

**CONFIDENTIAL**

Date:

Chairperson  
Portfolio Committee on Water Affairs and Forestry  
PO Box 15  
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21 October 2008  
Enquiries:  
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Our Ref: 706270

Dear Ms September

## **REVIEW OF THE NATIONAL WATER ACT 36 OF 1998**

Your invitation dated 4 September 2008 refers. Eskom welcomes the opportunity to make a submission to the Portfolio Committee on Water Affairs and Forestry on the current National Water Act.

Our comments are divided into general and specific as detailed below.

### **General Comments:**

1. The full implementation of the "Reserve" poses a serious challenge. Although the "Reserve" has the right to water it must be implemented in a sustainable way to guarantee this right for present and future generations. The potential impact on economic growth by operationalising the full "Reserve" or for that matter over-allocation of the water resource and the subsequent curtailment of existing users needs to be well considered.
2. The quality, adequacy and retention of skills should be a priority area for the water sector and collaborative and co-operative action in this regard may lead to innovative solutions but the National Water Act is silent on the area of skills development.
3. Water quality impacts on Eskom's water use have the potential to negatively impact Eskom's water use performance and at times may require large investments in mitigating this impact. The Waste Discharge Charge System has not been implemented as yet.
4. Two key influencing factors that impact on resource availability and water requirement is land use and climate change which is not specifically mentioned under the contents of the National Water Resource Strategy (September 2004). The role of Research and Development in the refinement and communication of climate-change, scenarios, projections, information and data as well as the identification and quantification of climate-change impacts and the adaptation and mitigation strategies needs to be expanded under the requirements of the National Water Resources Strategy.

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5. Water pricing and the methodologies adopted should accurately reflect the cost of the supply of water and should be simple, clear and unambiguous whilst ensuring the financial sustainability of the water utilities/institutions providing the service. A revision of the National Water Pricing Strategy, especially with the implementation of Catchment Management Agencies and the South African National Water Resource Infrastructure Agency (SANWRIA), could assist in addressing the issues raised. Also the framework for the management of the monies collected and distributed should be improved and a long term realistic pricing framework developed. There is also a need for a robust regulatory framework that supports the tenants of the National Water Act.
6. Part 2 of the National Water Act requires every Catchment Management Agency to progressively develop a catchment management strategy for the water resources within its water management area. However to date only two CMA's have been established in the country and the Inkomati CMA is busy with the development of its catchment management strategy. This provides a challenge around the principles for allocating water to existing and prospective users in all catchments, taking into account all matters relevant to the protection, use, development, conservation, management and control of water resources.
7. A catchment management agency contemplated in Chapter 7 must, by notice in the *Gazette*, establish a catchment management strategy for the protection, use, development, conservation, management and control of water resources within its water management area. In the absence of a Catchment Management Agency or the delegated functions, these functions need to be done by the responsible authority.

### **Specific comments**

1. 21 (a) Taking water from a resource:  
This "water use" is relatively clear and the only ambiguity emanates from the fact that a resource is not specifically defined in the National Water Act, (Act 36 of 1998). Abstraction from a resource in some instances is conducted by the Department of Water Affairs and Forestry on Eskom's behalf. Technically there is no 'abstraction water use' from a Government owned water scheme- abstraction reference point is directly from the resource. The National Water Act needs to be amended to provide for 'authorization' to extend 'abstraction' to mean from a Government Water Scheme being defined as inclusive of the set of pipes and pumps associated with the dam or sets of dams.
2. The definition of existing lawful use of water is not very clear. In the case of power stations the current understanding is that all abstraction water uses are lawful but Eskom could probably make a case for all water uses at the power stations to be existing lawful uses.
3. Procedure for licence applications: "41. (3) A responsible authority may direct that any assessment under subsection (2)(a)(ii) must comply with the requirements contained in regulations made under section 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989)."

Comment: Based on Eskom's current experience with the construction of Kusile Power Station, Eskom recommends that any investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource; be included as part of the Environmental Impact Assessment

process so as not to delay the water use licence application process once the Environmental Record of Decision is issued by the Department of Environmental Affairs and Tourism.

4. " 72. (1) In areas for which a catchment management agency is not established or, if established, is not functional, all powers and duties of a catchment management agency, including those powers and duties described in sections 79 and 80 and in Schedule 3, vest in the Minister.  
(2) In areas for which a catchment management agency is established, those powers and duties described in Schedule 3 which have not been assigned by the Minister to the catchment management agency, vest in the Minister. "

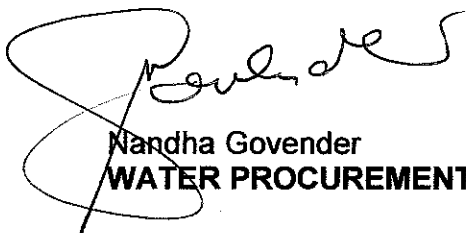
Comment: Care should be taken not to have stakeholders confused with functions being performed by the Catchment Management Agency and the responsible authority. The responsible authority needs to ensure full support is provided to resource and capacitate the CMA's to fulfil their functions as set out in sections 79, 80 and in Schedule 3.

5. "67. (1) In an emergency situation, or in cases of extreme urgency involving the safety of humans or property or the protection of a water resource or the environment, the Minister may -  
(a) dispense with the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument contemplated in section 158(1) is made or issued;  
(b) dispense with notice periods or time limits required by or under this Act;  
(c) authorise a water management institution to dispense with -  
(i) the requirements of this Act relating to prior publication or to obtaining and considering public comment before any instrument is made or issued; and  
(ii) notice periods or time limits required by or under this Act. "

Comment: The paragraph should read: 67. (1) In an emergency situation, or an **emergency nature in the national interest** or in cases of extreme urgency involving the **health and safety** of humans or property or the protection of a water resource or the environment, the Minister may -

We hold ourselves available for any queries you may have.

Yours sincerely



Nandha Govender  
**WATER PROCUREMENT MANAGER (GENERATION PRIMARY ENERGY)**