

"Ruaha+10"
"1993 – 2003"- Ten years of the Drying of the Great Ruaha River

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The Role of Water Rights and Fees in River Basin Management

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Introduction

Water is a basic natural resource to sustain life and for social- economic development. Many social and economic activities rely heavily on availability of adequate supply of fresh water. As a source of natural capital, water in adequate quantity and quality is a primary input for a whole array of production activities. In this case therefore, deliberate efforts are needed towards protection and sustaining this resource and to ensure that it is used efficiently and effectively for the benefit of the present and future generation. This goal cannot be met without having proper Laws and Regulations in place to ensure that, like many other resources, by constitution and Law, all the water in the country is vested in the United Republic of Tanzania. Furthermore every citizen has an equal right of access and use of this nations natural resource for his and nations benefit. The author is intending to highlight the water law in Tanzania and specifically the section granting of Water Rights. It is also aimed at discussing specific issues pertaining to Water Rights in the Great Ruaha as part of Rufiji Basin.

Water rights administration is a multi-disciplinary practice which has evolved in each country showing evidence of it, according to its particular history; no theory or formal discipline of its own has emerged as yet and such practice has attracted so far virtually no attention from academia and from research institutions. Of course there are research projects going on, as well as courses taught on hydrology, water law, water resources systems and modeling and environmental engineering. However, some people are not aware of integrated courses and truly inter-disciplinary research projects where theory and practice are blended for the benefit of water rights administration and its practitioners.

The Water Utilization (Control and Regulation) Act No 42 of 1974 and its subsequent amendments govern the present water management in the country. According to Section 8 of this Act all water in Tanzania is vested upon the Republic. It is also under this Act where in section 14 it is stated that no Person shall divert, dam, store,

abstract or use water or for any such purpose construct or maintain any works, except in accordance with an existing right or with a Water Right granted under this Act, A water right is therefore a right to use water for definite purpose(s). It is not an ownership of water or water sources as the word tries to connote. Once the applicant is granted a water right or Water Officers consent to discharge waste water or effluent into a receiving water body, he becomes a legitimate and lawful user and must abstract water, discharge waste into a receiving water body and pay fees and charges according to the water legislation and terms and conditions attached to the water right. The water Law that entails r granting of Water Rights puts all the procedures and regulations that if followed, will allow water utilization in different uses and users without unnecessary conflicts. Furthermore, having such regulations puts the government in good position to exercise its powers in controlling its water resources by making necessary decisions whenever need arises and builds awareness to users that water has a value and has a regulator.

Granting procedures

Before any decisions are made on the granting of water right the following actions have to be taken:

- The applicant fills in Water Right Applications forms in quintuplicate.
- The application forms are then submitted to the relevant Water Officer either directly or through Regional water Engineer' offices, together with an appropriate application fee
- In most cases a letter will accompany the application from the Village Government where the project is supposed to be executed. This is to show the authenticity of both the applicant and the project.
- The Water Officer will acknowledge receipt of the application forms and the application fees.
- The Water Officer will request information on the said application from as many people as possible whom he considers important to furnish him with information which will assist the Water Officer in issuing the grant.

The following institutions/officers are normally contacted:-

- District Administrative Secretary (**DAS**) in RBWO always asks this officer to submit an administrative report.
- District Executive Director (**DED**), this officer is required to submit a report similar to that of DAS in order to safeguard the interests of other projects in the District

- District Agriculture Livestock Development Officer (**DALDO**) submits an Agricultural Technical Report.
 - Regional Water Engineer (**RWE**) submits Hydrological and Hydraulic Reports
 - Sometimes District Natural Resources Officers (**DNRO**) is also asked to submit a report on effects of water use to natural resources.
- In most large water use projects the applicant is asked to submit an **EIA** Study Report to the board
 - If the Water Officer is aware of people who might object to the granting of a particular application he/she will write a letter to such persons inquiring if there are many objections
 - The Water Officer will submit the application to the Principal Water Officer for information and for announcement in the Government Gazette
 - The application after being published in the Government Gazette will also be made public at the respective District Commissioner' Notice board.
 - This takes 40 days.
 - After the Water Officer has received the requested information the application will be taken to the Basin Water Board for discussion. The Boards will advise the relevant Water Officer on steps to take
 - After that the Water Officer will offer a Provisional Water Right Grant to last for a year
 - If the works are not complete in the prescribed time the applicant will ask for an extension of time.
 - After completion the works are inspected by the relevant Regional Water Engineer, and if satisfied the Water Officer will be informed.
 - If the Water Officer is satisfied with the Regional Water Engineer's report he will issue a
 - Final Grant.

It must be noted that the law states openly and clear that, nothing in any water right granted shall be deemed to imply any guarantee that the quantity of water thereon referred to is or will be available. Moreover, where in the opinion of the Water Officer on account of drought, the supply of water from any source is insufficient for the needs of the persons using it, the water officer may at any time and from time to time, by notice in writing, addressed to the holders of water rights suspend or vary all or any rights to abstract or use water from that source for such period as he may deem necessary.

Water Uses and Water Rights in the Great Ruaha

Water uses within the Great Ruaha River catchment as in other catchments is of diverse in nature. The uses include domestic, irrigation, power generation, livestock and wildlife. Irrigation use being the most consuming include the large irrigation projects such as those of Kapunga rice project, Mbarali rice Farm and Madibira in the Usangu plains. Small irrigation farming is concentrated in both upper and lower catchment area. In most cases, irrigation in the lower catchment is conducted during wet season and to a small extent in the dry season. Dry season irrigation is mostly concentrated in the upper catchment areas. There are several small power generation plants in the area but the largest and most important being those of Mtera and Kidatu.

Records show that the oldest water right in the Great catchment was issued in 1951. Many applications for water rights have been received and water rights being granted to several uses and users. However the number of water rights and applications does reflect exactly neither the number of users nor the number of abstractions. This is because there still exists a number of users who abstract water from different sources without following the proper procedures. The existing list shows that there are about 300 water rights including the applications within the Great Ruaha catchment. This list includes water rights for domestic uses even those abstracting from ground water. Table 1 shows the status of water abstractions in the Rufiji basin in which a large number of water abstractions are found in the Great Ruaha.

Table 2: Status of Water Abstractions surveyed year 2003

Status of Abstractions	Number	Percentage of Total (%)
Without Water Right	573	38
With Water Right	941	62
TOTAL	1514	100

Advantages of water rights

Management of water resources by granting Water Rights or permits to the users is used in different countries in the world with minor differences in names and procedures. The government of Tanzania has decided to use this system as a way of managing its water resources and hence provided it in its water law. There is no way

in fact that one could manage such a resource which have conflicting uses without a proper legislative system to help as a guidance. In spite of some weaknesses in the water law especially the granting of water rights, still it has some advantages in the management of water resources. The advantages include the following: -

Government Control of water resources;

The water law states the regulations of using water as a resource owned by the nation and not by few individuals. It also gives the right of access to all the citizens of Tanzania. This access has to be regulated and safeguarded in one-way or another and the granting of Water Rights has been the way of regulating all these.

Proper water management on property;

In terms of improved water management practices for various types of water uses, water rights have played a major role due to the fact that monitoring, control and regulation of the same have been eased.

Awareness of the users and proper valuation of the water resources;

Having the water law and the system of water rights to those who use water enables the water users to be aware of the fact that this resource is not a no ones property. Without this, it would mean that everyone could use the resource the way he likes because it has no regulator. Such awareness can only be built up without having a system, which control the resource. Moreover, Having water rights and paying of the water user fees make users feel that water has value and need to be used carefully like any other commodity. Those using it cannot value a freely used Resource.

Relationships between government and the general public become less strained as a result of many water users getting to understand the fundamentals of water administration.

Conflict handling and Resolution

Water right Administration concerns conflict resolutions. Water Right provides or a better basis for conflict resolution handling.

Contribution to management costs

The law requires all water users especially those holding water right to pay water user fee according to their uses. Funds collected contribute in management costs and other sectoral development activities. The system of granting water rights facilitate the registration of water users who are supposed to pay water fee and also make them feel the responsibility of paying. This has been mentioned in the water policy that decision making in the public sector, private sector and in civil society on

the use of water should reflect the scarcity value of water, water pricing, cost sharing, and other incentives for promoting the rational use of water.

Resource Management and Planning

Having the system of granting water rights facilitate registration and preparation of water user inventory for different sources. Having record of the capacity of each source and its users, it becomes easier to decide on different water resources development projects. Sustainable use of water resources depends on the accuracy of source capacity data and the uses. Granting of water users is the only way that can facilitate the preparation of water user inventory.

Bases for International Negotiations and Protocols

A pre-condition in international negotiations in utilization of international waters is water right management system. Having this system of granting Water Rights in the water Policy and water Law enables our country to participate in different international negotiations for utilization of international waters.

Water right problems and weaknesses

Having a policy or a law is one thing and its implementation is another. This is the same for the water law and policy. Our society is still not aware of the National Water Law especially the issue of water rights. Many people still believe that water is a God given and it belongs to those who stay close to it. The awareness that there are other users apart from them is still far away and the preference of specific use prevails. This condition has led to several problems including overuse of the sources and water user conflicts. However, building up of awareness is a process and hence it takes time and resources.

The water law has some Weaknesses like other laws. These can be rectified with time to match with the prevailing conditions.

Weaknesses

- The major weakness is that of delays. It takes long before a Water Right issued. Sometimes due to lack of funds boards do not meet regularly. However as it is now, water boards will meet at least twice a year and Water Officer can issue Provisional Water Right Grants for domestic water use without necessarily taking them to the board.

- The system of issuing grants is transparent. However stakeholders do not have a system of electing members to the boards. The Minister responsible for Water Affairs appoints board members. Also the law does not require that the applications to be discussed at community level before proceeding to Water Boards. At present, the Water Officer normally requires that letters accompanies applications from Village Governments.

Future water rights

According to NAWEAPO, water rights are going to play more roles as viewed from the specific objectives of the water resources management. These objectives are:

- (i) To develop equal and fair procedures in access and allocation of the water resources.
- (ii) To ensure that social and productive sectors, and the environment receive their adequate share of the water resources.
- (iii) To ensure effectiveness and efficiency of water resources utilization.
- (iv) To promote the management of water quality and conservation.
- (v) To improve the management and conservation of ecosystems and wetlands.
- (vi) To promote integrated planning and management of water resources.
- (vii) To raise public awareness and broaden stakeholder participation in the planning and management of water resources.
- (viii) To ensure financial sustainability and autonomy of Basin Water Boards,
- (ix) To promote regional and international cooperation in the planning, management and utilization of water resources.
- (x) To provide the basis for future institutional framework and legislation for water resources management.

In order to ensure that water resources are used in sustainable manner and that ecological system and biodiversity are sustained the following will be undertaken:

- (i) *Water management approaches will focus on how best water is used beneficially and efficiently. Water allocations and use shall be carried out considering the principles of sustainability so that the resources remain viable for the use of the present and future generations.*
- (ii) *Trading of water rights, application of economic incentives and pricing for water use, shall be gradually built into the management system as a means or strategy for demand management and water conservation.*

- (iii) Urban and water supply entities, hydropower producers, irrigators, industries, mining operators, etc are required to improve the efficiencies of their water abstractions and distribution systems to avoid undue wasteful use of the resource.*
- (iv) Where feasible and necessary, rainwater harvesting, wastewater recycling and desalination of will be employed as a means of increasing the availability of water resources.*

The law is under review now so most of the weaknesses shall be dealt with then.