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COMPULSORY LICENSING CASE STUDIES: First Lessons

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STRUCTURE

1. Objectives
2. Background and Context
3. Approaches to Compulsory Licensing
    i. Early Approaches
    ii. Revised Approach
    iii. Comparison
4. Case Study Situation Assessment
5. Lessons
6. Conclusions & Recommendations
7. Acknowledgements

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1. OBJECTIVES

	INTENDED	NOT INTENDED
	Critical examination of what has happened to date	Finger pointing Blame apportioning Criticising
	Analyse lessons learnt	Negative prognosis or forecast based on progress-to-date
	Propose key recommendations	Recommending scrapping the process

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2. BACKGROUND AND CONTEXT

The National Water Act (NWA)

water affairs
Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

- National Water Act (No.36 of 1998)(NWA) – **now *more than 14 years*** since its promulgation.
- Was lauded internationally for being ***"state of the art"*** legislation in its time.
- ***Slow implementation*** of key interventions. E.g. Compulsory Licencing

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2. BACKGROUND AND CONTEXT continued

Compulsory Licensing (NWA s43-48)

- A ***uniquely South African*** process
- Epitomizes the ***implementation of IWRM and the NWA***
- ***Intervention mechanism*** in order to achieve four (4) objectives:
  - *fair water allocations for equity & address stressed systems*
  - *promote the beneficial use of water in the public interest*
  - *facilitate the efficient management of water*
  - *protect resource quality*

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2. BACKGROUND AND CONTEXT continued

Compulsory Licensing (NWA s43-48)

- ***"bulk licensing of water use"***
- ***Proactive and reactive water resources management tool***
- Compulsory Licensing – a ***panacea*** for all water management problems?

It probably is!!!

But …why use a sledgehammer when a claw-hammer will do ???

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2. BACKGROUND AND CONTEXT continued

Implementation Context

- Premise - ***licence is the basic unit for all water allocations.***

  How these are issued has a significant bearing on achieving the objectives mentioned above.

- Key conflict of interest - ***allocating and managing water resources among existing competing users and potential new users***

  in redressing past imbalances and ensuring sustainable and productive use of water resources.

- Challenge - ***create, promote and maintain an enabling environment***

  for all stakeholders to engage in IWRM and the water allocation reform process in a *CONSTRUCTIVE* manner.

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2. BACKGROUND AND CONTEXT continued

Implementation Context

- All water allocation processes are **underpinned by public engagement** to varying extents
- ***Many activities either precede or run concurrently with CL.*** These include *inter alia*:

Registration of existing water use
Verification of existing lawful use
NWRS and CMS's
Classification of the water resource
Setting the Resource Quality Objectives
Reserve Determination
International and Strategic obligations
Resource availability for allocation

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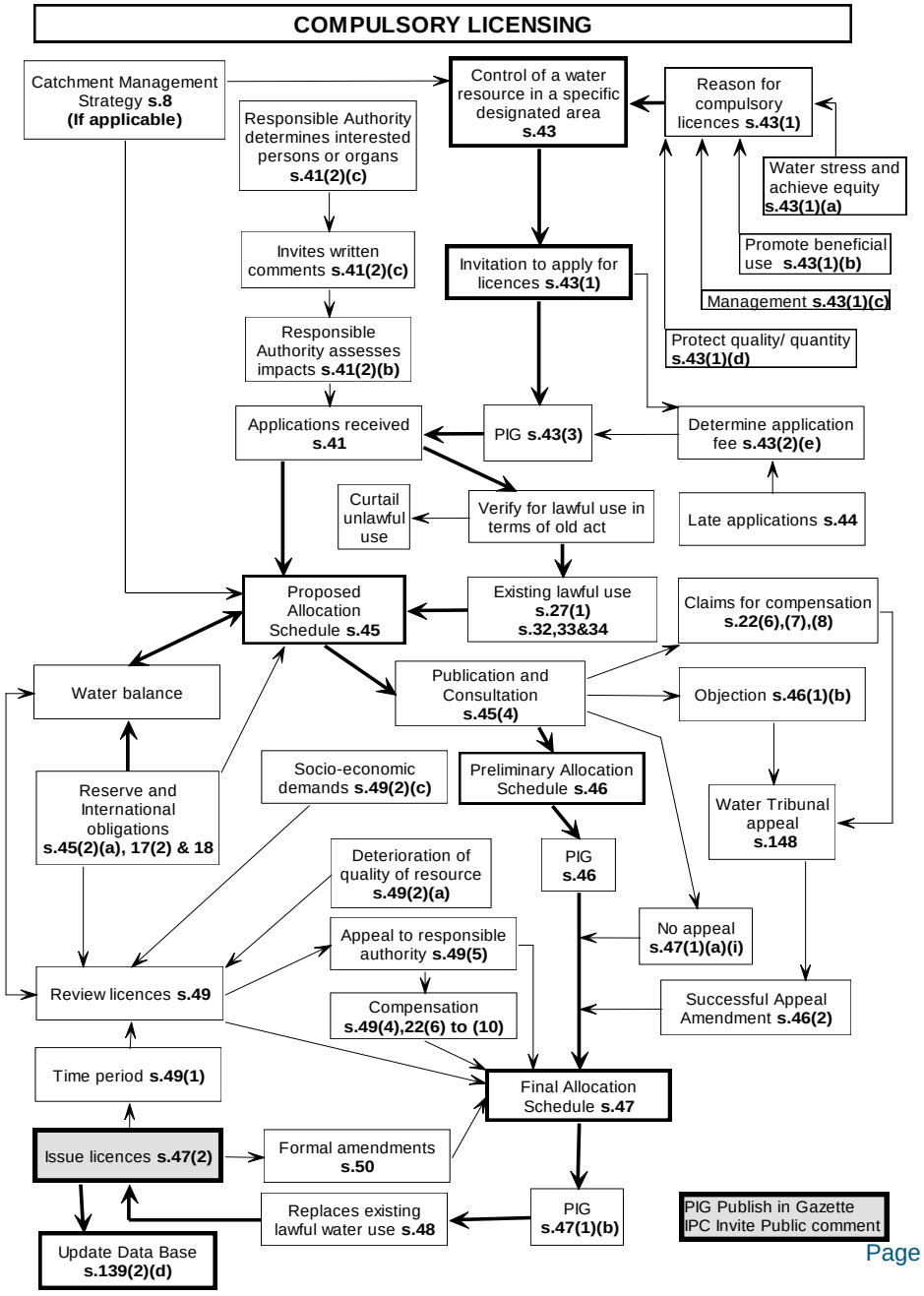

i. EARLY APPROACHES

- Original work-flow processes developed in 2001-2002
- Perkins & Wessels Model, May 2002
- A comprehensive process with a number of linkages and cross-linkages.
- Importantly, ***this model identified the building blocks that needed to be in place before CL could commence:***

i) Registration of existing water use;
ii) Verification of existing water use;
iii) National Water Resource Strategy;
iv) Catchment Management Strategy;
v) Classification of the water resource;
vi) Setting of Resource Quality Objectives;
vii) The Reserve;
viii) International obligations;
ix) Determination of water resource availability for allocation, taking cognisance of the above.

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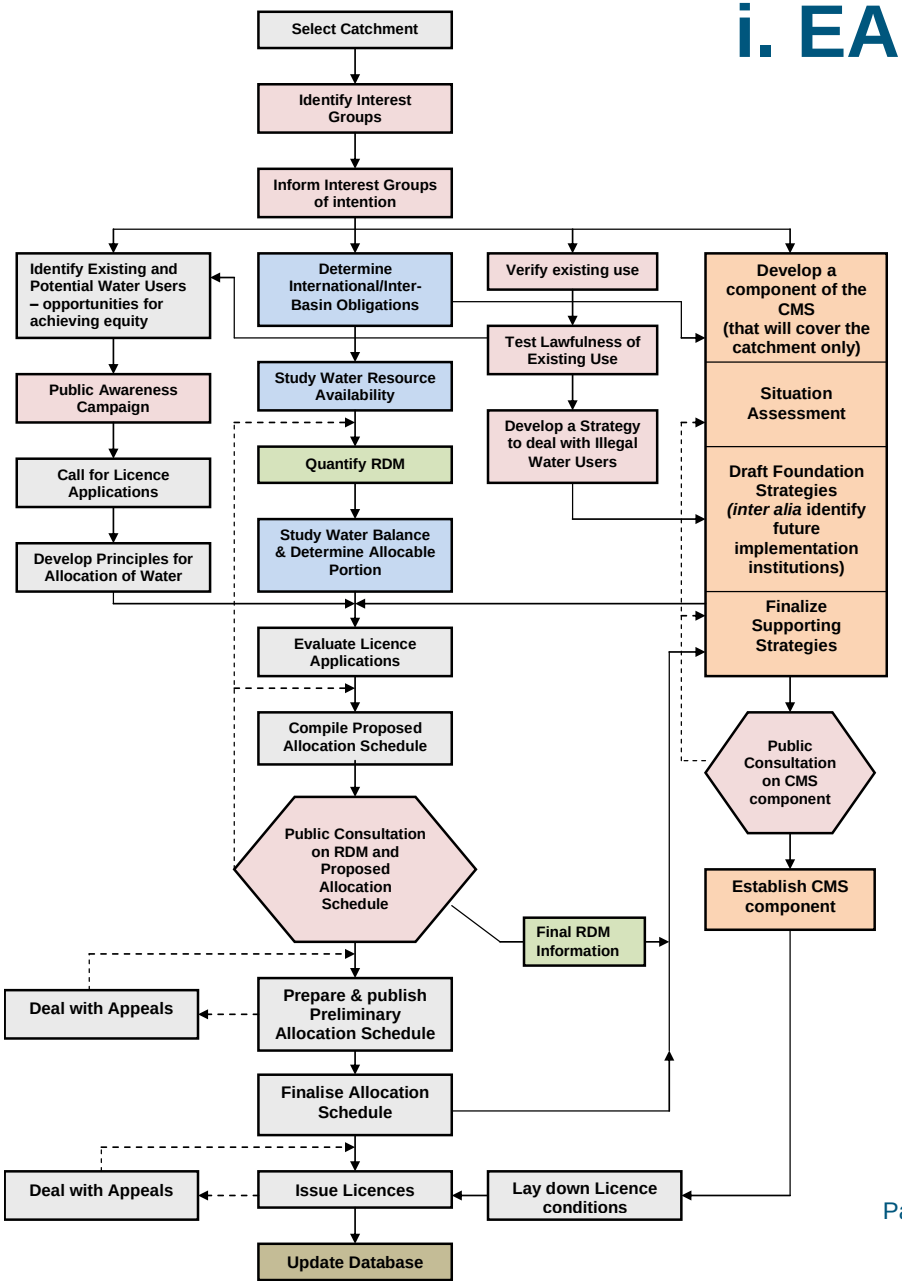
i. EARLY APPROACHES continued



- TINWA Model 1, Version 4, July 2002
- Very systematic, methodical, generally linearly structured and DWA-centric
- A number of **discrete DWA line-function inputs** at different phases of the process
- Pre-requisites – very **high coordination requirement** (singular vision) and **commitment and accountability for input** requirements
- No single line-authority
- Implementation time-lines would be out of sync with reform implementation demands
- Process design could result in isolated outputs and required consolidation for stakeholder communication and engagement purposes
- Implementation envisaged over a 20-year timeframes

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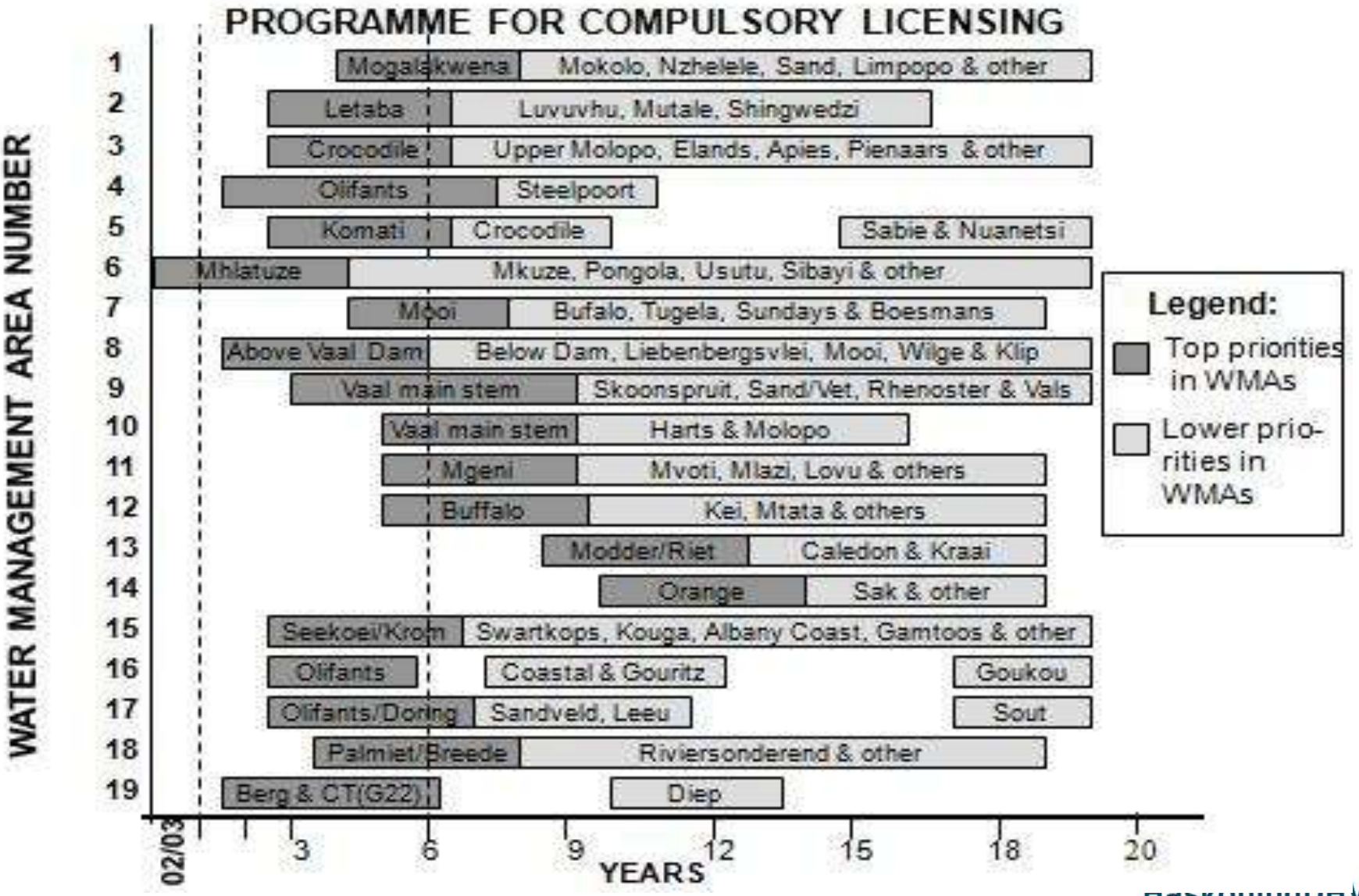
i. EARLY APPROACHES continued



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ii. REVISED APPROACH

WAR impact on CL[1]

- CL was one of several tools within a bigger **Water Allocation Reform** (WAR) programme toolkit – basically, the ***sledgehammer!*** in the box
- Structured into ***phases***, with CL within one of the phases
- The ***building blocks*** for CL were placed in earlier preparatory phases
- Recognised that ***the timing for completion*** of critical building blocks (CMA, CMS, RDM, water availability assessments & WR modelling, WCWDM strategies) were ***not synchronous***, but should not delay CL implementation
- Acknowledged its many linkages and associated complexities with ***processes outside the water sector***, but attempted to package these in a systematic, methodical and less confusing way
- Included ***various disciplines*** (technical, social, environmental, legal, administrative)

ii. REVISED APPROACH continued

WAR impact on CL²

- Designed to be ***meaningful, practical & less complicated***
- ***Minimise capacity & resource burden*** on DWA, other role-players & stakeholders
- ***Intensive inter-governmental collaboration and stakeholder engagement and empowerment processes***
- ***Address the transformation and service delivery agenda***
- ***Point of focus for water management implementation***

iii.Comparison

COMPULSORY LICENSING APPROACHES

PARAMETER	EARLY (1998-2003)	REVISED (2002-2007)	NEW ?
1. **Process Complexity**	Very High	Very High	?
2. **Resource and Competence Requirements**	Very High	Very High	?
3. **Overall Management Requirements**	Very High	Very High	?
4. **Process Design & Structure**	• Structured • Generally Linear and Webbed • DWA-Centric	• Structured • Phased • Input and Feedback-Oriented	?
5. **Framework Robustness** (conformity to legislative requirements)	Good	Good	?
6. **Implementation Flexibility**	Low: all preparatory processes to be in place before CL commencement	High: recognises preparatory processes at different stages of completion; implementation commencement dependent on process risks analysis	?
8. **Process Inclusivity Risks** (DWA internal and external stakeholders)	High	Low	?

4.Case Study Situation Assessment

GEOGRAPHIC AREA / CATCHMENT INFORMATION

PARAMETER	Geographic Area / Catchment		
	Tosca Molopo	**Jan Dissels**	**Mhlathuze**
i. Geography: **(a) Size of Area** **(b) Population** **(c) Character of Area**	(a) 1625 km^2 (b) Approximately 4 500 (c) Rural	(a) 197 km^2 (b) Approximately 4 000 (c) Rural	(a) 4209 km^2 (b) Approximately 525 000 (c) Widespread rural with urban and industrial nodes
ii. Water Information **(a) MAR / System Yield** **(b) Water Availability** **(c) Existing Lawful Use** **(d) Reserve Allocation** **(e) Main Water Uses** **(f) Total Volume Applied for in CL** **(g) Total (Proposed) CL Allocation**	(a) 15,597 million m^3/annum (b) Groundwater 11,1 million m^3/annum (c) 12,496 million m^3 (d) 0,577 million m^3/annum (e) Agriculture & Municipal (domestic) (f) 14,424 million m^3/annum (g) 9,960 million m^3/annum	(a) MAR = 45,291 million m^3/annum (b) 3,81 million m^3/annum (surface water) (c) 4,549 million m^3/annum (d) 7,45 million m^3/annum. Variable – 3 different catchment reaches (e) Agriculture & Municipal (domestic) (f) 5,436 million m^3/annum (g) 3,920 million m^3/annum (includes groundwater)	(a) MAR = 938 million m^3/annum (b) 262 million m^3/annum (surface water) (c) 393.51 million m^3/annum (d) Varies at different IFR sites in the catchment (e) Agriculture & Forestry and Municipal & Industrial (f) 401 million m^3/annum (g) 288,088 million m^3/annum
iii. Specialist Studies Undertaken	8	7	13

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STATUS OF PREPARATORY STEPS

SUB-PHASE (and NWA reference)	Geographic Area / Catchment		
	Tosca Molopo	Jan Dissels	Mhlathuze
i. Determination of Allocable Water (s23)	Completed		
ii. Reserve (Ch 3)	Groundwater Reserve Completed	Rapid Reserve Determined	Comprehensive Reserve Determined
iii. International Obligations & Strategic Uses (s23)	International obligations not established and formalised	n/a	n/a
iv. Existing Lawful Water Use Verified (s32-35)	Completed	Completed	Completed?
v. Catchment Management Strategy (s9)	None. Specialist Reports.		
vi. Catchment Assessment Report	Completed		
vii. Draft Water Allocation Plan (s9, s27)	Completed		

IMPLEMENTATION TIMELINE & STATUS

PHASE	Tosca Molopo	Jan Dissels	Mhlathuze
1. Announce CL			
i. Government Gazette (60d notice)	12 August 2010	20 August 2010	12 August 2010
ii. Number of Licence Applications	60	31	670
2. Proposed Allocation Schedule			
i. Government Gazette (60d notice)	17 December 2010	28 September 2012	10 August 2012 (extended by 30d)
ii. Number of Objections	10	None (22 October 2012)	19 (end-September 2012)
3. Preliminary Allocation Schedule			
i. Government Gazette	20 May 2011	n/a	n/a
ii. Number of Appeals	None	n/a	n/a
4. Final Allocation Schedule			
i. Government Gazette	22 July 2011	n/a	n/a
ii. Number of Allocations	50	n/a	n/a
5. Issue Licences	In Process	n/a	n/a

5. CASE-STUDY LESSONS

Mhlathuze

- ***Good:*** **1. a few "anchor" members of the project team**

- ***Bad:*** **1. lack of project continuity**

  2. stakeholder frustration with a stop-start project and incomplete processes

- ***"Not-so-Pretty":*** **1. raised expectations by HDI stakeholders regarding process benefits**

  2. sincerity of participants in question – extensive early principles / proposals "disregarded(?)"

- ***Overall***: **1. general cynicism about commitment to CL**

5. CASE-STUDY LESSONS continued

Jan Dissels

- ***Good:*** **1. A few "anchor" members of the project team**
- ***Bad:*** **1. lack of project continuity (including preparatory phase projects)**
  2. high turnover of project staff
  3. extent of analyses did not match the expected economies of scale for the size of catchment and number of users
- ***"Not-so-Pretty":*** **1. raised expectations by HDI stakeholders regarding process benefits**
- ***Overall:*** **1. general cynicism about commitment to CL**

5. CASE-STUDY LESSONS continued

Tosca Molopo

- ***Good:*** **1. early engagement with stakeholders**
  2. unlawful water uses addressed
  3. voluntary formal agreements made among stakeholders
  4 open relationship between regulator and stakeholders
- ***Bad:*** **1. lack of project continuity**
  2. high turnover of project staff
  3 slow project close-out – issuing the licences
- **"*Not-so-Pretty*":** **None**
- ***Overall:*** **General cynicism about commitment to CL**

5. SUMMARY LESSONS OF CL

1	***Scrutinise the reason for invoking CL***
2	***Local/regional involvement is crucial***
3	***Inadequate internal buy-in***
4	***Early external stakeholder engagements***
5	***Regular and concerted communications campaign***
6	***Visible project support***
7	***Cooperative governance***
8	***Incomplete*** pre-project processes

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6. CONCLUSIONS

- Current (Revised) process is ***in line with Draft NWRS 2*** proposals and recommendations for implementation.
- **Multi-disciplinary, integrated programme** with initial high resource competency requirements.
- The **issues emerging** from the case-studies are ***not insurmountable*** (see recommendations to follow).
- **Calculated risks** must be taken to fast-track implementation.

6. RECOMMENDATIONS

- **Establish a high-level DWA *Programme Management & Implementation Unit***

- **A *bold and new* communication context**

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7. ACKNOWLEDGEMENTS

- DWA for the opportunity to be involved in these land-mark processes and projects
- Project team members and my ex-DWA colleagues for the vigorous (and sometimes very heated, but sorely missed!) discussions and debates. These contributed to the development (and part implementation) of very robust processes
- All stakeholders for their (sometimes) active participation, compliments, criticisms and genuine feed-back
- Process observers for their invaluable critique

ThankYou

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