

REGISTRATION OF BOREHOLES & WATER WELLS



Ward 2 Forum
SERVING THE COMMUNITY TOGETHER

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REGISTRATION OF BOREHOLES & WATER WELLS

Executive Summary

The course of action, i.e. whether to register the water use or not, will be based on the intended uses and limits. The following scenarios apply:

- Schedule 1 – use within the set limit = carry on and use the water;
- General Authorisation (limits are published and reviewed every 5 years) = register your water use;
- For volumes abstracted above the limits of the General Authorisation = apply for a water use license.

If groundwater use falls under Schedule 1 – no permission required

As part of the new allocation system incorporated into the NWA, a landowner, or legal occupier of the land, has a right to reasonable use of water taken from an aquifer on that property. This “reasonable use” is defined in Schedule 1 to NWA as:

- “reasonable domestic use in that person's household”;
- “small gardening not for commercial purposes”;
- “the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land”.

Schedule 1 water use therefore does not require any permission or registration.

It is assumed that if a household uses more than 10 kilolitres of groundwater per day (10 000 litres/day)

Summary

- One does not register a borehole, but the groundwater use;
- No permission to drill a borehole or use groundwater for Schedule 1 use is required;
- Groundwater use above Schedule 1 use and not exceeding the General Authorisation limits, must be registered;
- A license will be required for all groundwater use above the [General Authorisation](#) limits;
- If a newly-drilled borehole replaces a collapsed borehole, and the water use from that borehole was lawful, the water use from the new borehole will constitute an existing lawful use.

Introduction

Ever since the announcement by the Theewaterskloof Municipality, in respect of the Water Restrictions, the Ward 2 Forum have been inundated with queries and questions relating to the implications and requirements that have to be met in order to comply with the latest restrictions.

Some of the more common questions that have been asked are:

Q: Do I have to register my well and borehole?

Q: How do I register my borehole?

Q: How do I get permission to drill a borehole?

To address this we have done some research on how these restrictions affect domestic and groundwater users. To explain this it is important to understand what is required in terms of the **National Water Act (Act 36 of 1998)**. In reading the Act, one of the important factors that stand out is that it is not the borehole that is the focus, but rather:

1. The groundwater use.
2. The amount of groundwater you plan to use,
3. The purpose for which the water will be used, will determine whether you need to register your use, or obtain a licence.

To motivate this some background to the **National Water Act of 1998 (NWA)** and how it differs from the repealed Water Act of 1956.

The National Water Act (Act 36 of 1998) – a progressive piece of legislation

When it was enacted in 1998, the National Water Act was hailed internationally as the most progressive water act in the world.

Not only was **Integrated Water Resources Management (IWRM)** written into the Act, but equitable distribution and sustainable utilisation of water were also set as guiding principles. The explanatory note to Chapter 1 states:

“These guiding principles recognise the basic human needs of present and future generations, the need to protect the water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water...”

Changes from the repealed Water Act of 1956

A major change for groundwater lies in the following two statements:

- *The Minister of Water and Sanitation is in terms of section 3(1) of the NWA the public trustee of the nation's water resources. A water resource includes in terms of section 1(1) “an aquifer”.*
- *According to the preamble to the NWA it is recognised that “water is a scarce and unevenly distributed national resource which occurs in many different forms which are all part of a unitary, interdependent cycle.”*

An aquifer

The definition of an aquifer is “a geological formation which has structures or textures that can hold water or permit appreciable water movement through them to the extent that it can be abstracted economically’ and groundwater is the “water contained in an aquifer”. A borehole is the mechanism that the groundwater can be accessed and/or abstracted from the aquifer.

National resource

The words “national resource” imply that groundwater is no longer regarded as the property of the land owner on which it is found, as it was under the repealed Water Act of 1956 (Act 54 of 1956). According to section 5(1) of the repealed Water Act “the sole and exclusive use and enjoyment of private water shall vest in the owner of the land on which such water is found.” The provisions of the NWA dealing with groundwater cannot be regarded as an arbitrary deprivation of property (private water) as envisaged in section 25(1) of the Constitution of the Republic of South Africa of 1996.

The purpose of the NWA is to bring about sustainable use of all water within the natural water cycle to the benefit of all users. It gives effect to the legal principle *res omnium communes* (natural resources falling outside the legal commerce and which are available to all people). There is a constitutional requirement for water reform to bring about equitable access to the water resources and to redress the results of past racial discrimination.

All lawfully exercised rights to groundwater before the commencement of the NWA are replaced with allocations under the NWA. Further, those who have not exercised rights to groundwater when the NWA commenced, have the right to apply for a licence. These applications would be evaluated to determine whether a licence should be issued or not, taking into consideration all the relevant factors.

It is the groundwater use you are registering, not the borehole

When dealing with licensing and registration of water use, it is important to point out that a person does not need any permission to drill any borehole nor to register a borehole. However, once the borehole has been drilled and water found, the registration of the water use, which in this case is groundwater, must be done ***depending on the ultimate usage.***

The course of action, i.e. whether to register the water use or not, will be based on the intended uses and limits. The following scenarios apply:

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- “reasonable domestic use in that person's household”;
- “small gardening not for commercial purposes”;
- “the watering of animals (excluding feedlots) which graze on that land within the grazing capacity of that land”.

Schedule 1 water use therefore does not require any permission or registration.

Although an upper limit for Schedule 1-uses has not been set in the NWA, a Catchment Management Agency, which is the Breede-Gouritz Catchment Management Agency (BGCMA), may in terms of item 2(e) of Schedule 3 limit the taking of water under Schedule 1. It is assumed that if a household uses more than 10 kilolitres of groundwater per day (10 000 litres/day) for a “non-commercial small garden”, then they are exceeding the limits of Schedule 1, and the water use should thus be registered.

Any water use that is more than is allowed under Schedule 1, or which is not an existing lawful water use, should be authorised, under either a [General Authorisation](#) or a licence.

The General Authorisation serves as blanket permission; thus, no licence is needed. This has been done to limit the administrative burden, as it covers a large portion of the groundwater users. However, as with any licence there are certain conditions. These are:

This water use is limited in the volume that may be abstracted. See *Government Notice 399 in Government Gazette 26187 dated 26 March 2004*, time application extended by *Government notice 498 in Government Gazette 35477 dated 28 June 2012* (and corrected by *Government notice 970 in Government Gazette 35909 dated 30 November 2012*) for the limits applicable;

This water use must be registered if more than a certain volume is abstracted (see the General Authorisation for details).

If groundwater use is above General Authorisation limits – a licence is required

A licence will be required only if the groundwater use is above General Authorisation limits.

For more information on registration and applying for a licence, <http://www.dwa.gov.za>.

Data Management

The borehole data being generated during drilling for water is crucial for the cost effective development and sustainable utilisation of the groundwater resources of the country. The adage that “*you cannot manage what you do not measure*” applies to natural resources as much as it applies to financial and human resources.

This brings us back to the provisions of section 3(1) of the NWA, i.e. “*the Minister of Water and Sanitation acts as the public trustee of the nation's water resources*”. Implicitly this means that the Minister of Water and Sanitation also acts as the public trustee of the data related to the water resources of the country. This concept has been built into the *National Groundwater Archive (NGA)*. The NGA is a web-based database and any person can register to extract data from it.

In the light of the legal mandate that the groundwater resources of the country should be developed cost-effectively and managed sustainably, it seems natural that the data generated during the drilling of boreholes could not be confidential and thus should be submitted for capturing onto the NGA. Being web-based, the NGA allows any duly registered external groundwater data suppliers to capture data themselves.

The information in this document has been obtained from Ernst Bertram.

Having worked at the Department of Water and Sanitation for many years, he is regarded a specialist in the application of water legislation to domestic and commercial borehole installations.

Further reading: [National Water Act - Guide](#)

Ward 2 Forum Team

10 March 2017

Disclaimer:

Unfortunately many of the relevant documents required to complete this information piece are not available off the Department of Water & Sanitation (DWS)

For additional information on the activities of the Ward 2 Forum contact us on:

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