

JOINT SUBMISSION BY COSATU AND SAMWU ON THE DRAFT WHITE PAPER ON WATER SERVICES



Presented to the Department of Water Affairs & Forestry

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1 Executive Summary

The introduction of the new policy, the White Paper on Water Services is an important development as it helps in the evaluation of the existing policy and legislation framework. Whilst there may be some remarkable service delivery achievements since 1994, there has developed no fundamentally new context to warrant a profound policy shift. The main difference between 1994 and now is the change in the institutional framework where the local government tier assumes its constitutionally assigned role and the progress made in the service delivery. If anything, it is argued here that this White Paper must improve and strengthen the redressing of inequalities as a key aspect of the governments water policy..

The White Paper's new definition of basic water and sanitation which refers to the prescribed free minimum provisions is not an improvement on the 1994 White Paper on Water Supply and Sanitation Policy in the sense of representing a step further in the progressive realisation of the goals of the Constitution as stated in section 27.1. Free basic water must be set at a minimum of at least 50 litres rather than 25 litres per person, in order to ensure that this policy help realise the elementary requirements of the Constitutional mandate - sufficient water to support life and personal hygiene needs. In addition, the policy must provide for yard connections rather than the current 200-meter cartage, with 10 litres per minute flow rate at all water points, as was the case in terms of the 1994 White Paper. The definition of the basic sanitation is vague although it seems to point the VIPs as the basic minimum provision. It is argued that flush toilets or equivalent new technology that is environmentally friendly should be set as the minimum level of service.

The provision of the free water service is a constitutional imperative and therefore must take precedence above water service provider's policies, including credit control policies. It is therefore argued that access to basic water service is inviolate and should therefore under no circumstances be subject to the credit control service cuts.

Whilst the White Paper correctly asserts the policy stance taken in section 19 of the White Service Act, in terms of which the public sector delivery model is the preferred option, it fails to carry through this stance consistently throughout the document. Instead, through the notion of the "public interest" it puts any kind of delivery model (private or public) on the same footing, left to the discretion of various local authorities. It is therefore argued that the White Paper needs to be more concrete in calling for the public sector delivery option as the preferred delivery model consistently throughout the document.

2 Introduction

This submission is a response to the Draft White Paper on Water Services dated October 2002. It highlights and summarises the key concerns that the Congress of South African Trade Unions (COSATU) and the South African Municipal Workers' Union (SAMWU) have with the White Paper. We have already made submissions on the Discussion Document towards a Water Services White Paper that was released earlier last year. This response should be read in conjunction with comments made in that document. The White Paper is more concrete than the Discussion Document and more specific about what is being proposed. We have not repeated all the arguments put forward in that initial submission, and this submission should be seen as complementing rather than replacing the arguments made in relation to the Discussion Document.

As was the case in the formulation of the Water Services Act of 1997, the longstanding relevant Nedlac agreements have not been fully taken in to account in the formulation of this policy framework. In the agreement, Nedlac parties developed some consensus around key themes of the water service delivery in South Africa:

- The setting of minimum standards for service levels
- Private sector involvement in water service provision
- Regulation of water use by industrial users
- The setting of norms and standards of water tariffs
- The supply of water service by industrial users

Thus, in many respects the thrust of our submission insists on the broad policy stance that has emerged out of the Nedlac agreement.

While much of the language used in the White Paper is progressive and seems positive, the details and policy suggestions tend to undermine and neutralise the progressive wording.

This submission identifies particular themes and issues in the White Paper that we want to respond to. We have not made suggestions on specific word changes since it is often the broad thrust of what is being proposed that we believe requires reformulation.

At the outset of our response, we want to raise our concern about and opposition to the use of consultants by DWAF to draw up the White Paper. We believe there are enough qualified and skilled people within the department who are quite capable of drafting a White Paper, without the department having to spend millions on bringing in consultants who, by the very nature of their position within the economy, will be inclined towards privatisation/commercialisation when making policy suggestions and proposals. And if there is not sufficient capacity within government, then the resources would be better spent on building that capacity rather than bringing in outside bodies. The formulation of public policy must in the first instance be entirely led by the department and Minister concerned. This approach would in turn help to enhance the department's capacity.

The White paper is meant to inform a review of the Water Services Act and other legislation relating to water services to ensure the legislation supports and conforms to its policy framework.. It also identifies the need to make sure that all the different pieces of legislation related to water fit together and complement each other. For instance, it addresses the interface between water services and water resources – with the objective of achieving integrated planning and effective management through the whole water cycle. We welcome this attempt to integrate the legislation. One of our criticisms of the last round of legislation was that the National Water Act (the overarching Act) came after the Water Services Act (which deals with a specific aspect of water), and the discrepancies and inconsistencies were never ironed out.

The need to integrate legislation relating to water and to local government is not, however, as strongly stated in the White Paper. This should surely be a priority, given that much of the local government legislation was promulgated after the Water Services Act. We are pleased to note that DWAF and DPLG are co-operating

on the White Paper through a core group emerging from the Water Services Sector Leadership Group. We are concerned, however, that this cooperation does not seem to be reflected at parliamentary level. There were, for instance, no representatives of the Local Government Portfolio Committee at the meeting of the Water Affairs Portfolio Committee where DWAF gave a briefing on the White Paper. We need clarity on the extent of co-operation between the two departments, and, in particular, the two portfolio committees.

The alignment of local government and water legislation needs to be done in a way that reinforces the public delivery of services. We would oppose any redirection of policy which opens up more space for privatisation or commercialisation of service delivery.

3 Definition of water services

The White Paper's definition of water services is broader than that contained in the Water Services Act. It includes three new aspects:

- Water services are from source to tap (before, the implication was that water services dealt with the reticulation system only). This new definition increases the potential responsibility of water authorities (municipalities). With municipalities assuming this greater responsibility, special customer relationships, where DWAF or a Water Board sells water directly to large business or industrial customers, often at heavily subsidised costs, should be excluded.

We are opposed to “special customer relationships” as they undermine the principle of cross-subsidisation, and limit the ability of water authorities to deal with water resources in an integrated way.

Extending the responsibility of municipalities has implications for the future role of water boards. We deal with this in a later section.

- Water services now also incorporate organisational issues (what is referred to as business processes) like correct metering/billing, as well as hygiene education. This broader understanding of what is involved in water services is welcomed.

We agree that education around water usage, conservation and sanitation is important, but, and this is a very important qualification, education must not become a substitute for decent levels of service. Accordingly, the White Paper needs to coherently elaborate how the educational aspect will be given effect, and how it will be monitored.

- Water services are not restricted to potable water as it is in the existing Act. It now includes water for agricultural or industrial use. This is important given that municipalities now cover the country wall-to-wall, including farming areas. Again, this will allow municipalities to take a more integrated approach to water resource management and be more pro-active about redistributive policies within their area of responsibility. Municipalities can play a more active role in encouraging more efficient usage of water, and in forcing water polluters to pay. Municipalities need to deal with practices that show scant regard for conservation - such as large-scale irrigation during the day, irrigating in a way that allows 60 – 70% to go back into the ground, and contaminating water resources with pesticides, insecticides and other toxic waste.

The roles of different organs of state (e.g. municipalities, DWAF and the Department of Tourism and Environmental Affairs) need to be clearly spelt out, and the water and environmental legislation needs to be aligned. In addition, and very importantly, the way in which the various institutions identified in the National Water Act and the Water Services Act relate to each other, and the different responsibilities they have, needs to be clarified.

An important point that we welcome is the emphasis on sanitation services being part of water services. (“Water services means both water supply services and sanitation services.”) For too long, sanitation services have not been accorded the importance they should have, and the fundamental linkage between water and sanitation services has not been sufficiently foregrounded .

4 Definition of basic water and basic sanitation

Basic water supply

The White Paper defines a *basic water supply* as “the provision of appropriate education in respect of effective water use as well as a minimum quantity of 25 litres of potable water per person per day (or 6 000 litres per household per month) within 200 metres of a household, which is not interrupted for more than seven days in any year; and with a minimum flow of 10 litres per minute in the case of communal water points. Potable water is defined as drinking water that does not impose a health risk.”

There are a number of problems with this definition:

a) 25 litres per person per day is inadequate

25 litres per person per day is simply not sufficient. It amounts to only half of the World Health Organisation’s (WHO) recommended 50 litres per person.¹ It is too little to meet human and environmental needs, let alone the special needs of infants, the sick, incontinent, aged, or those living with HIV/Aids. In these cases the need for water is greater, and it is well recognised that sufficient water would contribute considerably to the health and well being of these individuals.

We have long argued for 50 litres per person per day as an absolute minimum. In fact, a strong case can be made, based on international research, for much more to be the acceptable minimum. While Gleick², after quantifying the basic drinking, sanitation, bathing and cooking/kitchen water needs, arrives at a minimum basic water requirement of 50 litres per person per day, he does also cite other researchers who have arrived at a considerably higher amount. For instance, he refers to Falkenmark, who argues for 100 litres per person per day to be the minimum amount necessary for an acceptable quality of life. Practical research conducted by SAMWU indicates that a reasonable daily minimum water usage per person would fall between 63 and 120 litres³. These figures do not include water used for subsistence gardening or the operation of small businesses – practices which are often essential for the survival of the poor.

Our position, therefore, is for a basic minimum of at least 50 litres per person per day in line the recommendations of the WHO.

¹ McDonald, D.A. 2002a, “You get what you paid for: Cost-recovery and the crisis of service delivery in South Africa”. Alternatives, 28(3)

² “Basic water requirements for human activities: meeting basic needs” by Peter H. Gleick in *Water International*, 21 (1996)

³ We can show that a daily minimum water usage per person (in a household of 8) is:

Wash basin	10 litres
Toilet (2 flushes)	26 litres
Hands/teeth/face	8 litres
Drinking (in sub-tropical climate)	5 litres
Food preparation	1 litre
Washing up (morning and night)	3 litres
Clothes	7 litres
General house cleaning	3 litres
TOTAL	63 litres
Bath (instead of washbasin) – 2 per week @ 200 litres per bath	57 litres
TOTAL	120 litres
Shower (instead of washbasin) – 3 per week @ 100 litres per shower	42 litres
TOTAL	105 litres

b) Allocation of water per household

The White Paper's proposal to allocate 6 000 litres per household is based on the logic of 25 litres per person on the basis of an average figure of 8 individuals per household. As argued above, 25 litres per person lifeline provision is grossly inadequate to meet hygienic needs and support life as envisaged in the Constitution. With many households being far larger than this figure and still others being multi-nuclei where families are accommodated in the backyards as a result of the housing crisis, 6000 litres per households amounts to no more than a nominal lifeline provision. At least, a WHO advocated 50 litres per person would by extension double the household provision to 12 000 litres, thus making a meaningful impact on the livelihoods of the poor as intended in the clause 27 of the Constitution.

c) Level of service

A standpipe is defined as the basic water service level. This level of service is too low and will not improve people's living conditions or standard of living. Research has shown that a yard or house connection reduces diseases like diarrhoea (particularly among infants and the aged); saves time (water does not have to be fetched from a community standpipe); is less of a burden on women; allows for more effective subsistence gardening/farming and economic activity in the informal sector; and allows communities to live with more dignity.

On the other hand, there are many problems with only providing standpipes in a community. The immediate cost is obviously less than supplying piped water on-site, but in the long run it is inefficient and costly:

- The economic, social and environmental benefits of providing a higher level of service are not achieved.
- When demand for water increases in the area the system becomes overloaded
- When the services are upgraded, the basic infrastructure (such as thin pipes, and reticulation system that only extends as far as streets) has to be ripped out and completely replaced at great cost.

There is a real danger, therefore, that low levels of service will tend to become entrenched in a community. Communities have little chance, in this scenario, of escaping from the trap of poverty.

We therefore continue to argue for piped water into a yard in rural areas as a preferred service level and house tap connection in urban areas as a prescribed minimum service level in line with the medium term goal of the Reconstruction and Development Programme

d) Minimum flow

The pressure in pipes should be sufficient to deal with the specifications outlined above (yard or house connections, which is not interrupted for more than seven days a year, and with at least a minimum of 50 litres per person per day).

We argue that the 10 litres per minute flow rate should apply to all water points, within reason, and not just to communal water points. It seems to us that it would be a fairer and more equitable situation if the basic definition included a commitment to this flow rate for all water points consistent with the 1994 White Paper.

Basic sanitation service

The White Paper defines a basic sanitation service "as the provision of appropriate health and hygiene education and a toilet which is acceptable to the users, safe, reliable, environmentally sound, easy to keep clean and provides privacy and protection against the weather, is well ventilated, keeps smells to the minimum and prevents the exit of flies and other disease carrying pests."

This is much less specific than the water services definition, but clearly points towards Ventilated Improved Pit latrines as the basic form of sanitation. At one point the White Paper argues explicitly that "in most instances, waterborne sanitation should not be regarded as a basic level of service.... A municipality should only consider subsidising flush toilets further where it is confident it can fund, administer and sustain these subsidies." (section 5.5.2 pg. 34)

We argue both that the definition must be more specific, and that VIPs are totally inadequate as the basic sanitation service. We agree with SALGA's characterisation of VIPs (particularly as a replacement to the bucket system) as socially unacceptable.⁴

Apart from social considerations, there are also environmental and health problems associated with VIPs, which the White Paper does not recognise. These include:

- Waste-water (eg. water used for bathing, washing, cooking) needs to be properly drained away –it can't be put into a dry sanitation system.
- VIPs that are self-constructed are often not properly constructed – they need an expensive, independent external structure and complex draining and ventilation duct procedure.
- There isn't enough capacity to drain/suck VIPs – and cost to low-income residents is high.
- Bacteria etc from pit latrines often penetrates into water table and contaminates it.
- Children often don't use VIPs because they are kept dark to keep insects out.
- People with Aids need better standards of hygiene as part of fight against opportunistic diseases.
- Approximately 20% disease abatement could be gained by having flush toilets rather than VIPs.⁵

We note with concern that there are limits on what the DWAF subsidy for sanitation can be used for – a dry on-site toilet facility like a VIP - and that it is only under certain conditions that the DWAF subsidy can be topped up with other subsidies to provide a higher level of service.

Viewed from a perspective of the sustainability of the delivered services and the consequent improvements in the conditions of life, the insistence on the VIP as the prescribed minimum sanitation service does not take into account the health and social benefits in the long term, as opposed to the narrow and immediate concerns about the financial cost. VIPs do not necessarily help to avoid the financial, human toll and suffering costs associated with cholera outbreaks.

We argue that flush toilets, or equivalent new technology that is environmentally friendly, should be set as the minimum level of sanitation service. (It is taken as a given that the bucket system, where it still exists, must be eradicated as rapidly as possible). We have specified “equivalent new technology” because we recognise that some areas of the country are water scarce and full water borne sanitation might not be feasible. We believe, however, that there are viable and acceptable alternatives, which are the equivalent to flush toilets.

This is in line with the Nedlac agreement whose minimum service standards called for the provision preferably of water-borne sewage, necessary for the safe, environmentally friendly, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic waste water and sewage from household, including informal households.

5 Free Basic Water

The White Paper argues that the right to free basic water is not an absolute right, and can be limited. Under certain conditions people can be cut off from even the minimum free amount of 6 kilolitres per household.

This limitation on what should be a basic right is repeated in several places and in several ways in the White Paper:

“Everybody in South Africa has a right to a basic amount of water and a basic sanitation service that is affordable. With this right comes a responsibility – not to abuse the right to free basic services and to pay for services where these are provided over and above a basic amount.” (Preface)

⁴ SALGA NGC Discussion Document “Local Government: The driving force of delivery”

⁵ Source: Patrick Bond 'Unsustainable South Africa' pg 23

“Consumers have a right to a basic water supply. However, this right also embodies the obligation to exercise that right reasonably and in accordance with general limitations placed on that right.” (section 5.6.6 pg. 36)

“The right to a free basic water supply is not an absolute right, however, and the abuse of the right to free basic water can result in the restriction and/or disconnection of the water supply, provided fair and equitable procedures are followed and special arrangements for indigent persons are made” (section 5.8.2 pg. 40)

We reject this approach completely. It contradicts other commitments in the white paper to "affordable" water services, which we interpret to mean affordable for ordinary members of the community and those most in need of water. It is because water became unaffordable (when full cost recovery principles were implemented) that cholera broke out in KwaZulu Natal – resulting in more than 250 000 people being infected nationally by January 2002. This scourge of cholera outbreaks continues even this year.

The policy position advocated by the White Paper in this regard is contradictory. On the one hand it purports to translate into policy the constitutionally entrenched right to water in terms of which access to sufficient water is propounded as a human right, whilst on the other hand it seeks to circumscribe it by a policy position advocating disconnection of lifeline provision where end-users are in arrears. Constitutional provisions take precedence over policy unless when they are so qualified or limited by the Constitutional Court. This is inconsistent with government's recognition of water as an essential service, whose continued availability to end-users must be ensured and may not be disrupted even by a labour action. It was on the basis of these concerns, particularly the threat to life posed by disconnections of households from water supply that disconnections were outlawed in Britain, where even “trickle valves” are outlawed.

Our position is that nobody should be denied access to free basic water, even if they are in arrears and can't afford to pay their water account. Access to free basic water should be an absolute right, which nobody can be deprived of, no matter the circumstances, because water is essential to life. As we outline in Section 6 below, the state has recourse through inter alia the courts to enforce payment of arrears, and our argument should not be interpreted to be an encouragement of refusal to pay for services. The ring-fencing of free basic water as an inviolable right has nothing to do with promoting a culture of non-payment, and everything to do with issues of health and basic human rights, including those of children who are powerless to deal with issues of non-payment.

We have identified a number of other problems with the way that the free basic water policy is being implemented. These problems need to be highlighted:

- a) As we have already stated, in our arguments about the definition of a basic water supply, 25 litres per person per day is insufficient. The basic amount of water that each individual should have an absolute right too, is at least 50 litres per person per day, if not more.
- b) Many municipalities have not implemented the free basic water policy. This means that many people still do not have access to free basic amount of water. According to DWAF's own very inconclusive figures, only 57% percent of the total population in South Africa have access to free basic water. DWAF has admitted that the figures on its website are inaccurate and don't give a fair reflection of what the actual situation is.⁶

Another way of looking at the figure of 57% is to say that of 25 736 communities across the country, only 12 784 (50%) have implemented free basic water. This is nearly two years after the promise for free water was contained in the ANC election manifesto for the December 2000 elections. In rural areas in particular people do not have access to free water yet. In fact, the number of people who actually have access to free basic water is probably much lower, for many of the reasons outlined below.

⁶ For instance, problems and inconsistencies with the figures on the website are identified in a report by Provincial Support Unit for Free Basic Water in the Mpumalanga Region.

- c) Those who are in arrears often don't get the free basic water unless they make an arrangement to pay off what are often insurmountable bills.
- d) Residents who have their water cut-off are denied even the basic amount of free water.
- e) Access to the free basic water is often conditional on residents paying a connection fee – which can be as high as R800.
- f) Those who don't have access to basic water services (ie in areas where there is no or little water infrastructure) don't have access to the free water. These are generally the poorest of the poor, and those most in need of access to free potable water.
- g) Many municipalities are implementing the policy through the indigent policy. There are many problems associated with the indigent policy. These include the cost of administering such a policy, the difficulty of determining appropriate, fair and just criteria, defining who is “poor”, and the danger that many of the most needy will fall through the gaps.

The following questions around criteria that should be used to determine who could be included in an indigent policy, demonstrates the fundamentally problematic and unsustainable nature of such a policy.

- Is it based purely on income – either of the individual or the household? An individual might earn above the cut off limit, but be responsible for a large household, or in fact for two or three different households. How do you take these complexities into account?
- Many people survive by earning money where they can - in short-term, temporary jobs, casual work, informal economic activities and so on. How do you quantify these small bits of money coming in – from income sources that are unreliable, insecure and temporary? Should money from these sources disqualify someone from falling under an indigent policy?
- What level should the income be set at?
- If the determination of poverty is based on expenditure rather than income (as seems to be the trend), then how do you determine the expenditure of a household? Does expenditure include hire purchase agreements, or money spent that is derived from loans?
- Is the geographical area taken into account?
- Are certain categories of people automatically included in the policy? e.g. unemployed, single parents, pensioners, anyone on a grant.

In contrast to all these problems thrown up by an indigent policy, a universal free lifeline service is easy to administer, is inclusive, and does not detract from everyone's right “to have their dignity respected and protected.”⁷

- h) Old, leaky, disrepair systems mean that there is high water loss and residents often end up paying for this “lost” water. This is particularly the case where residents have bought municipal houses that they previously rented.
- i) There are very little, or no, additional central government finances for implementing this free basic water policy. This makes it very difficult for the poorer, weaker municipalities to implement it. Innovative and progressive measures need to be put in place so that municipalities are able to cover the costs of the free basic water. These measures include substantially increasing the equitable share, effective local and national cross-subsidisation, and a rates-based or geographic-based tariff system where those who pay below a certain rates level, or live in a particular geographic area are excluded from any payments. We note that in terms of

⁷ Section 10 of the Bill of Rights

⁹ DWAF “Establishment of a Pricing Strategy for Water Use Charges in Terms of section 56 (1) of the National Water Act, 1998 (Government Gazette 20165, 12 November 1999; No. 1353, 12 November 1999)

the pricing strategy for raw water use charges⁹ issued by DWAF in a government gazette in 1999, municipalities should be receiving “the first tranche of 1st tier water (equivalent to that portion required to meet basic human needs, defined as 25 litres per capita per day) free of charge” (Section 5.1). It seems few, if any, municipalities, in fact, receive this amount of free raw water (either from DWAF or Water Boards). This urgently needs to be clarified as it has enormous implications for the ability of municipalities to implement in a sustainable way the free basic service.

j) Municipalities are being allowed a lot of flexibility in how they implement the policy. This means that there are differences among the municipalities in the amount given for free, who gets it, and so on. The result is considerable unevenness and inequity in the implementation of a national policy.

6 Credit control policy

Our approach to credit control is shaped by our position, argued above, that everyone has an absolute right to a basic amount of free water. This right to water must be understood in the context of water having a social value and not just an economic value¹⁰. In other words, while it does cost municipalities to treat water and deliver it to the end point, this cost should not be allowed to detract from people’s right to water as a socially necessary good. We therefore argue that nobody should ever be disconnected completely from their water supply. Apart from impacting on people’s basic rights, it has serious health and environmental consequences.

The White Paper, however, takes a different approach – and one that we reject. The measures identified by the White Paper include:

a) Disconnections of even the basic amount of free water.

While the White Paper states that when there is non-payment it is preferable to restrict access to the free basic water amount, or provide an alternative source of water, rather than disconnect completely, municipalities *can* disconnect completely.

“Where the costs associated with limiting water services in this manner would have a substantial impact on the viability of the water services provider, water services may be disconnected after proper procedures have been followed, and until such time as the consumer has made an arrangement for the settlement of the outstanding amount.” (section 5.6.6 pg. 36)

“Immediate disconnection may be appropriate where services equipment has been tampered with, since this may jeopardise the health of consumer and the security of the system.” (section 5.6.6. pg. 36)

We are strongly opposed to this. Nothing should prevent people having access to the free basic water they are entitled to. As already stated, disconnections have been outlawed in the UK, because of the impact it has on health and hygiene, in terms of the 1999 Water Act. This makes it illegal for households to be disconnected, for pre-payment meters to be installed or even “trickle valves” to be used. The non-payment of accounts is dealt with in the same way that non-payment of any other account would be dealt with – through the courts. This means that while other measures can be instituted to reclaim debt, cutting off an essential source of life is not one of them.¹¹

b) Cutting off electricity when there are arrears on water accounts.

¹⁰ In November 2002 the United Nations Committee on Economic, Social and Cultural Rights took an important step by declaring that “water should be treated as a social and cultural good, and not primarily as an economic good.”

¹¹ “UK Water privatisation – a briefing” by Lobina, E and Hall, D (PSIRU, February 2001), In this document, the new Labour government is quoted as saying: “Where the water supply is disconnected, the maintenance of good health and hygiene can only be put at risk. In the light of this, and having considered the available evidence, the Government believes that disconnection does not have to be an integral part of the process of collecting arrears of charges for water supplied to domestic premises.”

We argue that the approach of cutting off people's electricity when they are in arrears with their water account is completely unacceptable.

Both cutting off one service because households are in arrears with another service, and cutting off completely the source of energy of a household, impacts on people's basic rights. It also has serious health, safety and environmental consequences. For instance, greater use of paraffin as an alternative is damaging to the environment, a fire hazard, and inefficient.

Cutting off electricity is also inconsistent in government's own terms. How can they argue for services to be ring-fenced through business units, and yet penalise people who don't pay for one service through withdrawing their access to another service?

c) Installing pre-payment meters.

Municipalities view pre-payment meters as a viable mechanism for credit control, and the White Paper supports them in this.

We have, however, serious concerns about the implications and effect of pre-payment meters – particularly on the poor. It seems to us that there is a real danger of these meters being very onerous for the poor. For instance:

- These meters result in self-disconnection from services that are basic and important both for life and decent living conditions. It looks like the individual's own choice on the surface - but it is not really a free choice. They are being forced into an unhealthy and possibly dangerous situation by poverty. Poverty, and people's inability to pay for services, is turned into individual problems with individual solutions (self-disconnection) rather than collective problems. Self-disconnection might be a more politically acceptable solution for councils, in that they do not have to go out to people's homes and do the disconnecting themselves, but is unacceptable for both individuals/households and the broader public good.
- Councils often use pre-payment meters to gather in debt. For residents in debt, a certain amount of the money they pay into their card is allocated for covering arrears they have built up. For the poor, this makes it even more difficult to afford enough water to meet their needs.
- In addition to pre-payment meters being used for debt collection purposes, there is evidence of the price of water obtained via pre-payment meters being heavily regressive. The price of pre-payment water in some of the poorest areas, for instance, is considerably higher than for any other domestic users.
- Pre-payment meters are a way of privatising disconnections. It reflects a commercial approach to service delivery that is more about balancing the financial books than about meeting the service needs of communities. The government, who has a responsibility to make sure that people have access to public services, is simply abdicating from that responsibility and making it the responsibility of the individual.
- Pre-payment meters perpetuate gender inequalities. When the money runs out and households are faced with no water and no electricity, it is generally women and children (women are traditionally seen as responsible for domestic work) who must compensate by fetching water from other sources, fetching wood to make fires and so on. It increases the burden of, and time spent on, domestic duties for women.
- With the existing system of metering, the council sends out an account for water already consumed. In other words, the council, as an organ of state, bears the up-front cost of the service, while individuals pay after they've used the service. With pre-payment meters, the individual/household must bear the cost up-front (ie people pay before they use the electricity or water). Poor individuals/households are much less able to bear this cost than the state.
- Pre-payment meters leave no room for poor households to use credit as a means of ensuring their continued access to water. So, unless the household has ready cash when their water card runs out, they must do without water. Many poor households have to make a choice on a day-to-day basis about what they are going to spend their scarce resources on. Very often, it might be a choice between food, buying more units for their electricity meter, and buying more units on their water card. If they choose food, their lack of access to water can lead to serious health and environmental dangers, including possible loss

of life. This is one of the reasons that the government in the United Kingdom has outlawed the use of pre-payment meters¹².

Given our concerns, we argue that a two-pronged approach needs to be taken to this issue:

- We believe that it is still too early to advocate uncritically the widespread use of pre-payment meters. A great deal more research needs to be done into the long-term impact of these meters on the poor; as well as the impact they will have on the constitutional imperative on the government to ensure access to water as a human right. Future policy on pre-payment meters can then be informed by this research.
- In the meantime, municipalities making use of, or intending to make use of these meters must do so in accordance with both their statutory obligations and social imperatives to ensure access to a basic amount of water for all, rather than simply as a punitive mechanism of control. In other words, pre-payment meter cards must be embedded with the lifeline free basic water supply per day per person, followed by a progressive block tariff system, based on cross-subsidisation. Legislation should provide that no pre-paid meters be allowed to operate without the provision of the free basic water supply.
- In addition, since the pre-paid meter system is mainly introduced in the low-income urban and rural areas as water provision is extended to these communities for the first-time, with the goal of reducing the administration costs and therefore debt and end-user arrears; we propose that the administration costs saved through this system should be used as part of the resources required to raise minimum level of lifeline provision to 50 litres per person for all.

7 Separation of water authority and provider

The White Paper entrenches the division between the water service authority and the water service provider. We have always argued against this division, except as it allows for other public sector bodies (such as Water Boards) to assist municipalities in delivering water. For us, the division seems to be consistent with the general commercialisation of service delivery, and simply sets up a situation where the move towards privatisation is made that much easier.

There seems to be little compelling evidence to support the argument that municipalities cannot be a regulator and a provider at the same time. Municipal councils have always carried out this dual role, and we see no evidence that it is this that has resulted in inefficiency and poor service delivery.

We are alarmed at the extreme lengths that it has been taken to in the White Paper – where, even if a municipality is both authority and provider, an artificial contractual relationship must be set up between the municipal manager and the manager of the water department, “the service provider”. Instead of seeing the municipality as an integral whole, with the water department and the administration working collaboratively together, the municipality is divided up into arms length units.

Instead of improving efficiency and effectiveness, the division between authority and provider, whatever form it takes, seems likely to worsen these:

- It is bureaucratic. Water provision is governed by a contract.
- It is legalistic. The municipal manager relates to the water provider on the basis of a fixed contract that leaves little room for dealing with actual problems and complexities. It removes the possibility of any flexibility.
- It is costly and a waste of resources.
- It undermines accountability. Political responsibility for service delivery is taken away, and replaced with commercial responsibility in the form of an autonomous manager.

¹² “Water regulation and pre-payment meters” by Mark Drakeford in *Journal of Law and Society* Vol 25, Number 4, December 1998 and “UK Water privatisation – a briefing” by Lobina, E and Hall, D (PSIRU, February 2001),

¹⁴ SAPA October 30 2002

8 Public versus private sector delivery

The White Paper starts off by stating that public sector delivery is the preferred option for delivering water. This policy stance correctly gives the mode of public delivery of water services preferred status. But it doesn't then promote this option very strongly. The White Paper being a policy framework needs to elaborate more on this policy stance, including making references to the kind of circumstances under which a deviation could be countenanced.

- When it sets out the procedures municipalities must follow in choosing an external water provider (section 4.5.5 pg. 23), there is no preference given to the public sector.
- Among other steps, the WSA “should identify possible providers including water boards, other municipalities and CBOs”, but doesn't say it should first identify other *public sector providers*.
- It must have compared the respective merits of public versus private provision and if it chooses the private option, it must be able to make a sound and rational case for this, including a motivation for the strategic and operational benefits for the WSA. In other words, it compares public and private on the false assumption that they are equal options.
- When choosing a private WSP, the WSA must be able to show the contract will provide value for money, be affordable to the institution and transfer appropriate technical, operational and financial risk to the private party. In other words, the main considerations in considering which private sector company to bring in are financially orientated, rather than social considerations.

It also qualifies the commitment to public sector delivery by saying that the priority is to protect the public interest, and sometimes it might be in the public interest to have private sector delivery.

In this way, municipalities are given space to bring in the private sector because they can argue that it is in the “public interest”. References to public interest tend to be open to subjective interpretations wherein any policy option could be justified or rejected. Typically, there is a tendency to refer to public interest as a way of undermining the contribution of trade unions in the context of transformation or restructuring of state bodies, where the trade unions' contributions are discarded based on the perception that they are only fighting against privatisation because they are selfishly trying to protect the narrow wage interests of their members. We reject this argument. We have always argued that we believe privatisation will be against the interests of the community, as well as against the interests of workers. Water is a public good, and as such must be left in public hands. We don't believe it can be in the public interest to give a 30-year contract to a private company to deliver services as they have done in places like Nelspruit and Dolphin Coast. Evidence has been steadily mounting of numerous problems with public-private partnerships and privatisation initiatives.

- The BOTT (Build, Operate, Train and Transfer) schemes that the government set up were not successful and were eventually scrapped because they were proving too costly.
- The 30 year concession that the Dolphin Coast municipality signed with Siza Water, a subsidiary of Saur International of France, has run into problems. Because the company experienced a shortfall in revenue, the contract was re-negotiated and tariffs were raised. This was done so that the company would not lose out on the profit it had anticipated.
- Similar problems are being experienced in Nelspruit. Many residents in the poorer communities are not able to pay their bills because of sudden increases in their water bills. As a result they face water cut-offs. The financing for infrastructural development that the company promised as part of its bid has not materialised as envisaged - the company struggled to raise the finances externally. Eventually it turned to a South African parastatal, the DBSA, for the money. The DBSA could just as easily have lent to the municipality itself. As well as the price increases, services have not been extended, and there are ongoing service delivery problems such as breaks in the supply of water, ongoing leaks, slow response to burst pipes, disconnections with no warning and so on.
- The Nkonkobe municipality in the Eastern Cape took WSSA to court to cancel a contract that the previous municipality (Fort Beaufort) had signed with the company. The Nkonkobe municipality argued that the contract was proving too costly for the municipality. They won the court case on the grounds

that the Fort Beaufort municipality had not consulted sufficiently with the community before entering into the contract.

We do recognise some role for the private sector. This, however, should be confined to building local government capacity and procurement-type arrangements. In other words, we envisage a much narrower role than that identified on under the guiding principles in section 3 of the White Paper. We are opposed to the private sector getting involved in operations, management, consulting services and investment that involves concessions. For us, the basis of the role the private sector can play is contained in the local government National Framework Agreement.

We again raise serious concerns with the role of consultants – this is an involvement of the private sector that we regard as completely wasteful. Last year, according to the Auditor-General, the use of consultants cost government more than R16-billion¹⁴. Instead of using existing public sector capacity, or focussing on expanding and building it, government is wasting huge amounts of money on these consultants.

9 Definition of privatisation

In section 4.5.5 (pg. 22) of the White Paper there is a definition of privatisation that narrows it to the sale of fixed assets. Any other arrangement involving the private sector, like concessions (which they call private operations), is excluded from their definition.

We strongly oppose this understanding of privatisation. It is not possible simply to get rid of a problem (privatisation), by defining it away. We align ourselves with a broader definition that is prevalent in both national and international literature on privatisation.

Cosatu has consistently defined privatisation in terms of the extension of the market. This definition of privatisation covers, not only the open sale of state assets, but also other processes that turn state functions over to the private sector and the market. These processes include:

1. The sale or partial sale of state-owned assets or enterprises.
2. The introduction of private competitors in sectors historically controlled by the state. Effectively, this approach privatises part of an industry or sector, even if the state does not itself sell any assets. It effectively subjects state interests to pressure to compete on the market, ultimately reducing their capacity to meet social needs.
3. Relinquishing the management of state functions to private interests. This can take the form of outsourcing services from the public service. It also takes the form of contracting management of municipal services to private companies. In these cases, the state does not necessarily sell assets, but they nonetheless fall under private control.
4. The requirement that state functions operate on a commercial basis, in some cases registered under the Companies Act. Commercialisation both often forms a first step toward privatisation and subjects state activities to the logic of the market. As with the privatisation of historically state-run industries, it makes state interests pursue commercial imperatives rather than broader social needs.

This is not just an understanding of privatisation adopted by those opposing it. According to Joshua Galeforolwe, chief executive of Botswana's Public Enterprise Evaluation and Privatisation Agency (Peepa): "Peepa adopts the definition where privatisation covers a very wide range of different policy actions resulting in private sector involvement in economic activities that have been previously undertaken by the public sector. Privatisation has been advocated as the means to enforce market discipline and promote efficient allocation and use of economic resources."¹⁵

¹⁵ Botswana – A Business Report Review October 2002

10 Community-based organisations as water service providers

The document defines Community Based Organisations (CBOs) as not-for-profit organisations within a defined community that are mandated by that community to provide a specific municipality service to that community.

In general we do not support CBO involvement in water provision. Not only is this the role of local government, which they should not be abdicating responsibility for to community organisations, but we question how viable it is for CBOs to provide water.

The document identifies two key criteria for choosing a CBO as a WSP. Firstly they must have the appropriate legal status and secondly they must be able “to provide water services as (or more) cost-effectively compared to other alternatives.” There are major problems with this second criterion.

- Firstly, there is a problem with financial considerations being the over-riding factor when considering who to bring in as a WSP. Presumably this is the key criterion which will also be applied when WSAs consider bringing in private sector providers.
- Secondly, CBOs are generally small, community- based organisations. How can they compete on financial terms with private providers? The only way for them to do this is by finding ways to cut their costs (probably affecting the quality of service and workers employment conditions) or by implementing stringent credit control policies. Already there have been cases where NGOs have been reluctant to implement the free basic water policy because it impacts on the financial viability of the water schemes they are running.

We would see the key role for CBOs and NGOs as being involved in capacity-building for local government.

11 The role of Water Boards

The document outlines three possible options for the future of water boards:

- i) Status quo: DWAF owns and controls water boards through the Minister of Water Affairs and Forestry appointing the boards. The situation is as outlined in the Water Services Act. Where a Water Board is a water services provider, it must enter into a formal contract with the municipality (water services authority).
- ii) Water Service Authorities would be responsible for the bulk functions of water boards, unless there are existing situations where Water Boards deliver bulk services across water service authorities. This would mean that Rand Water and Umgeni Water would stay as Water Boards, but some of the other smaller boards, which operate within the boundaries of one water authority, would cease to exist. Their functions would be taken over by the Water Services Authority (the Municipality).
- iii) Regional source to tap utilities would be set up – similar to the regional electricity distributors (REDs). The utilities could either be wall-to-wall or in selected areas.

We have in the past supported the establishment of wall-to-wall Water Boards across the country because we saw Water Boards playing an important role in assisting municipalities with water delivery and building their capacity. We are, however, very concerned at the general trend towards the commercialisation of the Water Boards where Water Boards are under increasing pressure to act like a business because they must compete with private companies.

We note that SALGA has also raised serious reservations about Water Boards and the way that they are currently operating.

Since we support an integrated approach to service delivery - both within and across services - we believe there is an argument to be made for making municipalities responsible for water service delivery from source to tap. This would mean that one of the key roles of Water Boards (to deliver bulk services) would then fall away and the need for Water Boards themselves would be lessened where such capacity on the part of the Water Service Authority exists. Therefore, we argue for a water service provision system consisting of both the authorities (where they have capacity) and the water boards. In other words, the boards complement the water service authorities.

Where municipalities lack capacity and it is not feasible for them to deal with bulk water, it might make more sense for multi-jurisdictional entities covering several water authority providers to be established. Where appropriate, existing Water Boards could be transformed into these entities.

We therefore call for the continued ownership and control of the Water Boards by DWAF where the Minister appoints the board members. These Water Boards would be contracted to Water Service Authorities lacking capacity and they would not be confined to a particular authority's jurisdiction.

They would be subjected to a strong regulatory framework governing their operation and there would be clear lines of accountability between the water boards and municipalities. The Water Boards would not be expected to compete with private companies, which forces them to operate along commercial lines. Thus, they must continue to function as non-profit autonomous utilities such as they were constituted by the Water Act of 1956 and also as proposed by the 1994 White Paper. This would allow them to assist local authorities lacking the capacity to deliver water services, in order to ensure that such authorities are able to deliver water service in the future.

12 The role of DWAF

The White Paper argues that the direct role of the Department of Water Affairs in water provision will be phased out over a five-year period, and that the department will focus on playing a regulatory/oversight role.

We agree with this conceptualisation of DWAF's role, and the phasing out of DWAF's responsibility for direct water provision since local government is supposed to be the organ of state that is responsible for water delivery. Our concern is with the proposed timeframe. We do not believe that it is viable for DWAF's involvement to be phased out within the next five years. Are some of the newer, weaker municipalities ready to take over responsibility for water services yet? There is the real danger that if DWAF hands over the water services too soon, the municipality will want to contract them out to a private company because they don't have the capacity themselves.

13 Emphasis on developing management and improving their conditions

In the White Paper top management, rather than workers or even middle level management, is seen as the key to effective water service provision. Throughout the document there is an emphasis on the need for good management. The implications that are drawn are very problematic.

- Municipalities need good managers therefore they must be paid high salaries with good incentives.
- Municipalities need good managers therefore a great deal of energy and resources must be put into building their capacity.

The importance accorded top management is never balanced by the recognition of the important role that workers play, with the result that the White Paper never focuses on developing the capacity of workers. Management is an important function, and in the past we have argued that it is often poor management that is the cause of service delivery problems. But at the same time, when looking at improving service delivery, the vital role played by front-line workers needs to be accorded the importance that is due to it and their capacity needs to be developed.

Throughout the document there are general references to the need for capacity building, but most of these refer to building management capacity. For instance, on page 14 it states “The need for capacity building is ongoing and should be prioritised. Capacity building relates not only to “hard” technical skills but also equally to “soft” skills including health education, communication, negotiation, social mediation, leadership and management. Good managers are scarce and should be sought out and nurtured.”

There is one general reference in the section dealing with support to the need for training and the need to make use of sector-based and other training initiatives including the SETA. But no indication who the training is for – workers at the frontline of service delivery or management?

14 Contracts

There are three areas of concern relating to contracts.

a) Implied contracts

The White Paper suggests that “implied contracts” are sufficient (when it discusses the definition of a water service provider as someone who has a contract or implied contract with water services authority (section 1.4.4)). We need clarity on these “implied contracts”. We also argue that an “implied contract”, particularly when the private sector is involved, is not sufficient protection for municipalities and residents and it must be clearly stipulated that a written contract must be entered into.

b) Definition of retail water services provider

The document raises a number of points around the definition of a retail water services provider (section 4,5) eg. a resident should never have to deal with more than one water provider and one sanitation provider (or preferably one provider who deals with both aspects); a municipality should only have a contract with one retail provider for a specified area; the defining characteristic of a retail WSP is that the WSP has responsibility both to provide water and/or sanitation services physically and to manage consumer interface; and the WSP assumes financial risk related to provision of services and collection of fees.

We can support this approach if it is in the interests of clarifying exactly who is responsible for service delivery in a particular area, and who residents should be interfacing with. We are, however, concerned that in defining providers in a way that excludes cases like JOWAM and WSSA, Queenstown, these will fall outside of the regulatory framework. Provision must, therefore, be made for these agents to be as strictly regulated as a water provider.

c) Problems with contracts

The White Paper does not refer explicitly to problems that can arise in relation to contracts and how they could be averted or dealt with.

Among these problems are:

- The danger of self-perpetuating contracts as municipalities find they have no capacity to take over from the private company when the term of the contract expires
- The danger of long-term contracts failing to meet current priorities and needs. This is particularly a problem when the contract is for a longer period than the life of the council. There is the very real possibility of a new council being elected who find the contract to be too onerous and take steps to end it as was the case in the Nkonkobe Municipality.
- Where the contract is not cancelled, but rather re-negotiated, it can prove to be extremely costly for the municipality.
- Contracts can be very bureaucratic and legalistic mechanisms for shaping service delivery. They lack flexibility and tend to focus on financial rather than social considerations.

15 Sector goals:

This White Paper draft goes much further than the previous discussion document in setting out very specific sector targets (pg 8 & 9). We need to ask questions about some of the specific sector targets.

- An additional 7 million people to be served with basic water supply services by 2008 and 18 millions to be served with basic sanitation services by 2010 – what about sustaining these new connections? We know it's a problem with water extensions that have already been made. Water projects have fallen into disuse because of lack of capacity to maintain them. What measures will be put in place to ensure that it doesn't happen again?
- Free basic water is applied to all people with access to basic services by 2004. What about all those without access to basic services? They are surely the ones who need water the most. People without access to basic water get it through pumps/boreholes (and presumably untreated from rivers/dams) and rudimentary water supply services (which are defined as a service which provides access by a household to water with a quality which is adequate from a health point of view and which is within a distance of 1000 metres from the dwelling in which the household resides.)
- A payment rate of at least 90% of billed invoices by 2008 seems to be unrealistic given the socio-economic circumstances in which the majority of the end-users find themselves as well as the unsuccessful attempts through initiatives such as the Masakhane Campaign, whilst in the meantime the local government debt (R24 billion) continues to grow. In addition, the Water Service Act empowered the Minister to regulate the national tariff standards in line with what was agreed to at Nadlac. It was further agreed that the Minister should be empowered to consider the setting of maximum tariff levels in order to avoid run-away tariff increases by local authorities and the putting in place of mechanism to facilitate cross-subsidisation.
- Government invests at least 0.5% of GDP on water infrastructure on an annual and ongoing basis. This is not enough given backlogs, inequalities in service delivery, need to fund the free basic water policy and so on. Government spending on water has decreased between 1997 and 2000 by 7,5% in real terms.¹⁶ This calls for increased investment at least at a rate that would not only help recover from this contractionary period but also set it on a positive footing.

16 Local Government Finances:

Taking into account our argument for higher standards and levels of service delivery for water and sanitation services, and recognising the high level of poverty and unemployment in the country, considerably more financial resources needs to be pumped into local government for service delivery. This needs to happen both through making the total cake bigger, as well as by making the slice of cake that goes to local government bigger.

Local government initially experienced a substantial drop in intergovernmental transfers – 85% between 1991 and 1997. While the amount allocated to local government has now begun to pick up, it is still too low to allow municipalities to meet all the responsibilities that they have been allocated.

The equitable share is earmarked for poorer, weaker municipalities and is meant to cover the operational costs of providing a basic service to all. Capital transfers costs are covered by the CMIIP. Given the backlogs in service delivery and municipalities' responsibility for providing free basic water we argue that money allocated through both transfer programmes needs to be substantially increased.

¹⁶ Marx, C., 2001, South Africa's experience in the privatisation of its water and sanitation services. (Draft report prepared for water aid.)

Subsidies and infrastructural development must be targeted explicitly towards the poor and working class. This should be done through a set of policies weighted in favour of the working class, but which don't result in increased administrative costs for the state (e.g. through an indigent policy).

The free basic water policy (as we would like to see it implemented), with an initially gently rising block tariff, is an example of this weighted kind of policy.

Implementing the free basic water through an indigent policy is exactly what we don't want.

17 Conclusion: General orientation to commercialising water service delivery

a) Overall approach

In many of the problematic areas identified above the general orientation of treating water services like a business, rather than a public service, can be seen.

Meeting the needs and interests of the poor and working class is not a strong thrust of the paper. Part of the vision for water services is that "water supply and sanitation services are sustainable and are provided by effective and efficient institutions that are accountable and responsive to those whom they serve." But this commitment doesn't distinguish between the different classes it services. Given that we live in a capitalist society, a class-blind statement like this is likely to end up favouring the middle-class/the rich and perpetuating the status quo.

A theme that is constantly repeated is the need to view water services like a business. "Water services must be provided in accordance with sound business principles in order to maintain sustainability" (Pg. 11)

- The user pays principle is emphasised, as is the principle of cost recovery
- The White Paper specifies that municipalities should only introduce higher levels of service where "there is an adequate income to support the proposed investments". In other words, only if people can pay for higher service levels should they be provided. No consideration is given to the social, environmental, economic and health benefits of providing a higher level of service.
- Pricing is seen as a key tool of demand management and of promoting efficient use and reducing wastage. "A consumer who does not pay for water in relation to the amount of water consumed has no incentive not to waste water." (section 5.7.1 pg 37) This does not recognise that people/communities can value water for other reasons and recognise the social importance of using it wisely.
- Commercial and business ways of operating are regarded as far superior to public sector management: "Pro-active management is one of the key factors that characterise the differences between the operation and management of commercial enterprises compared to the public sector. Water service providers should learn to be pro-active with respect to marketing, customer focus, preventative maintenance and management information systems." (section 6.5.8)

We reject this commercial approach to water service delivery. Our argument has always been for a strong public sector ethos to drive the provision of water to communities. This is the only way that the needs and interests of the poor and working class can be met.

In general, we would argue for a White Paper that recognises that water is a public good that is best provided by the state, and builds on and strengthens the positive aspects of the existing Water Services Act (such as the protection against rampant private sector profiteering), in order to develop water services that are accountable, equitable and that prioritise the needs and interests of the majority in South Africa - the poor and working class. This is the original perspective expressed in the 1994 White Paper from which this new White Paper policy attempts to shift away. Until June 2000 when the Minister announced new regulations to amend the Water Services Act, this legislation stated very clearly that water is to be delivered by the water service authorities. In clause 19.2 it accommodates the role of the private sector as a service provider if all the

public sector options have been investigated and found not effective. The regulation which the Minister introduced to amend the Act, known as clause 19.5. “defined a water provider as anything from local government to the private sector”.¹⁷ Clause 19.5 is not consistent with the White Paper’s assertion the public sector delivery mode is the preferred option, as it effectively detracts on the latter’s precedent status. This accounts for its ambiguity and failure to coherently and consistently advocate for the public sector as a preferred option. We see this as an unnecessary confusion which the White Paper’s framework could clear by categorically advocating the private sector as preferred option in line with the 1994 White Paper and the Nadlac agreement.

b) Process:

We feel strongly that this White Paper needs to be tabled and discussed at NEDLAC.

In addition, we request that we are part of the final round of consultations to be held before the production of the final Water Services White Paper.

Finally, our understanding is that changes to the Water Services Act will flow out of this White Paper. This would be, then, an appropriate time to re-open the negotiations around the section 9 (1) regulations promulgated in terms of the Water Services Act. We are unhappy with the process that these regulations went through (little or no consultation) and regard this as an opportunity to rectify this matter.

¹⁷ van Rooyen, Carina (2002) “ Gear must go! The case of water delivery”.