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1993 -10- 13

12th October 1993

The Chairman
Technical Committee on Constitutional Issues
Multi-Party Negotiating Process
P O Box 307
ISANDO
1600

Dear Sir

REGIONAL BOUNDARIES - WATER SUPPLY

The Rand Water Board gave evidence before the Commission on the Demarcation/Delimitation of the SPRs on 1st October 1993 and requested that its written Heads of Submission be forwarded to you for your notice and attention.

The Rand Water Board, if given the opportunity, would wish to expand on the submissions made in the Heads.

At this stage I would like to draw your attention to the extracts from Ramsden - The Status, Powers and Duties of the Rand Water Board - A Legal History and Analysis that come at the end of the document. Since the area of interest of a water authority will overlay those of several regions, a single region would not be the appropriate authority to clothe that water authority with statutory authority. The water authority, however, does not have national interests but only local interests. The submission is made that the most appropriate way of clothing a water authority with statutory authority would be by way of Private Act, that being the most appropriate method for Parliament to recognise and legislate concerning local interests.

Three copies of the Heads of Submission are enclosed for ease of reference.

Yours faithfully

H T Ramsden
ACTING CHIEF EXECUTIVE

Enclosures

COMMISSION ON THE DEMARCATION/DELIMITATION
OF SPRs

MULTI-PARTY NEGOTIATING PROCESS

Heads of submission

For the sake of clarity the Central, Federal or National government is hereinafter referred to as the "State" whereas the Federal or Federated states are referred to as the "Regions".

1. GENERAL PRINCIPLES

1.1 Federalism is established :

- (a) to deal with diversities of interests. culture, religion, language, etc,
- (b) to regulate those matters that are only of local interest,
- (c) to diffuse the sovereign power of the State.

1.2 (b) Above is often found in Unitary States. The Republic of South Africa has its Provincial government system and decentralization of, inter alia, education, health, roads and some taxation functions. (Verloren van Themaat, Staatsreg p 232, 382, 455 and 524 and Worrall, South Africa - Government and Politics p 6 and 7.)

1.3 Matters that concern the nation as a whole are usually entrusted to the State in a centralized form (cf Strong, Modern Political Constitutions p 87 - 110 and Rodec, Anderson & Christol, Introduction to Political Science, p 244 - 249, 330 and 375.

2. THE SUB-DIVISION OF THE STATE INTO REGIONS

2.1 In order to give effect to the guiding principles a delimitation of the State into Regions ought, it is submitted, seek to collect together within a proposed political boundary persons of like interest, culture, religion, language, etc and/or people with strong local interests that can best be served by local administration, control and legislation.

2.2 No matter how carefully a region is structured, many of its interests will be the concerns of its neighbours as well. Third generation rights cannot in most instances be adequately protected within the confines of municipal bills of rights but their effective implementation requires international co-operation on the global or African region scale (for instance pollution cannot in all instances be contained within national borders). (Johan D van der Vyver "Constitutional Options for

Post-Apartheid South Africa", in Emory Law Journal, Vol 40 No 3, Summer 1991 p 781.) The functions of Water Supply Authorities give rise to third generation rights and require special treatment to ensure effective implementation (Postea, section 4 "The Peculiar Position of the Rand Water Board").

3. CONCURRENT AND EXCLUSIVE POWERS

- 3.1 The exercise of concurrent or exclusive powers will help to regulate to some degree the particular position that water supply authorities find themselves in, but they are not the whole solution.
- 3.2 Depending on the importance of a particular matter, a federal constitution may assign exclusive powers to the State or to a Region or may assign those powers concurrently to the State and a Region or to one or more Regions. When concurrent powers of the State and a Region are in conflict, the State's powers prevail (Strong, p 88 - 91 and Nwabueze, Federation in Nigeria under the Presidential Constitution p 76).
- 3.3 Research has been carried out into the Federal Constitutions of the United States of America (Blaustein & Flanz, Constitutions of the Countries of the World, volume IX); the Federal Republic of Germany (Bechscher Ratgeber, Recht p 652 and 676 - 677 and Blaustein and Flanz, volume VI); the Constitution of the Commonwealth of Australia (Blaustein and Flanz, volume 1); the Constitution of the Nigerian Federation (Nwabueze, p 76, 81, 92 - 93 and 391 and Read "Nigeria's new constitution for 1992 : The Third Republic", in Journal of African Law, vol 35, No 1, p 174); and the Constitution of India (Singh, The Constitution of India, p 24 - 27). In some instances the management and control of a water supply is given to the Regions, in others to the State and in other instances the powers are concurrent.
- 3.4 The powers exercised by the Rand Water Board do not affect the whole of South Africa and are therefore matters that should be delegated to a lower level. On the other hand there is no regional delimitation on the negotiating table that even nearly corresponds with the Rand Water Board's limits of supply as supplemented by the areas in which it has a statutory duty to exercise management and control of the catchment area. The way in which this apparent contradiction was dealt with in the past was by permitting the Rand Water Board to promote a Private Act in Parliament in an analogous way to that in which Universities have Private Acts (Ramsden, The Status, Powers and Duties of the Rand Water Board - A Legal History and Analysis p 602 - 605).

4. THE PECULIAR POSITION OF THE RAND WATER BOARD

4.1 As has already been premised there is no regional delimitation on the negotiating table that even approximates to what may properly be considered to be the limits of supply of the Rand Water Board as augmented by the catchment area of the Vaal River system.

4.2 Annexure A depicts the Board's limits of supply - an area of 17 000 km² in extent, extending from Rustenburg and Mabopane (north of Pretoria) in the North to Carletonville in the West, Bethal in the East and Sasolburg in the South.

These limits have been superimposed on a map of the so-called "Planning Region H" to show the lack of correspondence.

The reason why water supplied within those limits by the Rand Water Board is among the least expensive in the World is that the right economies of scale are achieved. To truncate or divide these limits of supply between political regions must in some measure destroy the economic balance achieved.

4.3 The limits of supply extend both north and south of the Vaal River, that is to say into parts of the present Transvaal Province and into parts of the Province of the Orange Free State. (Annexure C.) Rivers ought never to serve as water supply boundaries. It is axiomatic that the river can supply settlements on both of its banks. The direction in which the Board has been requested to expand its limits of supply is southwards to include Heilbron. These decisions regarding expansion are made by the Board in the best economic interests of its consumers. It is for this reason that its water supply boundaries are not fixed but may be varied by the Minister (Rand Water Board Statutes (Private) Act, 1950 section 112).

4.4 Water authorities throughout the world have what may even amount to a natural obligation to protect the gathering grounds of their water resources. The Rand Water Board has a statutory duty to protect the gathering grounds of the Vaal River system. This catchment area extends from the Witwatersrand in the north to Sterkfontein Dam in the South and as far east as Ermelo and Vereeniging and Liebenberg's Vlei in the West. This area is 55 290 km² in extent, includes six Regional Services Councils and is depicted on Annexure B. The enforcement of Third Generation rights relating to water on behalf of the public as well as on account of its own self interest within the catchment area is entrusted to the Rand Water Board by section 139 of its Statutes.

4.5 Annexure C depicts the sources from which the Vaal River system is supplemented principally for the benefit of the Rand Water Board's consumers. Today an estimated 8,7 million people depend upon the Rand Water Board for a sustained supply of healthy potable water - that is to say about a quarter of the total

population of South Africa. Sixty-seven per cent of South Africa's gross domestic product is generated within these limits of supply. Predictions based on historic trends are that demand for water will continue to grow at around five per cent per annum.

Many deliberate interventions have been made to try and disperse the increasing population within the limits of supply to other parts of South Africa better served with water resources, but all of these interventions have failed. The yield from the Vaal River system before its augmentation was 4 100 Ml/d and was sufficient to supply the demand up to the year 1982.

The Tugela-Vaal project that later developed into the Drakensberg pumped storage scheme was designed and implemented in 1974 to transfer water from the Tugela River into the Vaal River system. This project should provide an assured supply of water for use in the Board's limits of supply up to the year 1997.

Work has already begun on the first phase of the Lesotho Highlands Water Project to meet the demand beyond 1997. These schemes have brought parts of Natal and parts of the Kingdom of Lesotho within the Rand Water Board's areas of interest in addition to the catchment area of the Vaal River. This greater augmented area will not fit easily into any region brought into being for either political or economic reasons.

- 4.6 These difficulties were evident even in Apartheid South Africa. Annexure D depicts that the Board's limits of supply contained eight Regional Services Councils, none of whom were in any way able to discharge the function of bulk water supplier within their regions.
- 4.7 What has been stated regarding the position of the Rand Water Board is not a unique situation but one that is common to all the larger water supply authorities in the Republic of South Africa. This again bears testimony to the fact that the grouping of political or economic interests within a Region will not be the optimum grouping for a water supply region.
- 4.8 Annexure E depicts the Board's limits of supply and the Vaal River catchment area. Leaving aside the extensions into Natal and Lesotho referred to in 4.5 above, the North West, PWV area, Eastern Transvaal, Natal and Orange Free State SPRs will be affected by the Board's limits of supply and the Vaal River catchment area.

5. THE INESCAPABLE REALITY

- 5.1 Sanitation regions are dictated by natural and physical features such as topography and drainage basins. Although the Commission has taken such matters into consideration they were not adopted as criteria for demarcation. (Report of the Commission on the Demarcation/Delimitation of SPRs p 7 and 8 read with 15.) There will very rarely be any correspondence between sanitation regions and political or economic Regions. Most water supply authorities consider it to be their duty to enter the field of sanitation so as to husband South Africa's meagre water resources. The necessary natural and physical features will coincide with the catchment area under the control of the water authority.
- 5.2 It is essential that water regions including sanitation regions are allowed to be established by the State for sound economic reasons as an overlay across Regional boundaries that will be brought into being on account of the uniformity of other interests within those Regional boundaries.
- 5.2 Because of growth and development within the Post-apartheid regions, the boundaries of the water regions should be capable of being expanded by the Minister of Water Affairs in accordance with demand from communities and should therefore not be subject to delimitation or redelimitation. In this way a number of water regions could together cover the whole of South Africa.

6. THE STATUS OF THE LARGER WATER SUPPLY AUTHORITIES


- 6.1 The Rand Water Board can only speak for itself in this matter but that which it proposes would also be effective in the case of other larger water supply authorities.
- 6.2 It is submitted that a public utility corporation (which the Board already is) could exist with the purpose of serving a viable area which may comprise several regions or parts of several regions.
- 6.3 The utility corporation should owe its existence to a Private Act of Parliament so as to give it dual accountability both to the State for carrying out the purpose for which it was created and to its consumers, the Regions served. Pages 602 - 605 of Ramsden are also annexed since they are pages from an unpublished work. Accountability to consumers could be achieved by providing in the Private Statute for certain representation on the managing board of the public utility by representatives of the governments of the Regions served.

7. CONCLUSION

- 7.1 Since the solution proposed is one of an institutional arrangement with constitutional implications the Commission on the Demarcation/Delimitation of

SPRs is respectfully requested to forward these submissions together with a supporting memorandum to the Chairman of the Technical Committee on Constitutional Issues for consideration and inclusion in its deliberations.

- 7.2 It is submitted that the proposal of the Rand Water Board accords with both the criteria for the demarcation of SPRs together with the constitutional principles and merits the support of this Committee.


CHIEF EXECUTIVE
RAND WATER BOARD
1st OCTOBER 1993

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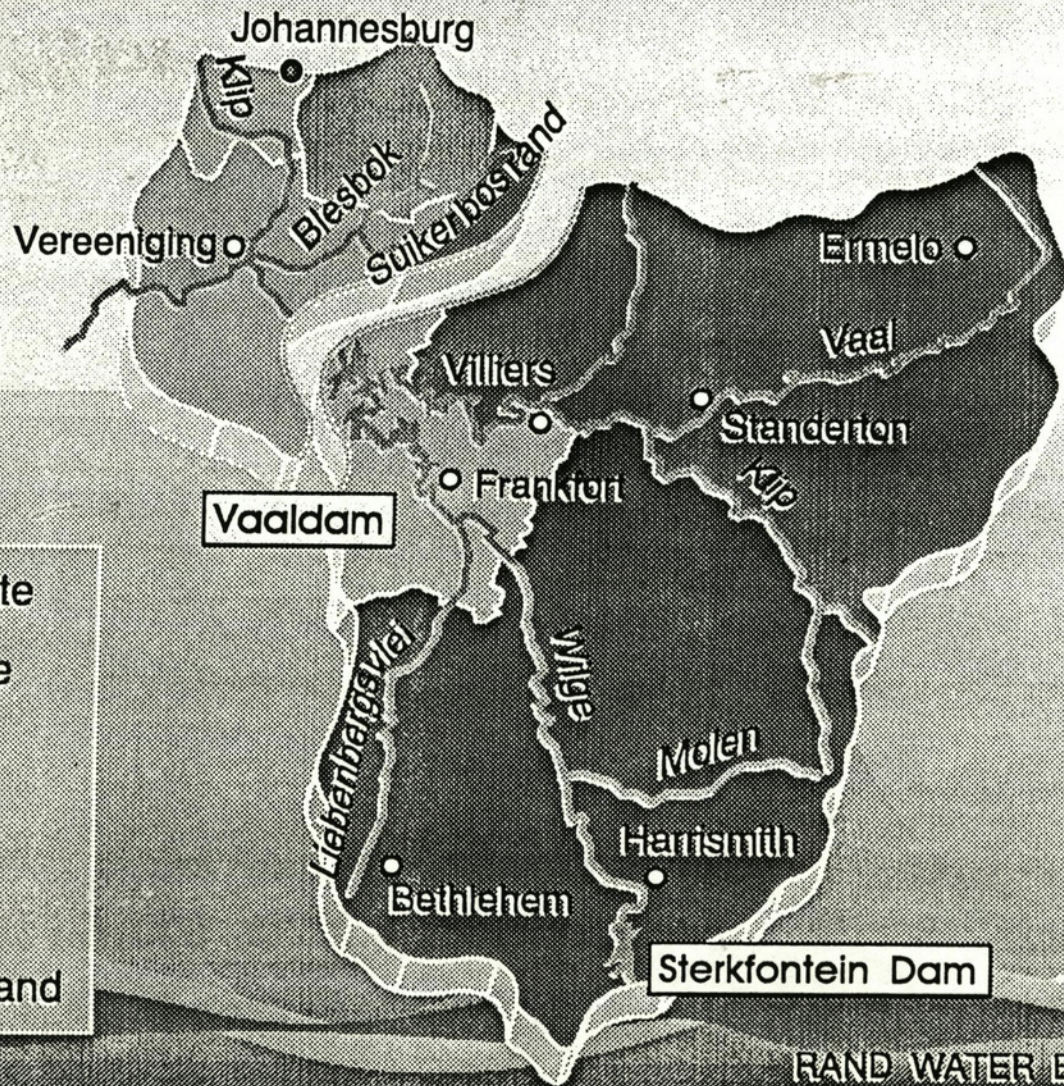







RAND WATER BOARD

LIMITS OF SUPPLY ———
REGION H (DEVELOPMENT BANK OF SOUTH AFRICA) - - - -

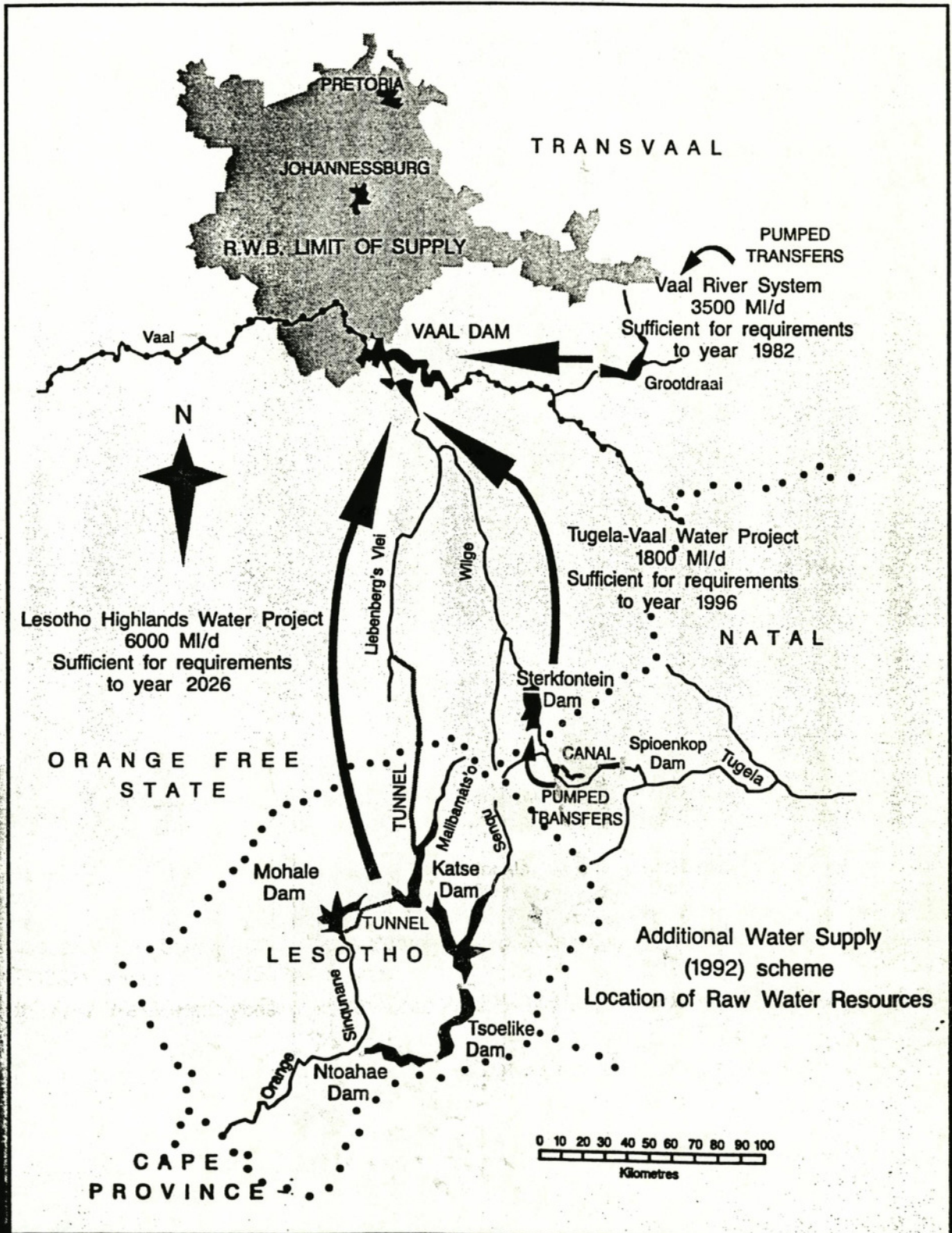


REGIONAL SERVICES COUNCILS WITHIN THE CATCHMENT AREAS











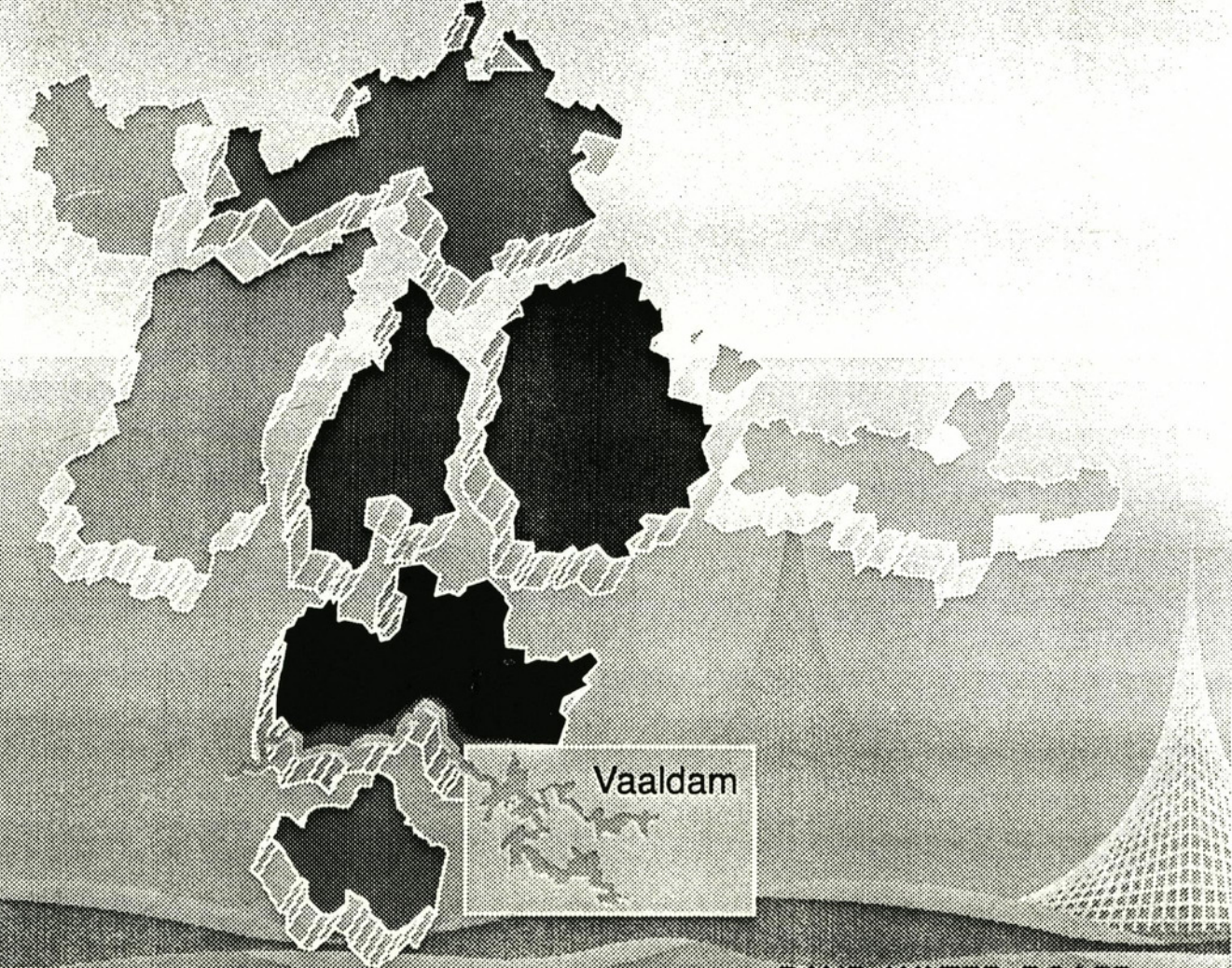
-  Northern Free State
-  Eastern Free State
-  Vaaldriehoek
-  East Vaal
-  East Rand
-  Central Witwatersrand

RAND WATER BOARD



REGIONAL SERVICES COUNCILS WITHIN THE BOARD'S LIMITS OF SUPPLY

-  Rustenburg / Marigo Region
-  Pretoria
-  West Rand
-  Central Witwatersrand
-  East Rand -
-  East Vaal -
-  Vaaldriehoek -
-  Northern Free State -



RAND WATER BOARD

