic water services (the provision of potable water supply and the removal and disposal of human excreta and waste water) necessary to afford them a healthy environment on an equitable and economically and environmentally sustainable basis shall be supported.

**Principle 26**

Water services shall be regulated in a manner which is consistent with and supportive of the aims and approaches of the broader local government framework.

**Principle 27**

While the provision of water services is an activity distinct from the development and management of water resources, water services shall be provided in a manner consistent with the goals of water resource management.

**Principle 28**

Where water services are provided in a monopoly situation, the interests of the individual consumer and the wider public must be protected and the broad goals of public policy promoted.