

**DEPARTMENT OF WATER AFFAIRS AND FORESTRY****No. 541****15 May 2009****PROPOSED GENERAL AUTHORISATION IN TERMS OF SECTION 39 OF THE NATIONAL WATER ACT, 1998 (ACT NO 36 OF 1998)**

I, Pamela Bulelwa Yako in my capacity as Director-General: Water Affairs and Forestry and duly authorised in terms of section 63 of the National Water Act, 1998, intend to issue a Notice to generally authorise the rehabilitation of wetlands in terms of section 21(c) and (l), of the Act to the category of persons set out in the Schedule hereto which is published for comment under section 39(3) of the said Act.

Interested persons are hereby invited to submit written comments on the proposed Notice to the Director-General of the Department of Water Affairs and Forestry within 60 days of the publication of this notice in the following manner:

- (a) Post: Private Bag X 313  
Pretoria  
0001:
- (b) Fax No (012) 336-6608
- (c) E-mail: [vduplessis@dwaf.gov.za](mailto:vduplessis@dwaf.gov.za)

Comments must be addressed to the Chief Director: Water Use, marked for the attention of Ms V du Plessis



Ms Pam Yako

Director-General: Water Affairs and Forestry

## SCHEDULE

### Purpose of Notice

1. This Notice replaces the need for a water user to apply for a licence for impeding or diverting the flow of water in a water course in terms of section 21(c) or altering the bed, banks, course or characteristics of a watercourse in terms of section 21(i) of the Act when rehabilitating a wetland, provided that the use is within the conditions set out in this Notice, but does not exempt the water user from compliance with any other provision of the Act unless stated otherwise, or from any other applicable legislation, regulation, ordinance or by-law.

### Definitions

2. In this Notice any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned, and unless the context otherwise indicates—

**"altering the bed, banks, course or characteristics of a watercourse"** means any change affecting the resource quality or flow components within the riparian habitat or 1:100 year floodline, whichever is the greater distance from the watercourse at the date of commencement of this Notice;

**"Constitution"** means the Constitution of South Africa, 1999 (Act No. 1 of 1999)

**"diverting the flow"** means a temporary or permanent structure causing the flow of water to be rerouted in a watercourse for any purpose;

**"impeding the flow"** means the temporary or permanent obstruction or hindrance to the flow of water in a watercourse by a structure built either fully or partially in or across a watercourse;

**"MEC"** means the Member of the Executive Council to whom the Premier has assigned the performance in the province of the functions entrusted to a MEC by or under such a provision;

**"NEMA"** means the National Environmental Management Act 1998 (Act No. 107 of 1998);

**"organ of state"** means an "organ of state" as contemplated in section 239 of the Constitution;

**"rehabilitation"** means the process of reinstating natural ecological driving forces within part or the whole of a degraded watercourse to recover former or desired ecosystem structure, function, biotic composition and associated ecosystem services;

**"the Act"** means the National Water Act, 1998 (Act No. 36 of 1998); and

“water user” means the category of persons contemplated in paragraph 5 of this Notice.

#### **Duration of Notice**

3. This Notice is valid for an indefinite period from the date of this publication unless—
- (a) it is replaced by another Government Notice;
  - (b) it is replaced by a general authorisation in relation to a specific water resource or within a specific area or to any category of persons; or
  - (c) the water user is required to apply for a licence in terms of the Act.

#### **Area of applicability**

4. This Notice applies throughout the Republic of South Africa.

#### **To whom applicable**

5. (1) This Notice is applicable to the category of persons who are organs of state and who are rehabilitating a wetland as a water use in terms of section 21(c) and (i) of the Act.

(2) This Notice is also applicable where the section 21(c) and (i) water use has a measurable positive impact or change on the physical, chemical or biological properties of a watercourse.

#### **Exclusions**

6. This Notice does not apply—
- (a) if the water user must make an application for other water uses in terms of section 21 of the Act;
  - (b) to any listed activity set out in Regulations 386 and 387 of 21 April 2008 respectively in terms of NEMA<sup>1</sup>;
  - (c) to any other notice published by the Minister of Environment Affairs and Tourism or the MEC, in terms of section 24D of NEMA as a listed activity or specified activity,

#### **Authority to enter onto land**

7. The water user must obtain—
- (a) the necessary authority to enter upon State owned or controlled land; and
  - (b) lawful access to enter upon private owned or controlled land,
- on which the proposed water use is to take place.

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<sup>1</sup> The present listing is under review by the Department of Environment Affairs and Forestry and this subparagraph

### Rehabilitation planning process

8. (1) The water user must compile and maintain an initial Planning Report consisting of–
- (a) identification of all persons potentially affected by the rehabilitation of the wetland;
  - (b) documentation on the appraisal of the stakeholders to be engaged on the proposed process;
  - (c) identification of the work to be undertaken;
  - (d) identification of rehabilitation interventions;
  - (e) design of rehabilitation interventions;
  - (f) design of draft rehabilitation plans;
  - (g) review and finalisation of rehabilitation plans; and
  - (h) establishment of a monitoring and evaluation process of work that is to be undertaken;
- (2) Based on subparagraph (1) the water user must–
- (a) identify all legal requirements that must be complied with in the rehabilitation process;
  - (b) maintain a copy of all published notices; and,
  - (c) establish and maintain an Issues and Comments Register.

### Rehabilitation plans

9. (1) A rehabilitation plan must contain the following information–
- (a) rehabilitation objectives;
  - (b) rehabilitation problems;
  - (c) rehabilitation strategy;
  - (d) wetland assessment report;
  - (e) draft rehabilitation design drawings;
  - (f) final rehabilitation plans;
  - (g) rehabilitation intervention;
  - (h) maintenance details;
  - (i) monitoring and evaluation data;
  - (j) construction notes;
  - (k) Environmental authorisation under NEMA, if applicable;
  - (l) written permission under the regulations of Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983), if applicable; and
  - (m) landowner documents.

(2) The water user must establish Best Management Practices to the approval of the responsible authority.

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may need to be amended during the evaluation of comment period, if necessary.

**Landowner documents**

10. The water user must obtain the following landowner consent documents-
- (a) Entry onto Land approval;
  - (b) Wetland Survey consent form;
  - (c) Terms and Conditions for rehabilitation;
  - (d) Property Inspection document; and
  - (e) Notification of completion document.

**Budgetary provisions**

11. (1) The water user must ensure that it has a sufficient budget to complete and maintain the rehabilitation as set out in this Notice.
- (2) The Department may at any stage of the process request proof of budgetary provisions.

**Conditions for impeding or diverting the flow or altering the bed, banks, course or characteristics of a watercourse****General**

12. (1) The water use must not cause a foreseeable or measurable detrimental impact or change on the physical, chemical or biological properties of a watercourse.
- (2) The water user must ensure that the design of any proposed structure or hardened surface associated with the water use—
- (a) does not have a detrimental effect on another person's lawful water use or land; and
  - (b) is not detrimental to the health and safety of the public.

**Structures and hardened surfaces**

- (3) Proposed structures and hardened surfaces associated with the water use must not—
- (a) be erosive;
  - (b) be structurally unstable;
  - (c) induce any flooding; or
  - (d) be a safety hazard.

**Instream and riparian habitat**

- (4) Measures must be taken to ensure that the water use does not result in a detectable or cumulative—
- (a) change in the stability of a watercourse;

- (b) change in the physical structure of a watercourse;
- (c) scouring or erosion of a watercourse; or
- (d) decline in the diversity of communities and composition of the natural, endemic vegetation.

### **Flow and hydraulics**

(5) The water use must not result in a detectable or cumulative change in the flow regime or the limnology of a watercourse.

### **Water quality**

- (6) The water use must not result in a detectable or cumulative change—
- (a) in the water quality of the watercourse and that pollution is prevented from occurring, continuing or recurring; or
  - (b) detectably decrease the quality of the water to downstream water users.

### **Biota**

- (7) The water use must not detrimentally impact on the—
- (a) breeding, feeding and movement patterns of aquatic biota, including migratory species; or
  - (b) level of composition and diversity of biotopes and communities of animals and microorganisms.

### **Rehabilitation**

- (8) Upon completion of the activity relating to the water use—
- (a) all disturbed areas must be re-vegetated with indigenous vegetation suitable to the area; and
  - (b) an active campaign for controlling new invasive exotic and alien vegetation must be implemented within disturbed zones.

### **Monitoring and reporting**

13. (1) Upon completion of the activity—
- (a) a habitat assessment study must be carried out annually for three years to ensure that the rehabilitation is stable, failing which, remedial action must be taken to rectify any impacts;
  - (b) the habitat assessment study referred to in subparagraph (a) must be made available, upon written request, to the responsible authority; and
  - (c) structures must be inspected regularly for the accumulation of debris, blockages, instabilities and erosion with concomitant remedial and maintenance actions.

(2) A final report must be submitted to the responsible authority upon completion of the work contemplated under subparagraph (1).

(3) Copies of all designs and rehabilitation plans under must be submitted to the responsible authority before commencement of any activity under this Notice.

**Registration**

14. (1) A person who uses water as contemplated in this Notice, must register such water use with the Department.

(2) Upon completion of registration, the Department will provide a certificate of registration to the water user.

NOTE: Forms can be obtained from Regional Offices of the Department or from the Departmental website: <a href="http://www.dwaf.gov.za">http://www.dwaf.gov.za</a>
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**Inspection**

14. Any property in respect of which a water use has been registered in terms of this Notice is subject to inspection as contemplated in section 125 of the Act.