



Guideline

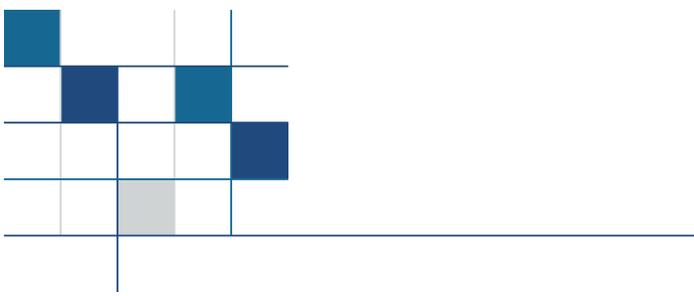
Spring exemptions

Activities regulated under:

Part III Section 5(1)(a) of the *Rights in Water and Irrigation Act 1914*

DRAFT

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1. Purpose

The Department of Water and Environmental Regulation has prepared this guideline to help landowners and occupiers of land¹ understand the spring exemption under Part III Section 5(1)(a) of the *Rights in Water and Irrigation Act 1914* (the Act).

1.1 Intent

Section 5(1)(a) of the Act describes the circumstances in which water flowing from a spring is not regulated by the Act.

This guideline outlines what you need to consider in determining whether your property's circumstances meet the requirements of section 5(1)(a).

2. Scope

Under the Act, when you take water on your private land from a spring that meets the requirements of section 5(1)(a), you are exempt from regulation under Part III of the Act.

A spring exemption under the Act does not exempt you from obtaining any other authorisation that other legislation requires (e.g. local government approvals, Aboriginal heritage, clearing of native vegetation and/or assessment under the *Environmental Protection Act 1986*). You are responsible for obtaining all the required authorisations before you begin any activity associated with a spring or the land where it rises.

This guideline is part of our policy framework and provides a consistent and transparent process to manage springs that come under section 5(1)(a) of the Act.

3. Context

A Legislative Council inquiry into private property rights, which was completed in 2020, has raised awareness about the spring exemption in the community. One of the inquiry's outcomes was for us to prepare this guideline to clarify how to determine a spring exemption.

The department does not grant 'spring rights'. Instead, the Act provides for circumstances when water flowing from a spring is exempt from regulation under the Act. We need to clarify the application of section 5(1)(a) because:

- there is a difference between the usual meaning of the word 'spring' and the definition of 'spring' under the Act
- it will reduce the risk of landowners and occupiers of land undertaking works or taking water which may be subject to regulation under Part III of the Act

¹ From here, this guideline will refer to the Department of Water and Environmental Regulation as 'the department' or 'we/us', and to the landowners and occupiers of land to whom this guideline is addressed as 'you'.



- the definition of a watercourse changed significantly when the Act was amended in 2000 to include watercourses that are modified from their natural state, or that flow intermittently or occasionally
- the Act does not define the process for determining whether the exemption in section 5(1)(a) applies to a spring
- the Legislative Council's inquiry into private property rights completed in 2020² noted there is a lack of understanding regarding how the spring exemption applies.

The department is responsible for administering the Act. We ensure compliance with the Act by responding to complaints and monitoring, and investigating potential breaches of the Act.

Before we developed this guideline, we gave case-by-case advice to individual landowners and occupiers of land about whether the spring exemption applied to their circumstances.

We have designed this document to include a step-by-step self-assessment guide to help you work through the sometimes complex hydrological and other considerations to decide whether a section 5(1)(a) spring exemption applies to your circumstances on your individual property. This self-assessment process is not a statutory process under the Act, but rather we intend it to help you ensure you take water and construct dams lawfully.

We strongly recommend that you complete the self-assessment in this guideline and compile all relevant evidence to support your determination that your circumstances meet the requirements of section 5(1)(a) before you begin any activities relating to the take of water under this provision.

You should exercise due diligence to satisfy yourself that you have met the hydrological and legal requirements of section 5(1)(a) before you start any activities relating to the take of water (including the construction of dams and other infrastructure). If you fail to do so, you could be committing an offence under section 5C. If you did commit an offence, we would consider a range of actions to address the immediate impacts of the offence, as well a range of other actions in accordance with our compliance and enforcement policy.

Given the complexity of some of the hydrological considerations, we strongly recommend that you engage a suitably qualified water specialist(s) to ensure the hydrological elements of section 5(1)(a) are appropriately considered and satisfied.

There is no statutory requirement for you to ask us to assess whether section 5(1)(a) applies and no legal mechanism to allow for the publication of a register of spring exemptions under the Act.

² Report 33, Legislative Council Standing Committee on Public Administration, *Private property rights: the need for disclosure and fair compensation*, September 2020.



Should we identify a potential breach following a complaint or monitoring, we may ask you for evidence (including advice from a suitably qualified water specialist) to support your determination that your circumstances meet the requirements of section 5(1)(a).

4. Legislation

The following primary legislation is for managing the take and use of water in Western Australia:

- *Rights in Water and Irrigation Act 1914* (the Act)
- Rights in Water and Irrigation Regulations 2000 (the Regulations).

The Act provides for rights in water resources, and makes provision for the regulation, management, use and protection of water resources, and for related purposes.

See Appendix 1 for further details on the legislation relevant to this guideline.

5. Rights in Water and Irrigation Act 1914 definitions

spring means a spring of water naturally rising to and flowing over the surface of land, but does not include the discharge of underground water directly into a watercourse, wetland, reservoir or other body of water.

underground water or underground water source includes water that percolates from the ground into a well or other works.

(1)...**watercourse** means —

(a) any river, creek, stream or brook in which water flows;

(b) any collection of water (including a reservoir) into, through or out of which any thing coming within paragraph (a) flows;

(c) any place where water flows that is prescribed by local laws to be a watercourse,

and includes the bed and banks of any thing referred to in paragraph (a), (b) or (c).

(2) For the purposes of the definition in subsection (1) —

(a) a flow or collection of water comes within that definition even though it is only intermittent or occasional; and

(b) a river, creek, stream or brook includes a conduit that wholly or partially diverts it from its natural course and forms part of the river, creek, stream or brook; and

(c) it is immaterial that a river, creek, stream or brook or a natural collection of water may have been artificially improved or altered

For the purposes of Part III, **watercourse** includes waters flowing from a spring to which this Part (III) applies.



wetland means a natural collection of water, whether permanent or temporary, on the surface of any land and includes —

(a) any lake, lagoon, swamp or marsh; and

(b) a natural collection of water that has been artificially altered, but does not include a watercourse.

reservoir means a reservoir, dam, tank or cistern. (*Water Agencies (Powers) Act 1984, section 3.*)

6. Relevant considerations for a landowner or occupier of land

6.1 Guidance to help identify a section 5(1)(a) spring

To constitute a spring under section 5(1)(a), the water must naturally rise to the surface of the land. Water may naturally rise to the surface of the land in different ways, such as:

- Artesian flow: where underground water pressure exceeds atmospheric pressure and a spring rises out of the ground due to this pressure.
- Non-artesian flow: a non-artesian spring is formed when underground water from an aquifer rises under gravity to the surface of the land and flows away. There is no impermeable layer above the aquifer to restrict water-flow through the soil and create pressure to cause artesian flow.

The water in a non-artesian spring flows away over the surface of the land from the point at which the water reaches the surface. This makes it different from a wetland, dampland, soak, reservoir or other body of standing water (see consideration 2 in Chapter 7).

See Chapter 8 of this guideline for illustrated examples of springs.

6.2 Guidance to help identify watercourses

A discharge of underground water directly into a watercourse, wetland, reservoir or other body of water is not a section 5(1)(a) spring.

A watercourse will be visible in the landscape and have a bed or bed and banks,³ although bank height or bed width may vary. Watercourses can vary in size and may also be indicated by the presence of distinctive biological, hydrological and physical characteristics.

Sheet flow is where water flows in a uniform direction across the landscape. Most runoff occurs as sheet flow – a film of water spread across the soil surface – and has low volume, velocity and energy.

³ A bank contains the height of water within the bed of a watercourse and may include artificially improved or created banks.



A watercourse may form when areas of sheet flow collect together in a localised way and flow in a single direction, over what is then the bed of the watercourse.

Where a watercourse has been artificially improved or altered, it is still deemed by the Act to be a watercourse. These alterations can include those resulting from land management practices.

Occasional or intermittent flow

It is important to note that the common-law definition of ‘watercourse’ was developed in jurisdictions which typically have far more rainfall and a much wetter climate than most parts of Western Australia. For this reason, the definition of ‘watercourse’ under the Act is broader than the common-law definition. One example of this is the inclusion of the concept that the flow in a watercourse can be intermittent or occasional and still be considered a watercourse under the Act.

Watercourses need not flow continuously; they may only flow intermittently or occasionally, depending on environmental conditions. The department considers that:

- Intermittent flow occurs where the flow of water in a watercourse is not permanent, but it is sufficiently regular and seasonal.
- Occasional flow does not require that the water in a watercourse flows throughout a season; however, occasional water flow in a watercourse needs to be of a sufficient duration that can distinguish it from short-term water sheet flow along a land contour, or mere runoff immediately following a rainfall event. If other physical features of a watercourse are not visible in the landscape and water flows for less than a few hours after a rainfall event, then it is unlikely to be a watercourse.

Assessment of intermittently or occasionally flowing watercourses may require onsite inspection and desktop analysis from a water specialist, particularly in instances where the physical features of the watercourse may not be well defined.

6.3 Naturally rising water at the head of a watercourse

The head of a watercourse is the starting point of that watercourse where water from sheet flow or other sources collects and begins to flow. If there are upstream collections of intermittent or occasional flow within a bed that connect to the location that is in question, then that location is not the head of that watercourse. A watercourse may be created by a combination of multiple watercourses, each with their own head.

If naturally rising water on the property is at the head of a watercourse (‘spring watercourse’⁴), then a watercourse formed solely from that spring water may not be a regulated watercourse until it leaves the boundaries of that property. However, if the spring watercourse subsequently collects with other flows in circumstances where

⁴ The term ‘spring watercourse’ is not used in the Act. We have used the term ‘spring watercourse’ in this guideline for ease of reference, to differentiate between that section of a watercourse which is fed solely by a spring and that section of a watercourse which is also fed by other sources of water.



those other flows would be themselves sufficient to form a watercourse, then the 'spring watercourse' has mixed with a regulated watercourse.⁵

If a spring watercourse on that land is subsequently fed by other discharges of underground water into its bed or bed and banks, then the water from those other discharges will form a regulated watercourse that contains some exempt water from the spring at the head of the watercourse.⁶ If this were the case on your property, you would need a licence to take water from the regulated watercourse and a permit to interfere with the bed or bed and banks of that regulated watercourse. Where regulation is required, we will specify the amount of water that may be taken under the licence. For us to understand how much water is regulated water and how much water in the watercourse is spring water, we would ask you to measure or estimate the amount of water produced by the spring at the head of the watercourse.

You may need to hire a water specialist to assess whether naturally rising water occurs at the head of the watercourse. They may need to conduct an onsite inspection and desktop analysis.

7. Self-assessment

7.1 Determine whether a section 5(1)(a) exemption applies

The requirements under the Act need to be demonstrated for a spring exemption to apply to the taking of water. The considerations are:

1. The land where spring water naturally rises and flows must have been granted or demised by the crown.
2. The water must naturally rise to, and flow over, the surface of land.
3. The spring water must not discharge directly into a watercourse.
4. The spring water has not mixed with water in an otherwise existing watercourse at the point it is to be taken.⁷
5. The spring must be wholly within the boundary of the land belonging to the landowner or occupier of land.
6. The exemption applies only within the boundary of the land belonging to the landowner or occupier of land where the spring rises and flows.

⁵ A regulated watercourse is a watercourse in a proclaimed area or a watercourse that is part of a system of watercourses that are specified in a proclamation made under section 6 of the Act.

⁶ See definition of 'spring' and 'watercourse' in section 2 of the Act. These definitions operate so that a spring only occurs at the head of a watercourse or in cases where no watercourse forms from the spring.

⁷ This is not part of the definition of spring, but is relevant to the point at which any spring water may be proposed to be taken. If at the point of taking, the spring water has mixed with regulated water, you may need a licence to take the regulated water and a permit to dam that regulated water.



If the spring satisfies all the above considerations, then it is a spring for the purpose of section 5(1)(a) and taking water will be exempt from Part III regulation.

If you choose to undertake self-assessment, you should complete a due diligence check of the following considerations to determine whether a spring (and exemption) exists for the purpose of the Act.

Consideration 1 - Land is granted or demised by the crown

Land is granted or demised by the crown if it:

- has been granted in such a way that it is no longer crown land (e.g. freehold land), or
- is crown land that is subject to a crown lease to a person who is not part of the crown (e.g. pastoral lease or other leasehold interest).

The status of the land can be verified by way of a certificate of title or a lease agreement with the crown.

Consideration 2 - Spring water must naturally rise and flow over the surface of land

A spring must be 'a spring of water naturally rising to and flowing over the surface of land'. The fact that it must be 'a spring of water' and must be 'rising' indicates that it refers to water rising to the surface under its own pressure (whether artesian or gravity) and does not include mere percolation of water due to waterlogging. The water must also then be flowing away from this location and so does not include the natural percolation of underground water by gravity where a low-lying area of land intersects the watertable, such as a wetland, dampland, soak, reservoir or other body of standing water.

Water should not be brought to the surface by artificial methods, meaning that water must not be pumped to the surface, abstracted from underground or accessed by excavating or disturbing the land to access the watertable.

You should consider:

- when and where the naturally rising water occurs
- whether the water flows over the surface of the land away from the point it rises to the surface
- for the reasons explained in Section 6.3 of this guideline, estimating the volume of water produced by the spring (e.g. litres/second or litres/minute).



Consideration 3 - Spring water must not discharge directly into a watercourse

You should be satisfied that the rising water does not discharge directly into a watercourse.⁸

As such, it is important to identify the watercourses on your property and the sources of the water that contribute to the existence of those watercourses.

You should consider:

- The topography, water catchment areas, water flow paths and where these flow paths converge to form a watercourse.
- The location of any collection of water (natural or altered) on the surface of the land through or out of which any river, creek, stream or brook flows.
- The depth of the watertable and the amount of annual variation in depth.
- The physical characteristics of the collection of water; that is, evidence of a bed or banks or a channel⁹ because of the flow of water (this can range from erosion in part of the bed through to a fully incised bed with banks in a river).
- How often water flows (if you cannot easily observe this in the landscape, you may need to engage a suitably qualified surface water specialist).
- The condition of vegetation and whether it demonstrates the existence of a watercourse (vegetation indicators may be absent as a result of some land management practices).
- Where the watercourse originates. Is it on or off the property? Does it flow from another property upstream?
- Whether the watercourse has been artificially altered or improved.
- Does the water naturally rising and flowing over the surface of land form a spring watercourse? If so, is that spring watercourse fed by other flows that would themselves form a watercourse? Is that spring watercourse augmented by any discharge of underground water directly into the bed or bed and banks of the 'spring watercourse'?
- Does the water naturally rising and flowing over the surface of land flow into a watercourse that originates elsewhere? Would the watercourse exist if not for the water naturally rising and flowing over the surface of land?

⁸ A spring, as defined under the Act, does not include the discharge of underground water directly into a watercourse, wetland, reservoir or other body of water.

⁹ A channel is a depression in the landscape that has been naturally formed by flowing water or has been artificially constructed or channelised to convey water flows. It may contain water-borne sediments and its shape may change based on the movement of water and the size of sediments transported within the channel.



Consideration 4 - Spring water has not mixed with water in an otherwise existing watercourse at the point that it is to be taken

If the spring water collects with other flows in circumstances where those other flows would be themselves sufficient to form a watercourse, then the spring water has mixed with a regulated watercourse.¹⁰

If you want to take water from that (point in the) watercourse, you need a licence and, if you intend to interfere with that watercourse, a permit. You would need to measure or estimate the total amount of water taken from the spring and used on your property.

Consideration 5 - The spring must be wholly within the boundary of the land belonging to the landowner or occupier of land

The exemption from regulation under section 5(1)(a) applies only within the boundary of the land that belongs to you; that is, where the spring rises and flows. The exemption does not apply once the spring water flows beyond the boundary of your land.

Consideration 6 - The exemption applies only within the boundary of the land belonging to the landowner or occupier of land where the spring rises and flows

You can take and use spring water that rises and flows within your property on your land.

You should consider:

- the location where a spring rises and flows on the property – see *considerations 2 and 3*
- where the property boundaries are in relation to that spring – see *consideration 5*.

When spring water has passed beyond the boundary of the land where it rises and flows, then the section 5(1)(a) exemption no longer applies and regulation under Part III of the Act is required.

7.2 Self-assessment methods

You may undertake the following self-assessment methods:

- onsite self-assessment and evidence gathering
- desktop assessment and evidence gathering.

In complex cases, you may wish to obtain advice from a professional water specialist.

¹⁰ A regulated watercourse is a watercourse in a proclaimed area or a watercourse that is part of a system of watercourses that are specified in a proclamation made under section 6 of the Act.



Onsite self-assessment and evidence gathering

We recommend you gather onsite evidence to support the self-assessment process. This can be in the form of photos, videos and written documents.

We suggest you record the date of the onsite property survey, including climatic details (e.g. rainfall, season), to provide useful information on the factors that may influence the rise and flow of water in the area. Seasonality is not a feature which defines a spring. Springs may flow all year round or have intermittent flow. This can make it a difficult task to identify whether water is a spring or a wetland, soak or waterlogging. Therefore, we recommend you conduct onsite validation of springs in late summer to reduce the perceived impact of rainfall (waterlogging) and elevated groundwater tables (i.e. seasonal variation of the watertable).¹¹

We recommend you record as much information as possible on the self-assessment considerations provided above.

Desktop assessment and evidence gathering

You can undertake a desktop assessment to collect data for a specific property and see how it fits into the broader surface water catchment.

Your desktop assessment may consider information such as geospatial datasets from geographic information systems (GIS) available from government agencies (e.g. Landgate) or professional water specialists. You may have to pay for professional services and/or to obtain certain information and reports.

You can use a desktop assessment to determine the presence of a watercourse upstream of a potential spring by using geospatial datasets (e.g. hydrography, aerial photography, topography, geology).

Assessing complex cases

You may need to seek technical validation from a professional water specialist if your case is a complex one. This may be for further investigation and review to determine the:

- natural rise and flow of spring water from underground water sources, and/or
- the presence of a watercourse and its interaction with uprising groundwater.

The following tools may be used as part of the assessment:

- *Confirm flow paths and catchment boundaries* – this process uses elevation data and GIS software to derive the flow direction and catchment area of a watercourse.
- *Determine likelihood of runoff from the catchment* – this process determines the likelihood of sheet flow being generated in intense rainfall events where the rainfall rate exceeds the soil infiltration rate.

¹¹ A key difference between a non-artesian spring and standing water such as a wetland, soak or waterlogging is that the water in a non-artesian spring will flow away from the point at which the water reaches the surface.



- *Confirm that runoff will be likely to reach the catchment outlet* – this process will estimate the time of flow concentration and help estimate the likelihood of flow reaching the catchment outlet, which may represent the intersection with another watercourse or existing or proposed dam.
- *Streamflow modelling* – this process scales measured streamflow¹² from the nearest stream-gauging station, where relevant and applicable.

7.3 Compile information

Once you have completed your self-assessment and appropriately determined that the circumstances on your property meet the considerations of section 5(1)(a), we recommend that you collate and retain all supporting evidence. This may include:

- maps identifying property boundaries, location and extent of water collection areas and water flow, topography or vegetation
- satellite imagery, photographs and videos
- hydrological reports from suitably qualified surface water experts addressing hydrological elements of the provision
- any legal documents relating to land tenure or access.

It is your responsibility to pay all costs associated with the engagement of a professional water specialist to undertake any investigations and any written assessment reports.

8. Management of springs and spring dams

8.1 Management provisions

You need to determine whether a spring exemption applies before starting any works or taking any water from a spring. If a spring exemption applies, you should ensure that:

- The spring is not excavated as the water must naturally rise to the surface in order for that spring to continue to be a spring for the purposes of section 5(1)(a).
- A dam is not constructed over the spring and reservoir water does not inundate the spring. If you put a spring dam as close as possible to the spring (without inundating it), this will reduce the likelihood that licensing will be required when spring water mixes with other water in a watercourse. In those cases, you may need to measure or estimate the volume of water from the spring.

¹² Streamflow is water that flows along a defined channel and bed and may flow permanently, intermittently or occasionally. Stream flow describes the flow of water in any watercourse and is part of the catchment's water balance.



If you have self-assessed that a spring exemption does not apply under section 5(1)(a), then Part III of the Act applies, and you need to apply to us for:

- a section 5C licence to take water (unless a riparian right¹³ applies)
- a section 17 permit to interfere with the bed and banks of a watercourse.

We will consider your application in accordance with Schedule 1 Clause 7(2) of the Act, which includes assessing the availability of water at the time we receive the application.

You must not undertake any works to interfere with the bed or bed and banks of a watercourse or take water until we have granted the licence and/or permit.

8.2 Legacy and historical dams

For practical reasons, because a spring cannot be returned to its natural state, we are likely to acknowledge a spring exemption in situations where a dam already exists over a spring that was constructed before 30 September 2020.

We will continue to apply previous decisions on spring exemptions to existing infrastructure and the take of water relating to those identified exemptions, unless we identify a need for re-assessment (e.g. following a complaint or site inspection as part of proactive compliance monitoring programs).

Where an existing licensed dam is considered eligible for a spring exemption after a re-assessment (e.g. due to associated land transfer of freehold title or lease arrangements with the crown), we can terminate the licence, or reduce it by an equivalent volume for the exempt dam (if there are other regulated dams on the property). This is to ensure that the take of any other water on the property, which is still subject to Part III, remains licensed.

If you believe we have incorrectly applied (or not applied) this provision to the circumstances on your property, we recommend you first undertake the self-assessment process in this guideline, and then engage with us directly to review the circumstances.

9. Examples of springs and spring dams

As shown in Figure 1, an artesian spring is formed when underground water from an aquifer rises and flows under pressure to the surface of the land through a fissure or crack in an impermeable layer of rock or clay.

¹³ Riparian right means is a right provided under section 9 of the Act and, in summary, is a right of an owner or occupier of land through which, or contiguous to, runs any watercourse; or contiguous to which, or partly within which, a wetland is situated, to take water from that watercourse or wetland for domestic, stock (not being raised under intensive conditions) or garden use (the garden must not exceed two hectares in size, from which no produce is sold and is used in connection with a dwelling).

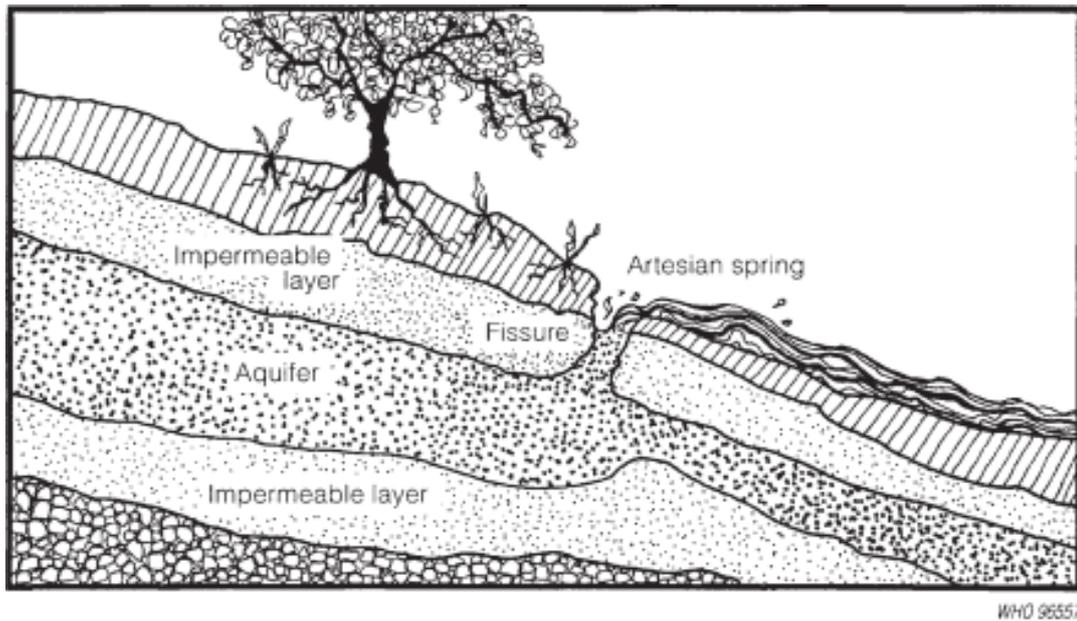


Figure 1: Conceptual representation of an artesian (pressure) spring

As shown in Figure 2, a non-artesian spring is formed when underground water from an aquifer rises and flows under gravity to the surface of the land. There is no impermeable layer above the aquifer to restrict water-flow through the soil and create pressure to cause artesian flow. This allows the groundwater to intersect the surface of the land, and the water then flows away from the point at which the water reaches the surface.

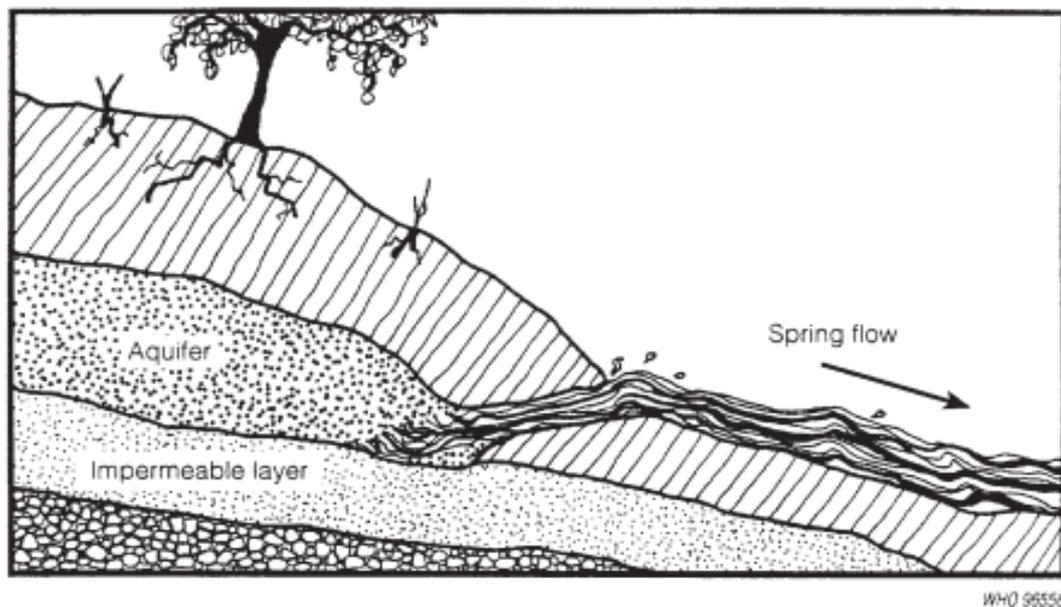


Figure 2: Conceptual representation of a non-artesian (gravity) spring



Figure 3 shows examples of the difference between regulated and unregulated water take associated with springs. The blue lines represent watercourses as defined by section 3 of the Act. The dam symbols represent the shape of a dam, with the point of the triangle pointing upstream.

Dams located on adjacent properties or downstream of areas where water naturally rises and flows within a watercourse are subject to licensing. The watercourse on the left does not qualify for a spring exemption. This is because the location where water discharges into the watercourse is not considered the head of that watercourse.

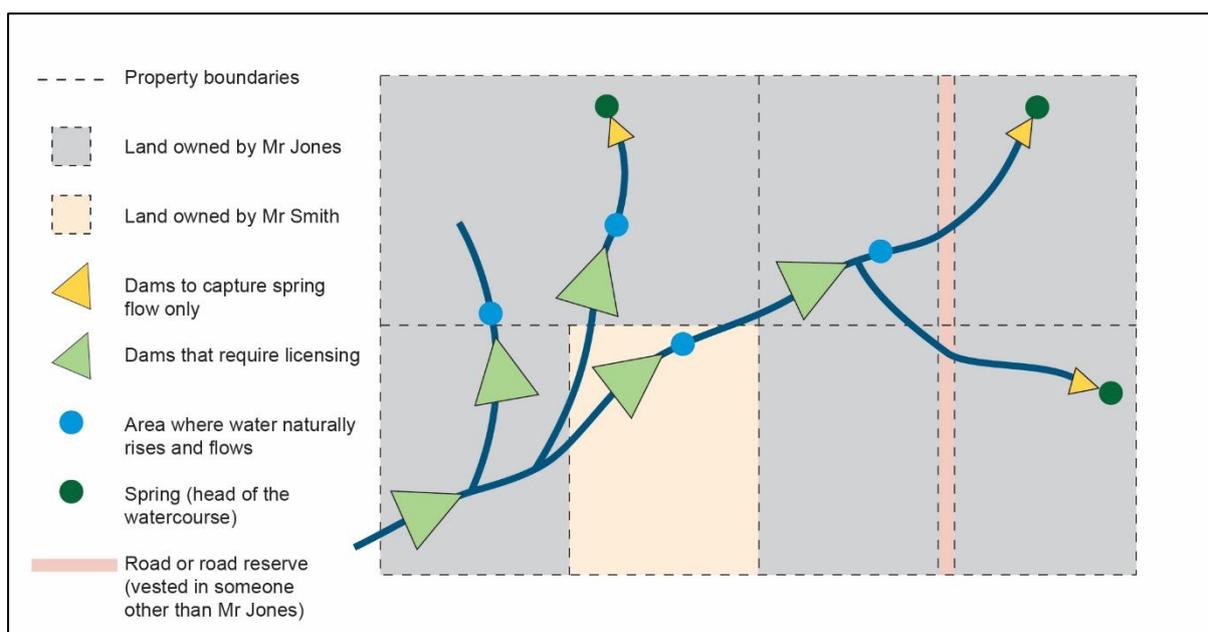


Figure 3: Conceptual representation of regulated and unregulated dams associated with springs

10. Example of non-exempt areas where water naturally rises and flows

See Figure 4 for examples of areas where underground water naturally rises and flows, and which are ineligible for spring exemptions.

The blue watercourse that is passing through the land from the upstream property is subject to regulation under the Act. In this case, a watercourse is determined to exist upstream of, and in another property, from where the underground water naturally rises and flows as part of the watercourse. Both properties shown would require regulation for the take of water (i.e. section 5C licence) for commercial use and for interference with the blue watercourse (i.e. permit).



In the property on the left, water rising and flowing from a spring at the head of the green watercourse (i.e. first-order stream) does not need to be licensed where only the flow from the spring is captured. (Note: Whether the lower parts of the green watercourse are a regulated watercourse may depend on the existence or non-existence of other flows into that watercourse).

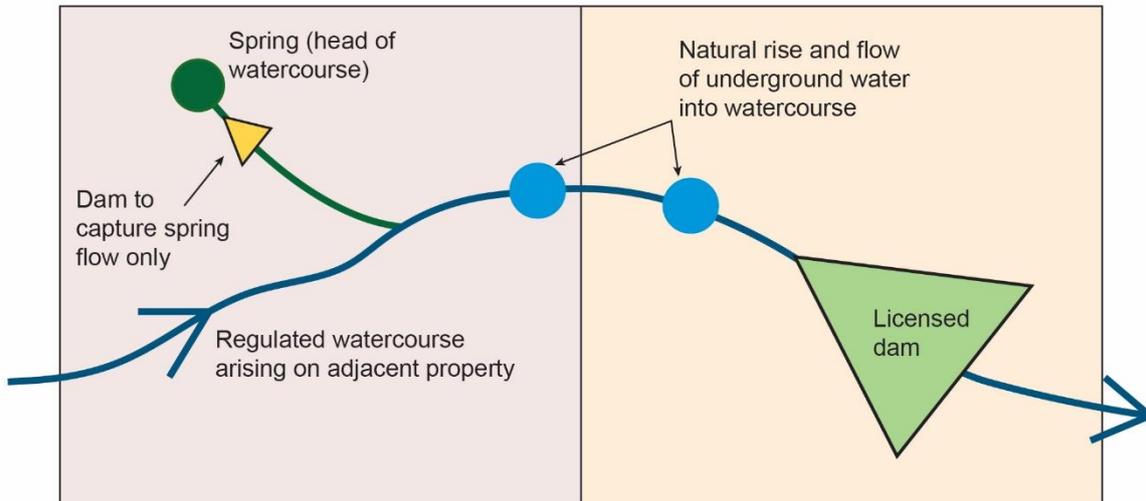


Figure 4: Conceptual representation of regulated (blue) and unregulated (green) segments of a watercourse



Appendix 1 - Legislative provisions of the Act

Part I of the Act

Sections 2 and 3 of the Act

Sections 2 and 3 of the Act provides the definition of water terms such as spring and watercourse. These terms and how they relate to a spring exemption are discussed in this guideline.

Part III of the Act

Part III of the Act provides for the management and control of water resources and makes provision for rights in water through regulation or exemption.

If an exemption does not apply, then a landowner or occupier of land would be subject to Part III:

- section 5C licensing to take water (for take that exceeds a riparian right), and/or
- permitting under section 17 to divert water or interfere with the bed or bed and banks of a watercourse.

Section 4 of the Act

This guideline aligns with the objects of Part III of the Act, which are:

- to provide for the management of water resources:
 - (i) for their sustainable use and development to meet the needs of current and future users
 - (ii) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them.

Section 4A of the Act

Section 4A provides a further definition of watercourse for the purposes of Part III, which includes water flowing from a spring to which Part III applies.

Section 5 of the Act

This guideline focuses on the section 5(1)(a) spring exemption provided by the Act.

Section 5 was introduced as part of the 2000 Act amendments to balance community interest in water resources, the rights of a landowner or occupier of land that have a spring on their property and the rights of other downstream water users.

Springs that meet the section 5(1)(a) requirements are exempt from licensing and permitting under Part III of the Act, unless a local by-law is prescribed bringing the spring within the control of the Act.



Section 5A of the Act

The right to the use, flow and control of water at any time vests in the crown except as allocated under the Act or another written law. The department is the lead State Government agency responsible for administering the Act on behalf of the Minister for Water.

An exemption or a water licence does not grant ownership to water. It only provides access to take and use water consistent with terms, conditions or restrictions of a section 5C licence, a riparian right or an exception provided under the Act or another written law (e.g. spring or riparian).

Section 5C of the Act

Taking water without a valid section 5C licence or in accordance with an exemption is considered an offence under the Act and may be subject to compliance and enforcement action.

Section 9 of the Act

In summary, section 9 provides what is known as a 'riparian right' which is a right of an owner or occupier of land through which, or contiguous to, runs any watercourse; or contiguous to which, or partly within which, a wetland is situated, to take water from that watercourse or wetland for domestic, stock (not being raised under intensive conditions) or garden use (the garden must not exceed two hectares in size) from which no produce is sold and is used in connection with a dwelling.

Section 17 of the Act

The landowner or occupier of land must not interfere with the bed or bed and banks of a watercourse unless the activity is authorised by a permit or an exemption under the Act. Unauthorised activity is considered an offence under the Act and may be subject to compliance and enforcement action.

Sections 26A and 26B of the Act

A spring naturally rises from an underground water source. Under sections 26A and 26B, a person must not commence, construct, enlarge, deepen or alter any artesian well across the state or any non-artesian well within a proclaimed area. If a spring is excavated, that spring may be subject to regulation under Part III of the Act (sections 26D and 5C) unless it is exempt from control in accordance with a section 26C exemption order or a local by-law.



Document implementation

This guideline comes into effect on the day it is published.

Related documents

Non-department documents	
Author	Title
WA State Parliament	<i>Rights in Water and Irrigation Act 1914</i>
WA State Parliament	Rights in Water and Irrigation Regulations 2000
WA State Parliament	<i>Environmental Protection Act 1986</i>
WA State Parliament	<i>Biodiversity Conservation Act 2016</i>
Australian Parliament	<i>Environmental Protection and Biodiversity Conservation Act 1999</i>
World Health Organization	<i>Guidelines for drinking water quality, volume 3: Surveillance and control of community supplies, second edition 1997</i>

Department documents	
Author	Title
Department of Water and Environmental Regulation	<i>Environmentally sensitive areas</i> (webpage)
Environmental Protection Authority	<i>Environmental factor guideline – Inland waters</i> (webpage and 2018 publication)
Environmental Protection Authority	Chapter B4 of <i>Environmental guidance for planning and development – Guidance statement 33</i> (EPA 2008) (currently being reviewed)
Department of Water and Environmental Regulation	<i>Supplementary information for permit applications to interfere with bed or banks of watercourses</i> (Department of Water 2012)

Custodian and review

The currency of this document will be continuously evaluated, and reviewed no later than three years from the date of issue or sooner as required.

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