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## Project Country Report

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# Water Permit Systems, Policy Reforms and Implications for Equity in Zimbabwe

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By

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#### **DISCLAIMER**

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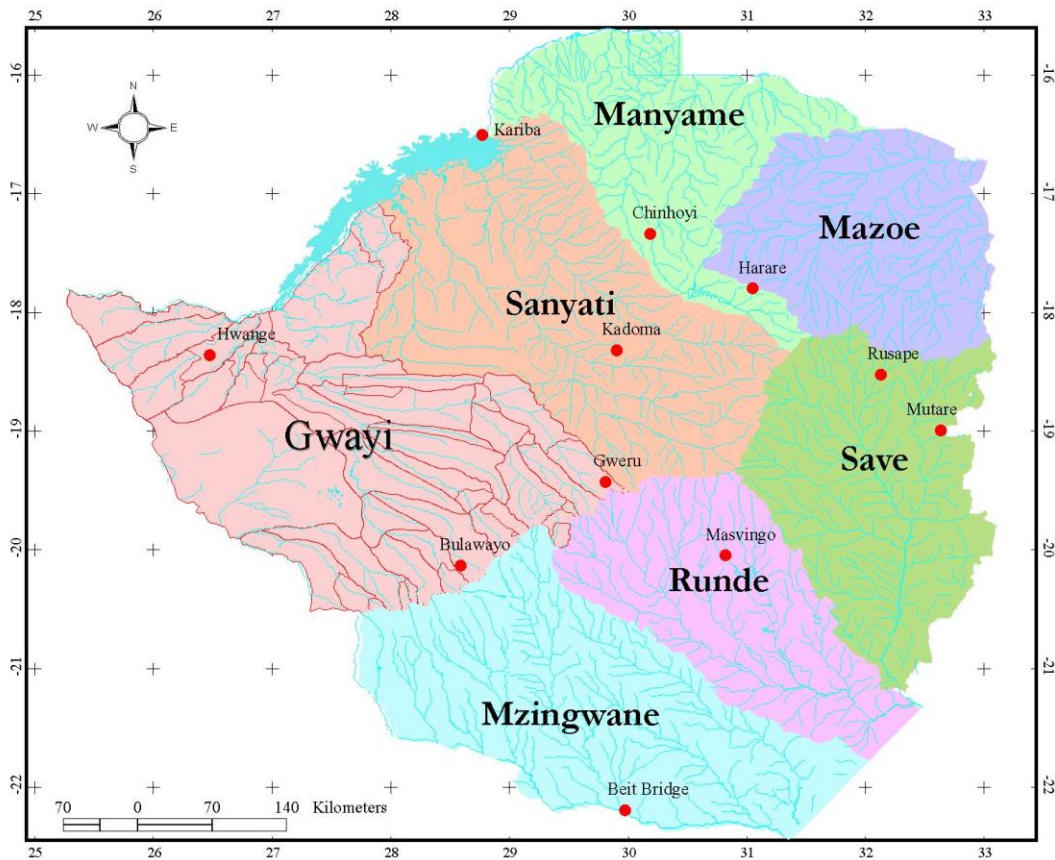
## 1. Brief history and context of the water sector

This section covers the following:

- Pre-law status and background
- Type and estimated number of pre-law authorisations and their legal status in the new law.
- Bio-physical context

Zimbabwe is a landlocked country bordered by Zambia, Namibia, Mozambique, Botswana, and South Africa. The total area of the country is total: 390,580 km<sup>2</sup> of which land is 386,670 km<sup>2</sup> and the rest is covered by water bodies. The rainfall characteristics in Zimbabwe exhibit a large variation with catchments in the Eastern Highlands receiving annual totals in excess 1200 while the drier parts in the South East receive less than 400 m per annum.

The Central Watershed divides the country into a dense river network. Almost all of the rivers in Zimbabwe drain into water channels that form transboundary waters. Water sharing at transboundary level is one of the major focus areas for water management units. The last assessment of surface water resources in the country estimated that the Mean Annual Runoff in the country is 23,6 x10<sup>9</sup> m<sup>3</sup>. The level of development is estimated to be less than 30% of the available water resources in the country.



**Figure 1: Catchment areas of Zimbabwe**

Access to and development of water resources is governed by the Water Act. While access to water for basic use and to sustain life is free, any use of water from which an economic benefit is derived is classified as commercial use in which case a user would be required to obtain a permit for such use.

Water management in Zimbabwe is currently governed by the Water Act (Chapter 20:24) of 1998. The Water Act is complemented by other Acts and policies. Before 1998, the Water Act of 1976 was in use to govern water use and development. Weaknesses in the Water Act of 1976 led to major water sector reforms. Some of the key weaknesses in the previous water Act include the following:

- The Act was not supported by Water Policy to guide the development and management of water resources.
- Water allocation was based on the Water Right System. A right holder had priority of access over any user who applied after him. In other words, water was allocated on the Priority Date System.
- Water rights were issued in perpetuity and it was difficult to accommodate new entrants when all water was fully allocated regardless of the economics of water use.
- Because of the Priority Date System and given that the majority of landowners were whites, it was perceived that entitlement to water was racially skewed and had followed the skewed distribution of land.
- A water right was issued against a property and could be passed on to the next landowner if ownership changed hands. However, the majority of people lived in Communal Lands

which essentially were State Land and, hence, could not technically apply for a water right. This raised questions around issues of equity as water could only be allocated to a minority of the population.

- There was no clear water pricing policy to pay for entitlement and use of water. Besides paying for the processing of a water right and for the infrastructure required to access the water there were no other fees payable by those given the right to the water;
- The water supply policy was too much supply-oriented;
- The environment, including pollution issues, was not given much consideration.
- Groundwater development and protection was largely ignored;
- The Act did not clearly articulate Integrated Water Resources Management issues which were gaining prominence globally.
- The Water Act of 1976 had been amended several times and was increasingly becoming complicated to administer.

In addition to the above weaknesses, administration of the Water Act was centralised. Provincial Water Offices existed but had little say in decision making on water allocation and management outside water held in Government dams. In areas of high activity, users formed Water Boards to manage water but these could not be described as inclusive stakeholder management. In addition, water allocation was left with the Water Court based in Harare and was responsible for allocation and dispute resolution across the whole country.

In the event of water shortage, the process of reallocation was very long and complex. A water right could not be revised, even if the right holder was not exercising his or her water rights unless if the right holder was compensated. Once granted, there was no requirement to pay for the possession of the water right or to contribute towards general water service provision. This meant that Central Government had to pay for water development and management.

## 2. Legislative Status

Water use in Zimbabwe is governed by the Water Act of 1998. The Act is one of the key outcomes of the water sector reforms which took place in the mid-90s. However, traditional systems also exist whereby traditional leaders hold power to declare water protection areas especially where quality is an issue. Communities respect such traditional laws as they pay more emphasis to source protection and equity of use. In practice, the traditional water governance structures are not given much prominence as the quantities of water involved are insignificant and generally assumed to be Primary Water. Water use for primary purposes is not a big issue as, by definition, primary water use is for the sustenance of household activities including washing, bathing, small gardening and reasonable livestock. Legally, traditional governance issues fall under a different Law. Of late, there has been increasing debate on the limits for livestock use as some parts of the country define wealth by the number of livestock owned or earn their livelihoods through marketing garden crops.

While the Water Act defines primary and environmental water uses, most of the clauses in the Act relate to the management of water for commercial use. The Water Act of 1998 became effective in

2000 and also paved the way for the creation of the Zimbabwe National Water Authority Act of 1998 which created a separation of functions between commercial activities related to water resources development and management vested in ZINWA and statutory functions vested in the Department responsible for Water Affairs

The Water Act of 1998 basically addresses the issues highlighted in the previous Water Act. The new main features of the “new” Water Act are:

- Water rights have been replaced with water use permits. The permits are issued for a limited period and can only be renewed subject to water availability and evidence of efficient use.
- The priority principle has been done away with.
- Water can no longer be privately owned.
- Water is to be viewed from the complete hydrological perspective, i.e. groundwater and surface water are treated as part of one hydrological system.
- Stakeholder-driven institutions have been formed that will have more say on water allocation and general water management on a day-to-day basis. These catchments and sub-catchment councils comprise of members representing various water use sectors and would have been nominated by their constituencies and then elected water users to serve in the water management bodies. Normally, two representatives of a sub-catchment council form the Catchment Council.
- There is greater consideration of the environment, with environmental water use now recognized as a legitimate user. A catchment Council, through the River System Outline Plan, determines priority of use. However, the general understanding is that priority of use follows the following order:
  - primary,
  - environment,
  - urban
  - industry
  - mining
  - agriculture
- There is more control over pollution, with the “polluter pays” principle being introduced.

The Water Act is supported by a Water Policy (NWP< 2013). Zimbabwe never had a Water Policy until 2013. Before then, issues of policy were implied but could not be traced to any document. According to Murungweni (2011), the development of the current Water Policy was guided by the following principles:

- Equity in Access to water: the land Reform Programme which resulted in the relocation of many Zimbabweans into commercial farming areas partially resulted in improving equity in access to water to those resettled, but regrettably, without financial resources, water utilisation has drastically reduced. The need to subsidise the supply of water to poor

people as target groups in order to guarantee their access to adequate and safe drinking water or irrigation has also only been partially achieved.

- **User Pays:** which means that people who make use of man-made infrastructure such as dams, treatment works, transmission and distribution systems, for their supply, must pay the cost of building and operating the structures. Cross subsidies between the rich and the poor are possible to accommodate equity. The writer's experience in the water sector is that the perceived poor in Zimbabwe are very good at debt servicing and that they try and live within prescribed limits.
- **Polluter Pays:** this means that those who are responsible for pollution will be charged for the cost that they force on others through their pollution. Polluted water needs to be cleaned and re-used due to overall shortage. The country is by far not nearer to achieving the desired effect. Permits are paid for based on quality only and volume is not taken into account.
- **Sustainability:** this means that a particular water use pattern can be continued for an unlimited number of years without partial or total disruption e.g. if water is polluted heavily, it can no longer be used as an input in agriculture or for primary purposes in spite of its physical availability.
- **Environment as a user of water:** This means providing sufficient quantity and quality water to protect riverine life and wildlife. This concept requires further guidance and training as no water is being released specifically for this purpose. Most catchments are considering reserving a percentage of the mean annual generation for environmental purposes while more comprehensive studies on environmental flow requirements are being considered.
- **Economic feasibility:** this means that the level of development of the infrastructure must be defined by what the country as a whole can afford to operate and maintain.
- **Catchment approach:** the reason is that precipitation, run off groundwater levels, storage, vegetation cover, water quality are interdependent and therefore influence each other in any hydrologically defined area. While precipitation may not be directly controlled by activities in that catchment, the rest of the characteristics are directly linked with human activities. Water sources and the catchment areas should be protected and preserved.

There are several Statutory Instruments which have been gazetted which facilitate the implementation of the Water Act. These Statutory Instruments provide guidance on implementation of various aspects of the Water Act such as:

- Statutory Instrument 33 of 2000: Water (Catchment Council) Regulations 2000
- Statutory Instrument of 2000: Water (Sub catchment council) Regulation 2000



- Statutory Instrument 95 of 2000: Water Levy Notice, 2000
- Statutory Instrument 34 of 2000: Water (River Systems Declaration) Notice 2000
- Groundwater Regulations and Pollution Control.

The Water Act became operational in 2000. By then, key institutions required for water management as proposed in the revised Act had been put in place. At the same time, all water rights were declared to have been converted to water permits under the new water management structures. Permit holders had a window to regularise their permits as it was also acknowledged that:

- Permits attracted a levy related to the permitted volume. There were no levies attached to a water right. The only payment made then was for processing the application for a water right. It was well possible that some holders did not, in fact, require as much water as they were allocated and could be free to revise their permits downwards
- It was an opportunity to confirm active and non-active permits
- Some water could be “freed” for reallocation in some catchments which were seemingly oversubscribed.

There are no indications on the permit data base to show that permits were revised at transition from water rights. The Act is not prescriptive on Priority of use. This function has been delegated to stakeholder management institutions (catchment councils) who have the mandate to allocate and/or reallocate available water based on competition of water. However this allocation should be in accordance with Section 13 of the Water Act which compels Catchment Councils to develop River System Outline Plans for their respective catchments. These river management plans would (re)define priorities of use and water sharing strategies in periods of abundance as well as in periods of scarcity. From the River System Outline Plans published for each Catchment in 2000, the general priority of water allocation seems to be primary and environment, urban, industry, mining and agriculture, respectively.

### 3. Implementation Status

This section covers the following key issues in Zimbabwe’s water permit system.

- Is there a formal or informal strategy on the rolling out of permit systems?
- What is the status of implementation of the law?
- Is there a prioritisation in issuing permits (both formal and informal)
- What has been the number of applications over the years, and total now?
- How are applications categorized (e.g. mining, industry, municipal, agriculture etc); data can be included in ‘raw’ form (e.g. excel sheets).
- Is Compliance monitoring and enforcement (CME) happening?
- How were (which) water users informed/awareness creation about the laws/permits
- What is estimated number of actual water users that are formally obliged to apply for a permit but have not been reached as yet? Which users are that in particular?

Water rights were automatically converted to water permits in 2000. This was the easiest and fastest way of creating a database for users. This means that permits exist for direct abstraction from river

systems and for storage. The law is very clear that water is vested in the State. Users may invest in hydraulic structures to access the permitted water. In addition, groundwater permits are being issued for abstracting water from boreholes.

According to the national water permit database, the following categories of permits exist:

**Table 1: Categories of permits**

Acronym	Permitted purpose
A	Agriculture
I	Institutional
M	Mining
C	Conservation
G	Government
H	Hydrological ram
B	Bed and Banks (sand abstractions)
R	Roads
E	Electrical use
T	Township
P	Primary
U	Urban

There are 11,072 registered permits country-wide. This translates to a total permitted volume of 15,291,017 ML. = on average 1 200 000 m<sup>3</sup> per permit, so enough for some 120 ha of irrigated land with an assumption of 10,000 m<sup>3</sup> for 1 ha.

**Table 2: Number of permits registered since 2000**

	No. of Permits	Flow(ML)	Storage (ML)	Total (ML)	No. of Permits since 2000
Gwayi	357	233,317	485,650	718,968	15
Manyame	1,790	194,481	2,459,624	2,654,105	16
Mazowe	2,601	448,181	1,303,475	1,751,656	136
Mzingwane	469	65,670	1,034,373	1,100,043	27
Runde	657	411,601	4,324,086	4,735,687	5
Sanyati	1,158	115,778	2,157,023	2,272,801	8
Save	4,040	864,610	1,193,148	2,057,758	1,154
<b>Total</b>	<b>11,072</b>	<b>2,333,638</b>	<b>12,957,379</b>	<b>15,291,017</b>	<b>1,361</b>

Out of this number, only 1361 (12%) permits have been registered since 2000.

Historically, the request for permits has followed the following patterns:

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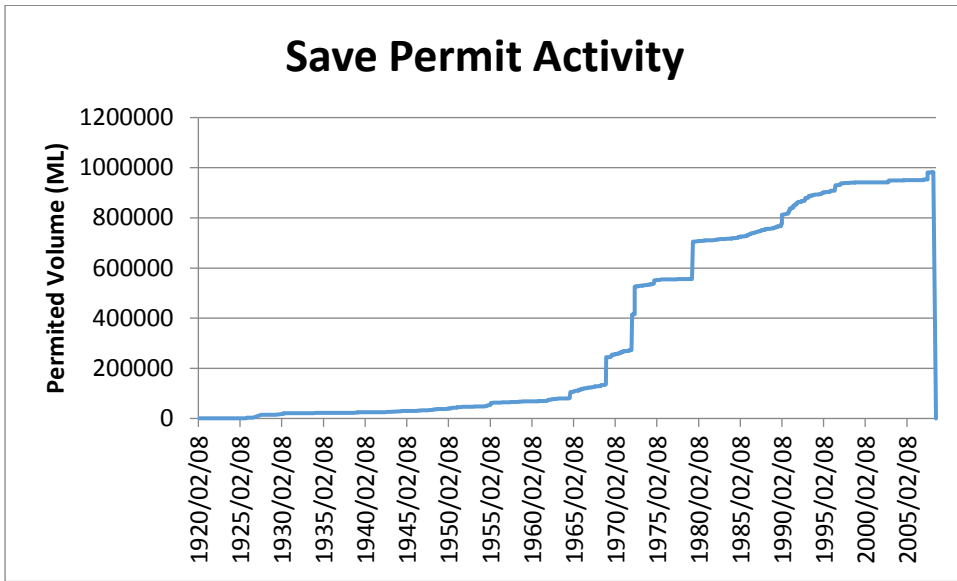


Figure 2: Save permit activity

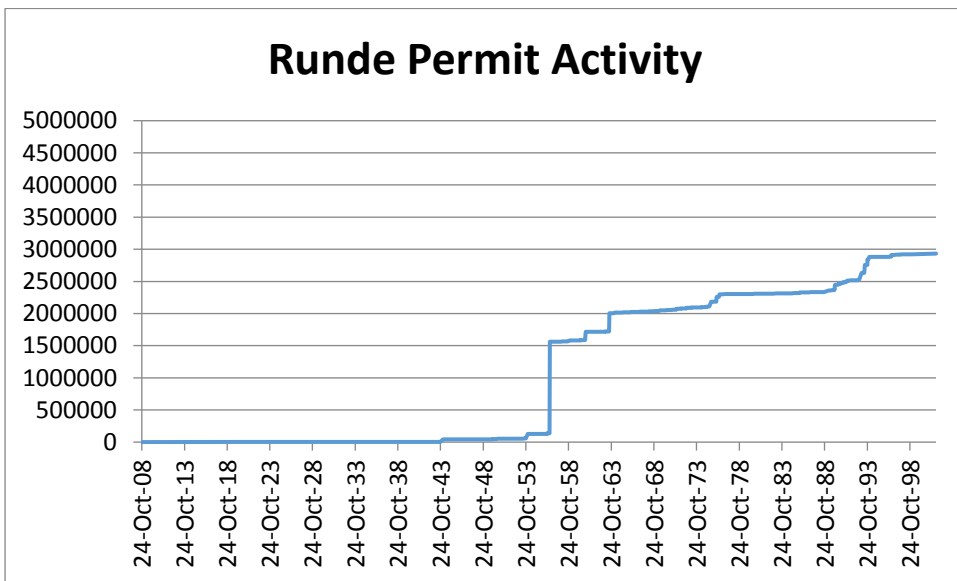


Figure 3: Runde permit activity

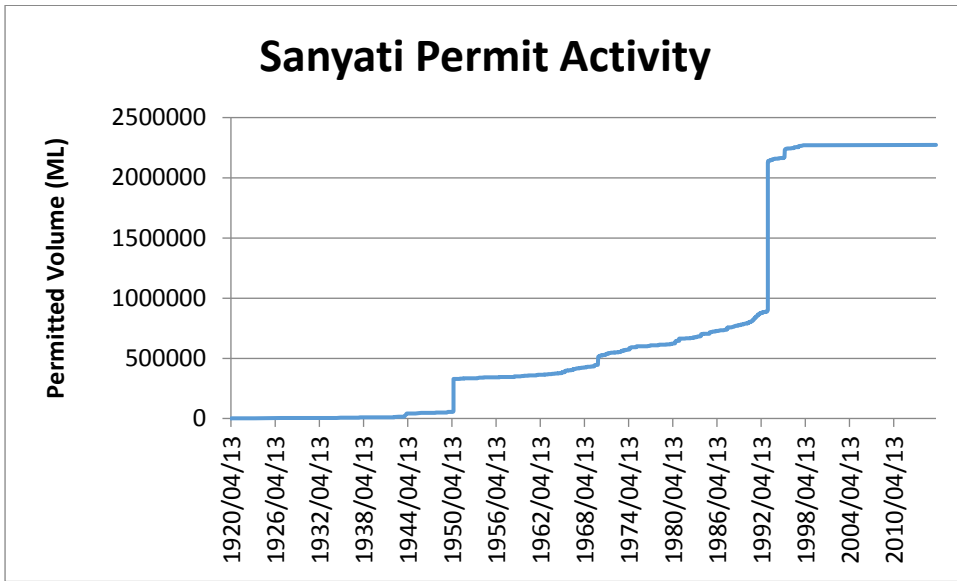


Figure 4: Sanyati permit activity

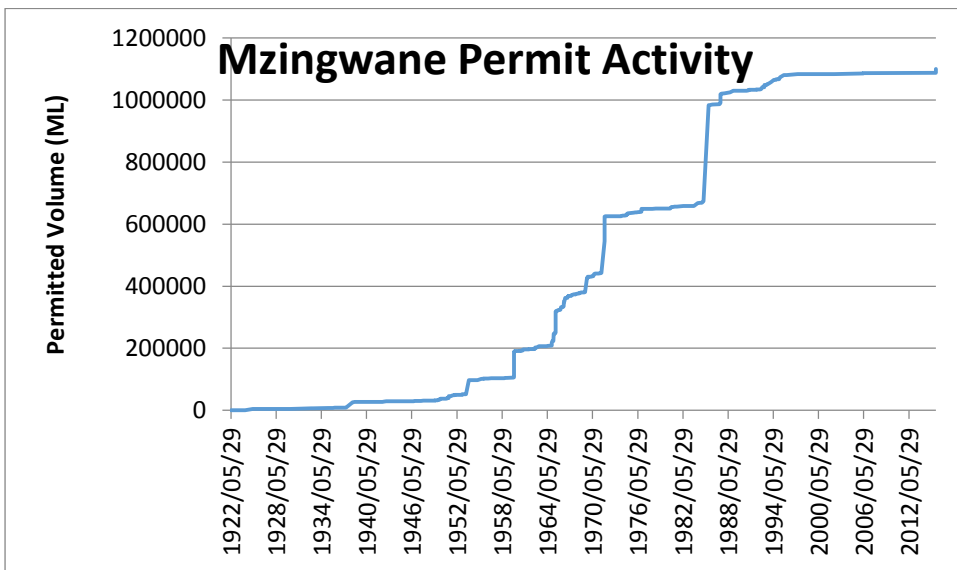
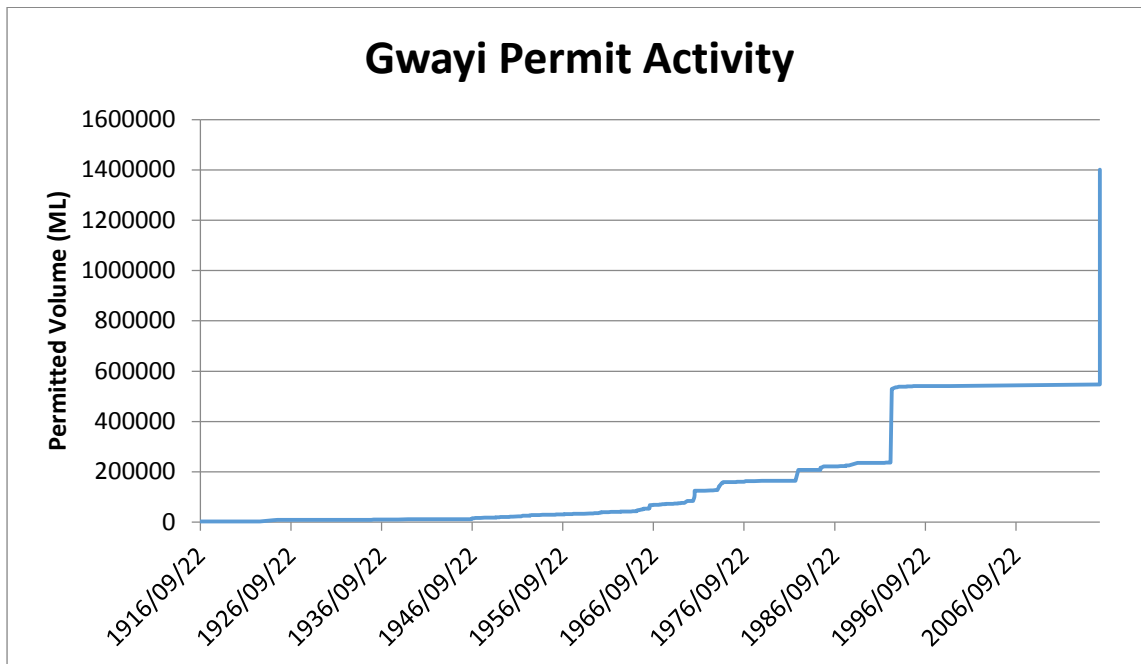


Figure 5: Mzingwane permit activity



**Figure 6: Gwayi permit activity**

Most activity in applying for permits occurred between the 60s and 80s. This can be attributed to the time was under sanctions after the Unilateral Declaration of Independence (UDI) by the Smith regime in the mid-60s. This means that the Government supported self-reliance by encouraging higher agricultural production and building of more dams. After attainment of independence in 1980, the borders were open to international trade and hence, there was less demand for investing in water security. The water sector reforms coincided with the Land Reform of 2000 which also meant that there was change of ownership and management at many farms and, hence, investment in water security could not be prioritised. Also the economic hardships which affected the country thereafter also saw less disposable income to invest in water infrastructure.

Compliance monitoring is the responsibility of Sub-catchment Councils which report to the Catchment Councils. The activities include monitoring for pollutions as well as to identify illegal abstractions.

#### 4. Fees (or levies, tax)

This section addresses the following issues.

- What are the applicable regulations in place regarding fees related to permits (so for using the water resource, irrespective of any infrastructure service delivered)?
- How much fees per user/applicant (monthly/annual/once-off)? (registration, annual water charges (for what purpose?), collection rates
- What is the estimated total revenue/year; and
- Where does the revenue go to and for what?

The Water Act provides for the implementation of the “User Pays” Principle by empowering catchment councils and sub-catchment councils to collect levies and fees to enable execution of their mandates. Statutory Instrument 95 of 2000 (Water Levy Notice, 2000) was gazetted which specifies the amounts payable for each use category. The payment of levies can be effected through any of the following means:

Payments of levies can be done through;

- Permit holders making direct payments at the sub catchment office
- Transfers into sub-Catchment Council accounts
- Collection of fees on the ground by sub-catchment council officials

The levy collected is remitted to the National Water Fund which is managed by the National Water Authority on behalf of the Minister of Water. However, the sub-Catchment Council is allowed to retain 7.5% of the collected fees and this money goes towards supporting operational costs of the sub catchment councils including payment of salaries, travel, sundries and general administrative costs.

The creation of a Water Fund is provided for through Section 39 of the ZINWA Act (1998) whose Trustee is the Minister of Environment, Water and Climate is the Fund’s trustee.

The Fund’s main purpose is to create a pool of financial resources to sustain initiatives aimed at developing and managing water resources in the country. These include the construction of water infrastructure such as dams and weirs so that all citizens have access to affordable water.

There are some consumers who access water through government dams. This is achieved through annual agreements with the National Water Authority. The rates for accessing raw water through Agreements are as follows:

**Table 3: ZINWA Water Tariffs**

Raw Water	Tariff (US\$/ML)
Industry	13.17
Commercial Agriculture	12.68
Urban	11.71
A1 Farmers	7.80
Communal	5.00

Source: ZINWA-Finance Division (2011)

The efficiency of collection of levies is very low. Almost all sub-catchment councils are owed levies by permit holders. A similar pattern is observed with the water tariffs which partly explains why ZINWA is failing to operate smoothly at the moment. Big permit holders such as local authorities, industries

and mines are the biggest culprits. Such users are also, in most cases, the largest polluters. This inefficiency has resulted in most catchment councils and sub-catchment councils failing to exercise their mandates.

Some of the reasons advanced for poor collection rates of levies are:

- The failure to separate land reform and water sector reform processes;
- Some databases have not been updated and permit holders complain that they are being billed for water which they do not use
- There is lack of understanding of how the collected levies would be used;
- The economy is not performing well and water fees are not highly prioritised.

## 5. Institutional Arrangements

In this section, the following issues have been addressed:

Who implements the laws/permits? What is the governance structure/approximate current number of staff?

- What is the procedure for application at different levels?
- How long does the procedure take for different categories?
- What consultation is required?
- What recourse, review, and/or appeal arrangements are in place?

The water sector reforms reviewed the responsibilities of the key institutions responsible for water management in Zimbabwe. These were the Ministry of Water Development and the Administrative Court. The reforms led to the promulgation of a Water Act of 1998 which paved the way for the creation of the Zimbabwe National Water Authority under an Act of Parliament of 1998. Functions of the Administrative Court, particularly the Water Court, were reviewed with allocation roles handed over to stakeholder-driven catchment councils.

The main institutions responsible for water management are therefore (Mupindu et al., 2004):

- a) Ministry of Environment, Water and Climate  
Responsible for policy formulation and supervision including transboundary water management.
- b) Zimbabwe National Water Authority (ZINWA)  
Responsible for commercial functions of water provision including infrastructural development, water treatment and resource monitoring. They also provide technical support to Catchment Councils.
- c) Catchment Councils



Responsible for water allocation and overall water management at catchment scale. The responsibilities specifically include the following:

- Allocation and re-allocation of water
- Approval of new allocations
- Monitoring performance of sub catchment councils
- Monitoring use of permits
- Development of development plans in consultation with other planning agencies
- Revenue collection
- Catchment protection
- Water development
- Ground water monitoring
- Water quality monitoring
- Temporary suspension of water rights
- Determining compensation for misuse or loss of use

d) Sub-Catchment Councils

Responsible for:

- Monitoring water use in accordance with allocations
- Ensuring measuring devices are in place and operating
- Reporting
- Operation and maintenance
- Collection of levies
- Catchment protection
- Ground water monitoring
- Water quality monitoring
- Data collection and consultation for annual and long term plans

e) Environmental Management Agency

Operates through its own Act of Parliament but has responsibility of pollution control and effecting the “Polluter Pays” Principle.

f) Administrative Court

Now only handles cases of dispute

- g) National Action Committee (NAC)

The National Action Committee for Water and Sanitation (NAC) was reconstituted in 2010 under MWRDM with the responsibility to oversee the rural, urban and water resources sub-sectors.

## 6. What are the challenges

Also to be discussed at the workshop.

Some of the challenges that relate to implementation of the water sector reforms and with particular focus on water allocation include:

- a) Awareness: The level of awareness of the overall water sector reforms is still very low. There is still confusion over responsibilities of e.g. ZINWA, Urban Local Authorities and Catchment Councils. This affects the level of stakeholder participation and confidence in the system.
- b) The withdrawal of the donor community at the stage of launching catchment and sub-catchment councils was a major setback. Only those sub-catchments which have big users or those who maintained relations with donors, e.g. Pungwe have remained active and viable.
- c) The sub-catchment council offices are under-funded and, hence, cannot employ key personnel. This in turn, affects other important activities such as monitoring.
- d) The permit database needs to be cleaned up. There are some permits which seem to be inactive while others may have been revised downwards or upwards simply by the permit holders changing their entitlements yet they are not updated officially.
- e) Permit holders are unwilling to pay for levies. There should be more transparency on the issue of levies especially on how it is calculated and the purpose to which it is used. There are perceptions that the money, since it is controlled by the Minister, may be used for other purposes outside what is set out as the purpose of the Water Fund. In fact not much development has been declared to have been supported by the Water Fund.
- f) The level of competition for water has dropped. This is evidenced by the number of applications for new permits after 2000.
- g) Participation by gender still seems to be an issue. Women are encouraged to participate more in water management structures e.g. catchment and sub-catchment councils. However, at such levels, more men participate.

- h) Priorities of ZINWA may be skewed more towards commercial activities than statutory functions. However, councillors are not necessarily experts in water management. This may compromise the effectiveness of water management. On the other hand, this may create unfortunate conditions whereby, in the absence of sufficient numbers of stakeholders with more knowledge of water issues, ZINWA would naturally dominate in water management discussions instead of resorting to the prescribed role of Secretariat and Technical Advisor of Catchment Councils.
- i) Certainly, not all consumers are registered. Also those registered are not paying levies. This records should be up-to-date.

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