

MANAGEMENT OF UNUSED LICENSED WATER ENTITLEMENTS

1.0 PURPOSE

To provide guidance, transparency and consistency as to how unused licensed water entitlements in the Northern Territory will be managed in accordance with the *Water Act 1992*.

An **unused licensed water entitlement** is the difference between the minimum extraction limit as specified in the terms and conditions of the licence and the highest actual volume of water extracted in any of three consecutive years.

This policy is to ensure that licensed water entitlements are fully utilised for the benefit of the licence holder, the community and the Territory by:

- (a) minimising the incidence of unused licensed water entitlements;
- (b) reduce speculation in licensed water entitlement allocations by ensuring that licence holders are able to demonstrate a genuine need to retain their full licensed water entitlement; and
- (c) ensuring that decisions to amend or modify a licence are fair and reasonable.

2.0 SCOPE

The policy generally applies to the right to take or use water under a licence granted under section 45 (licence to take surface water) or section 60 (licence to take ground water) of the *Water Act 1992*. Licences granted for the beneficial use of public water supply are exempt from the application of this policy.

This policy is intended to provide guidance to licence holders who may have used less than their licensed water entitlements. However, it is important to note that the requirements relating to unused licensed water entitlements will be determined by the provisions of the *Water Act 1992*. This policy must be read subject to that legislation.

3.0 CONTEXT

Water resources in the Northern Territory are managed in accordance with the *Water Act 1992* through water resource assessment, water planning, monitoring, modelling, licensing and compliance activities. Licences are granted under the *Water Act 1992* to support various beneficial uses of water, including community and development (commercial) needs.

Sustainable economic development in the Northern Territory is best achieved when development opportunities are not constrained by unused licensed water entitlements.

The department works with licence holders to ensure licensed water entitlements are optimised for the benefit of all Territorians by:

- (a) monitoring water use;
- (b) conducting compliance activities, including site inspections, to ensure licence holders comply with the terms and conditions of their licence; and
- (c) tracking that developments are progressing as committed to by the licence holder, according to their licence application, property development plan, water use plan and any other relevant information.

3.1. Relevant powers and functions under the *Water Act 1992*

The *Water Act 1992* provides for the investigation, allocation, use, control, protection, management and administration of water resources in the Northern Territory. Ensuring that licensed water entitlements reflect the licence holder's actual water use and need for water is fundamental to the effective management and administration of water resources.

In granting a licence under the *Water Act 1992*, the Controller of Water Resources (**Controller**) has the power to specify the terms and conditions of the licence. Licences are granted subject to conditions imposing a minimum and maximum volume of water that can be used or taken by the licence holder. These conditions reflect the licence holder's anticipated need for water as advised by the licence holder in their application for the licence and in supporting information.

If a licence holder does not take or use the minimum volume of water in accordance with licence terms and conditions, the Controller may invoke the power to amend or modify the terms and conditions of a licence under section 93(1) of the *Water Act 1992* to reduce the volume of water that may be taken under the licence. In deciding whether or not to amend or modify a licence, the Controller is required to take into account the relevant factors set out in section 90(1) of the *Water Act 1992*, including consideration of any relevant water allocation plan.

3.1.1. Relevant factors under section 90(1) of the *Water Act 1992*

A decision by the Controller of Water Resources to amend or modify a licence with an unused licensed water entitlement must take into account the relevant factors listed in section 90(1) of the *Water Act 1992*. The following factors are relevant:

- (a) availability of water in the area;
- (b) any water allocation plan applying to the area;
- (c) existing and likely future demand for water for domestic purposes in the area;
- (d) the quantity or quality of water to which the applicant is or may be entitled from other sources;
- (e) the designated beneficial uses of the water and the quality criteria pertaining to the beneficial uses;
- (f) provisions under the *Planning Act 1999* relating to the development or use of land in the area in question; and
- (g) other factors the Controller considers should be taken into account or that the Controller is required to take into account under any other law in force in the Territory.

Other factors the Controller may consider relevant may include:

- (a) evidence of progress against the purpose proposed in the application for a water extraction licence;
- (b) capability and capacity to use the water entitlement as proposed; and
- (c) any other mitigating factors.

4.0 IDENTIFYING UNUSED LICENSED WATER ENTITLEMENTS

In accordance with the terms and conditions of licences, licence holders are required to report their water usage to the department on a monthly basis. A record of reported water use is maintained by the department for each licence.

Water extraction licences are issued with conditions that deal with non-use and underutilisation of water entitlements. The operational effect of these conditions is that licence holders who use less than 90% of their maximum water entitlement (or the percentage specified in the relevant water allocation plan), for three consecutive 12-month periods must provide a report to the Controller to explain why the maximum extraction limits were not reached and provide a projection of use.

The Controller will assess a licence holder's continuing requirement for the full licensed water entitlement on an ongoing basis during the term of the licence. This assessment will be informed by all relevant matters relating to a licence, including:

- (a) compliance inspections;
- (b) regular reporting; and
- (c) any application to renew the licence.

4.1. Notice of unused licensed water entitlement

When an unused licensed water entitlement is identified, the Controller will provide a written notice to the licence holder which:

- (a) states that the Controller has identified that the licence holder has an unused licensed water entitlement;
- (b) provides information about the amount of the unused licensed water entitlement and any related matters;
- (c) expressly states the action the Controller is proposing to take in relation to the licence and the basis for that proposed action. This may include amending or modifying the licence to reduce the total maximum licensed water entitlement that may be taken by the licence holder under the licence;
- (d) gives the licence holder an opportunity to respond to the notice within a certain timeframe and to provide information as to why there is an unused licensed water entitlement and any other matters the licence holder wishes to raise with the Controller in relation to the unused licensed water entitlement, the licence or the proposed action; and
- (e) provides information about the factors the Controller is required to take into consideration in deciding whether or not to amend or modify a licence.

4.2. Responding when an unused licensed water entitlement is identified

The licence holder will ordinarily be given a period of at least 30 days to provide a written response to any notice issued by Controller in regard to the unused licensed water entitlement. In any written response to a notice, the licence holder may wish to outline:

- (a) any mitigating circumstances that resulted in the unused licensed water entitlement. Mitigating circumstances may include financial hardship, biosecurity or environmental issues impacting the activity;
- (b) any efficiency measures that have been implemented;
if relevant, an updated property development and water use plan setting out the projected annual water use for the remaining term of the licence;

- (c) the steps undertaken to utilise the licensed water entitlement. This may include:
- the application or granting of a permit or licence required to undertake the proposed activities;
 - quotes or invoices for infrastructure including evidence demonstrating when the purchase is expected to take effect or that there is a financial capacity to invest in the infrastructure;
 - evidence of efforts to trade the water entitlement in the short term;
 - progress against development plans; and
 - any trials or pilots of water-dependent development activities.
- (d) any other relevant matters to be taken into account.

As far as possible, the licence holder should provide evidence in support of their response to the Controller.

The licence holder may apply for an extension of the time to respond to the notice within the 30-day period if there are reasonable grounds requiring more time to form a response.

4.3. Controller determination on unused licensed water entitlement

On receipt of written response and supporting evidence from the licence holder, the Controller will then, taking into account that response and all relevant factors under the *Water Act 1992*, make a decision in relation to amending or modifying a licence. The Controller will make a decision in relation to an unused licensed water entitlement within 30 days, or as soon as practical after receiving relevant information and advice. The licence holder will be notified in writing of the decision and the reasons for the decision. If the Controller decides to amend or modify the licence, a copy of the licence as modified or amended and a notice of amendment will also be provided to the licence holder.

4.4. Licensed water entitlement security level

In circumstances where the Controller determines to amend or modify the terms or conditions of a licence that allocates licensed water entitlements across security levels, the licensed water entitlement will be reduced in order of security level. A licence holder's Low Security licence entitlements will be reduced first, then Medium Security entitlements and High Security entitlements.

4.5. Right to review

If the Controller decides to modify or amend a licence, the licence holder may seek a review of the decision under section 30 of the *Water Act 1992*. More information regarding how to request a review of a decision made by the Controller can be found on the Northern Territory Government website.

5.0 UNUSED LICENSED WATER ENTITLEMENTS MAY BE TRADED

If a licence holder identifies that they do not require their full licensed water entitlement, they may seek to trade it. The trading of licensed water entitlements is governed in accordance with the *Water Act 1992* and any applicable water allocation plan.

6.0 WATER WASTAGE

Wasting water is an offence under section 100 of the *Water Act*. Licence holders wasting water to avoid having an unused licensed water entitlement may be prosecuted and may have their licence revoked in accordance with the *Water Act 1992*.

7.0 RETURNED WATER

Subject to any applicable water allocation plan, water that is returned under modified or amended licences will generally be allocated:

- (a) If actual or projected consumptive use for the water resource from which water is taken under a licence is generally in excess of the thresholds set out in the Northern Territory Water Allocation Planning Framework, the unused licensed water entitlement is retired (i.e. it is allocated to the non-consumptive pool for the beneficial use of environment or culture); or
- (b) If actual or projected consumptive use for the water resource from which water is taken under a licence is generally within the thresholds set out in the Northern Territory Water Allocation Planning Framework, the water entitlement is returned to the consumptive pool and can be reallocated to consumptive beneficial uses in accordance with any applicable water allocation plan based on the following general hierarchy of allocation:
 1. rural stock and domestic;
 2. public water supply;
 3. Strategic Aboriginal Water Reserve.

An unused licensed water entitlement that was accessed from the Strategic Aboriginal Water Reserve will be returned to the Strategic Aboriginal Water Reserve.

7.1. Role of a Water Advisory Committee

Water Advisory Committees may be appointed by the Minister under section 23 of the *Water Act 1992*. Where a Water Advisory Committee has been appointed, the Controller may refer matters relating to unused licensed water entitlements within its jurisdiction to it for advice.

8.0 GLOSSARY

Term	Definition
beneficial use	Means the uses of water specified in section 4(3) of the <i>Water Act 1992</i> . In summary those uses are: agriculture; aquaculture; public water supply; environment; cultural; industry; rural stock and domestic.
consumptive beneficial uses	The following are considered to be consumptive beneficial uses: Public Water Supply, Rural Stock and Domestic, Agriculture, Industry, Aquaculture, Mining Activity and Petroleum Activity.
consumptive pool	The volume of water available for allocation to consumptive beneficial uses after allocations are made to the environment and cultural beneficial uses.
Controller	The Controller of Water Resources appointed under section 18 of the <i>Water Act 1992</i> .
Department	Department of Environment and Natural Resources

Licence	A licence granted by the Controller under section 45 of the <i>Water Act 1992</i> to take or use water from a waterway; or A licence granted by the Controller under section 60 of the <i>Water Act 1992</i> to take water from a bore.
licensed water entitlement	The volume of water that may be taken under a licence in accordance with the conditions of that licence, the <i>Water Act 1992</i> and relevant water allocation plan.
Security level	The order in which announced allocations are applied to licences in years when a less than 100% announced allocation is required to ensure that environmental water provisions are satisfied.
unused licensed water entitlement	The difference between the minimum extraction limit as specified in the terms and conditions of the licence and the highest actual volume of water extracted in any of three consecutive years.
water allocation plan	A water allocation plan declared under section 22B of the <i>Water Act 1992</i> . The <i>Water Act 1992</i> allows for the declaration of water allocation plans within water control districts. Water allocation plans detail the area and water resource, to which the plan applies, as well as the vision, objectives, strategies and performance indicators of the plan.
water control district	An area declared to be a water control district under section 22 of the <i>Water Act 1992</i> . A water control district is usually declared where there is a need for enhanced management of water resources to ensure the sustainability of groundwater reserves or river flows.
water resource	Surface water or ground water; or a watercourse, lake, wetland or aquifer (whether or not currently has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical stage and environmental value of the water resource).

9.0 RELATED DOCUMENTS AND LEGISLATION

- *Water Act 1992* and Water Regulations
- Strategic Aboriginal Water Reserves Policy Framework
- Northern Territory Water Allocation Planning Framework
- the relevant water allocation plan.

10.0 DOCUMENT CONTROL

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Document Change History

The following table records the history of any significant changes made to this document. The version number of the document is incremented as follows:

- by 1.0 for significant changes
- by 0.1 for changes made for clarity and reading ease only.

Version	Date	Change Details and Approver
1.0	17/4/2019	Northern Territory Government – New Policy