

Understanding the legalities of water regulations in SA

The rainy season in the Western Cape has now drawn to a close, and dam levels are at just above half of what they were at this time last year. Despite Level 5 water restrictions implemented by the City of Cape Town and various other methods of supplementing water supply that are currently being considered, the implementation of a large-scale, long-term solution will take time that the city no longer has.



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This is according to Terry Winstanley, director and head of the Environmental Law Practice at Cliffe Dekker Hofmeyr (CDH), who says that as a result, regulations have to be strictly enforced to prevent further mismanagement of water in the region.

One of the solutions, amongst others, include the Cape Town water supply being supplemented with either groundwater from the city's larger aquifers or desalination. "While desalination has proved successful in other arid countries, building a large-scale desalination plant will take over three years and will come at a great financial cost."

Focus on reducing current demand

Winstanley explains that although projects for the use of mobile, smaller-scale desalination plants and access to groundwater are underway, the primary focus is on reducing current demand, which has led to far stricter regulations on water use – particularly in water-intensive industries.

“While under the Old Water Act of 1956 a distinction was made between public and private water, there is a very different approach to water under the current National Water Act. Under the Old Water Act, water from a borehole would ordinarily have been considered privately owned water and its use largely unrestricted. The new Act stipulates that the state holds all water, regardless of its origin, in trust for the nation and allocates use rights. Under this Act, water use for specified purposes is subject to certain thresholds, beyond which a licence must be obtained.”

To enforce these regulations and prevent the further mismanagement of water, Winstanley says that there has been an upsurge in the prosecution of culprits. “There has also been some attempt to name and shame areas where there is excessive water use, and increasingly severe punitive tariffs are being imposed.”

Restrictions on agricultural use

She adds that water restrictions are now even being introduced for agricultural use in certain catchment areas within the Western Cape. “Water is a critical component in this sector, and new restrictions will mean farmers within these areas will be obliged to reduce their irrigation, currently by 10%.

“However, greater restrictions and the requirement to release water held in dams are also being discussed. This will have serious implications for agricultural operations that have already introduced the most water-efficient irrigation measures that they can. This situation may also have adverse impacts on employment in the agricultural sector,” Winstanley notes.

She says that while water restrictions on irrigation have mainly focused on the use of surface water, some measures have also been taken to reduce the use of groundwater. “Self-evidently,” she states, “it is much harder to police the use of groundwater, so exactly how these restrictions will be enforced remains to be seen.”

“However,” Winstanley points out, “enforcement may become academic. Groundwater resources are unlikely to be able to recharge at the rate that they are being used, so the use of aquifers will likely be restricted by our ability to access the water at increasingly deeper levels, or it will just run out.

“With the recent move to Level 5 restrictions, we will see an emphasis on capping water use within households and in the commercial and industrial sectors. The cap on water use for individual domestic properties is now set at 20kl per month, and if exceeded, the fines are expected to be in the range of R5,000 to R10,000,” says Winstanley. She adds that commercial water users have been ordered to cut their water use by 20% compared with a year ago.

Link to global warming

Winstanley concludes that while the current focus is on the Western Cape, given the severity of the drought conditions, it is not only this region at risk. “South Africa is an arid country to begin with, but there is an undeniable link between the current state of affairs and global warming. As rising temperatures across the country and the continent continue to impact rainfall negatively, increasing the likelihood and severity of drought conditions, it is imperative that we find workable solutions for both alternative water supplies and to reduce our water use without adversely affecting our economy.”