

STRENGTHENING THE KNOWLEDGE BASE AND CAPACITY TO SUPPORT THE TRANSFORMATION OF IRRIGATION BOARDS TO WATER USER ASSOCIATIONS

Report to the
Water Research Commission

by

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WRC Report No. 3022/1/22

ISBN 978-0-6392-0427-7

June 2022



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This is the final report of WRC report no. C202/21-00636.

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EXECUTIVE SUMMARY

INTRODUCTION

This study emanated from the challenges experienced during the transformation of Irrigation Boards to Water User Associations. Among many others, these challenges have been exacerbated by several factors such as the slow pace of land, agrarian and water allocation reforms, and the difficulties of achieving the required representativity on Management Committees of Water User Associations. The review of literature also revealed that capacity challenges in the form of shortages of human, financial and technical resources to support new 'developmental' WUAs, and obstacles in accessing capital to develop a new class of water users, especially irrigation farmers, exist. Delays in establishing Catchment Management Agencies (CMAs) have also contributed, as have policy uncertainty and bureaucratic delays within the Department of Water and Sanitation (DWS) subsequent to Irrigation Boards submitting transformation proposals.

AIMS

The general aim of this project was thus to consolidate and expand the knowledge base on the transformation of Irrigation Boards to Water User Associations and facilitate the inclusion of this knowledge in current and future transformation processes.

Specifically, the project aims to achieve the following.

- Review the current state of knowledge relevant to the transformation of Irrigation Boards to Water User Associations in South Africa.
- Undertake one detailed case study of the Irrigation Board transformation process underway in the Breede-Gouritz Water Management Area in the Western Cape.
- Provide expert, evidence-based advice to the key stakeholders in these processes.
- From the knowledge review and case studies, synthesise recommendations and indicators for enhancing and measuring redress and equity through the transformation of Irrigation Boards across the country.
- Using the case study, further develop the concept of embedded research in the context of water governance in South Africa, along with a critique of the potential that this approach offers to bridge the gap between generators and users of knowledge.

METHODOLOGY

In order to attain the objectives, the study undertook case study research at the Central Breede River Water User Association within the Breede-Gouritz Water Management Area. Prior to undertaking the case study, a detailed literature review was conducted to sift through the current level of knowledge on transformation of irrigation boards. This WUA was selected amongst many other similar institutions for two main reasons. Firstly, the study is looking at aspects of equity through the process of the transformation of irrigation boards to water user associations. In addition, the CBRWUA was considering incorporating the McGregor Irrigation Board and the Upper- as well as the Lower Breede River area to form part of the association thus making the lessons from this process useful.

The results from this study informed the development of a Transformation Charter which aims at addressing the issues of inequality within the water sector with a particular focus on Water User Associations. The lessons generated from the process of transformation currently ongoing within the case study were also useful in the update and development of guidelines for use by the Department of Water and Sanitation and its partners in the transformation of Irrigation Boards into WUAs.

RESULTS AND DISCUSSION

Two critical issues to do with equity identified within the case study include access to information and representation of historically individuals in the operation of WUA thereby affecting their ability to equitably

access water for productive use. The study identified the following factors affecting equity and inclusion in the CBRWUA:

- (a) **Social dynamics:** It was found that some users were not willing to work together with other users within the same institution while in other instances users felt that they would lose their competitive advantage if they combine with another institution in the process of transformation of the irrigation boards to the WUA. From the discussions with some commercial as well as emerging smallholder farmers, one could easily deduce that an environment of mistrust results from the existing history and social dynamics within the area.
- (b) **Land and water allocation reform challenges:** Just as echoed in other studies, reforming water allocation alone is not a sufficient avenue for addressing the existing challenges. From this study, for instance, it was found that despite the efforts to free some of the allocated water within the WUA to emerging farmers, the lack of available productive land made it very difficult for the emerging farmers to access this available water for productive use. It is noted here that while freeing allocated water for use by emerging and historically disadvantaged individuals can easily be dealt with by the CMA and the DWS, ensuring that the users have access to productive land on which the water use license can be applied is beyond their responsibility.
- (c) **Membership diversity:** Achieving membership diversity has been considered vital for achieving equity. However, it was noted in the study that the area under which the CBRWUA operate is dominated by white farming communities and that most of the land within this area has already been occupied and developed by white commercial farmers. Even though efforts to include other races within the area exist, these are often hampered by the unavailability of land exacerbated by the lack of excess water to be allocated to those people who would improve the membership diversity within the WUA.
- (d) **Individual Members Capacity:** The study reveals that the degree of participation of different members of the association in the affairs of the institution has been associated with the capacity of the individual members themselves. It was found that the representatives of smallholder emerging farmers failed to engage due to their limited experience and understanding of the agricultural water use issues which dominated the conversations during MANCO meetings.

In terms of transformation, the study found that the process has been hampered by several challenges, including:

- (a) **Ambiguity of the Transformation Concept:** The concept of transformation as applied within South Africa, and water sector in particular, is considered ambiguous by some sect of the society. According to some WUA members, the mere change of the institutions from the Irrigation Board to a WUA means that the institutions have achieved transformation. On the other hand, the continual to operate in the same manner as the former irrigation board has been considered lack of transformation by the DWS and other actors. From this study, it was clear that while there is agreement on the need to ensure that HDIs are given more support to access water for productive use, there was a lack of convergence on whether the expectation of the DWS on the role of WUAs in transformation is justified.
- (b) **The scale of operation of the institution in the catchment:** From the study it was clear that achieving representativity within the current landscape is challenging, more especially due to the issues of land availability. It was noted that most of the areas where WUAs operate have over 90% of the land used for commercial agriculture which is practised primarily by white farmers. This has made transformation challenging as the members of the institution can only be those who are plying their trade within this jurisdiction.
- (c) **Infrastructure financing arrangements:** The arrangements for financing the infrastructure have made it very difficult for achieving some transformation targets within WUAs (for some WUAs). While

arrangements have been made in some instances for the benefit of the emerging farmers, sometimes this has affected issues of equity within the space. It was further noted in the study that where the government has provided the financing for infrastructure, sharing of water from this infrastructure has not been difficult.

(d) Outstanding liabilities pose a risk to new WUAs: Some IBs had loans with banks that financed some of the infrastructures and these would be transferred to the new institution as per the National Water Act (Act 36 of 1998). It was observed during the study that where amalgamation was being proposed, those institutions that did not have liabilities did not respond positively to absorbing this type of liability thereby affecting the process of IB transformation to WUAs.

(e) Financial sustainability: Since the promulgation of the National Water Act (Act 36 of 1998), some established WUAs have failed to realise their potential a few years down the line mainly due to lack of financial resources. It was learnt in the study that there are a number of WUAs that cannot run a full administrative office and, therefore, rely on support from volunteers to switch on the pump to supply water to its members while other WUAs are composed of all resource-poor farmers who are not able to even keep up with their water use charges. Lack of sustainability in these WUAs defeats the purpose of transformation to some extent.

CONCLUSIONS AND RECOMMENDATIONS

From the results obtained in this study, the following conclusions and recommendations are made:

Revisit IWRM: Important decisions on water re-allocation should consider the implications of relationships between water users in a catchment, especially where historical water use differences exist in order to achieve equity and redress within the water sector.

Bringing back the commons: The institutional arrangements for water management within agriculture have for long been centred on irrigation infrastructure and not water as a resource. Transformation of irrigation boards to WUAs accords us an opportunity to work the institutional arrangements around managing water as a shared resource.

Institutional development: When developing institutions, it is important to understand “for whom are these institutions developed?” Resource users often create institutional arrangements and regimes that help allocate benefits from the resources equitably amongst themselves. Most importantly, good institutions are catalysts for getting incentives for good water resource utilisation among water users. It should be understood that the historical background of the institutional arrangements will mirror the scope and direction of the institutional changes that occur in society and the role of state institutions/regulator should be to provide incentives that do not only create an enabling environment for equity but also achieve optimal water use in the presence of scarcity.

Demand side management for water: The issues of equity within the water sector are deepened by extent of water scarcity in South Africa thereby affecting water allocation conversations. It is well known that the current water demand outweighs the available supply in most river basins in the country. While exploring opportunities for addressing inequality within the water sector, there is need for a changed focus from managing the water supply to managing the increasing water demands and hence encouraging water users to conserve the water they use.

ACKNOWLEDGEMENTS

The project team wishes to give special thanks to John Dini and Penny Jaca for their support during the course of the project. This study benefited a lot from the inputs and guidance from the following Reference Group members.

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ACRONYMS & ABBREVIATIONS

BGCMA	Breede-Gouritz Catchment Management Agency
CBRWUA	Central Breede River Water User Association
CMA	Catchment Management Agency
DAFF	Department of Agriculture, Fisheries and Forestry
DALRRD	Department of Agriculture, Land Reform and Rural Development
DEIC	Dutch East India Company
DWAF	Department of Water, Agriculture and Forestry
DWS	Department of Water and Sanitation
EIWS	Ecological Infrastructure for Water Security
ELU	Existing Lawful Use
ER	Embedded Research
FGD	Focus Group Discussions
HDI	Historically Disadvantaged Individual
IB	Irrigation Board
IWRM	Integrated Water Resources Management
MANCO	Management Committee
NWA	National Water Act (Act 36 of 1998)
NWRS	National Water Resources Strategy
SAAFWUA	South African Association of Water Users Associations
V&V	Validation and Verification
WAR	Water Allocation Reform
WMA	Water Management Area
WRC	Water Research Commission
WUA	Water User Association
WUL	Water Use Licence
WULA	Water Use Licence Application

1 BACKGROUND

1.1 INTRODUCTION

South Africa is one of the most unequal countries in the world with a GINI coefficient of 0.63 (World Bank, 2018). The continued unequal access to resources is entrenched in the history of the country, which dates back to the 17th century. The arrival of Jan van Riebeeck and the Dutch East Indian Company in 1652 marked the beginning of a change in natural resource management (including water) in South Africa. The land, water resources and pastures were changed from common ownership into a system of private ownership. The indigenous Khoikhoi pastoralists found it increasingly difficult to sustain themselves in a land in which access to limited water resources was necessary for survival, and they were forced to work for the company (Guelke and Shell, 1992). Since then access to water, availability and distribution have remained highly skewed (Seetal and Quibell, 2005), and inequality still prevails (Movik, 2012). Efforts to correct the imbalances seem to remain futile. Some of the reasons given for the continued inequalities include shortcomings in the implementation of water policy and legislation. As a result, historically disadvantaged individuals (HDIs), such as smallholder farmers still have limited access to productive water for irrigation purposes. The policy around the transformation of irrigation boards into water user associations is one of the main policies that need revision; as this is one way the government can open up opportunities for smallholder farmers to access productive water (Sadiki and Ncube, 2020).

Since the democratic dispensation of 1994, South Africa has been grappling with the issues of inequality in areas such as income distribution and access to various social services such as water and education, just to mention a few (McIntyre and Gilson, 2000). This is more so as the important role of water cannot be overemphasized in South Africa due to water scarcity. It should be pointed out that South Africa is the 30th driest country in the world and the country is projected to experience a 17% water deficit by 2030 if nothing is done (Department of Water and Sanitation, 2018b). At the back of this projection is the continued unequal distribution of water resources due to hydrological and geographical factors. Currently, only 5% of agricultural water used is by black farmers (*ibid*). A number of reasons are given for this disparity, but one of the major challenges is the failure of Irrigation Boards to transform into water user associations which are supposed to unlock water for everyone at the local level and enable the historically disadvantaged to participate in the water allocation processes. Other challenges include the failure by the DWS to sign off business plans for those water user associations (WUA) that have transformed making their operations difficult due to lack of full control of operations. In turn, the catchment management agencies (CMAs) have not been delegated full operational powers in crucial activities such as water use licensing, which is still centralised.

The history of unequal water use, and management and resource dispossession dates back to 1652 when the Dutch arrived in South Africa. According to the Roman-Dutch Law which was in operation before 1873, water in non-navigable streams, as well as spring water on land, was regarded as water at the disposal of the landowner (Pienaar and Van der Schyff, 2007). Unfortunately, this did not include the native Khoi who were forced off the land and became workers for the settlers (Guelke & Shell, 1992). When the British government came into power in 1805 the processes of water, land and institutional reform were expanded, to include the permanent land tenure system and the formalization of the riparian principle with a major focus on irrigation and agriculture resulting in the Irrigation and Conservation of Waters Act (Act 8 of 1912) (Funke et al., 2007a). In 1948 there was another change of government, and the number of water resource projects was increased to stimulate economic development. Several Acts were enacted including the Water Act of 1956 (*ibid*). The 1956 Water Act entrenched riparian rights, which resulted in inequalities in water access across races (Kidd, 2016), mostly the black communities to the extent that access to potable water and sanitation was also reduced (Msibi and Dlamini, 2011). Irrigation Boards (IB) were established under Section 79 of the Water Act No. 4 of 1956 to manage water resources within an irrigation district. Until the democratic dispensation commenced in 1994, a larger portion of South Africa's water resources continued to be utilised by a minority of water users.

One of the major steps of the new government in 1994 was to address the previous inequalities in access to water. The first step towards the review of the water legal framework was the White Paper on the National Water Policy of 1994 which was intended to review and propose the repealing of the National Water Act of 1956. The following are some of the notable recommendations carried out in the paper that was to be incorporated into the new Water Act.

- The abolition of the riparian system of allocation where the ownership of water is tied to the ownership of land
- The abolition of permanent ownership of water allocations and replaced by a reasonable renewal period
- The introduction of the reserve for meeting the requirements of the human needs and ecosystem sustainability
- Proposing that the National Government should act as the custodian of the water resources

The National Water Act (Act 36 of 1998) was developed and enacted in 1998 primarily to ensure that the nation's water resources were developed, managed, protected, used, conserved, and controlled in a sustainable and *equitable manner* for the benefit of all citizens of the country (Republic of South Africa, 1998). The introduction of the universal water law (National Water Act of 1998) brought about anxiety amongst water users as most of the loopholes observed in the earlier legislative frameworks were patched. The new law required that the injustices of the past be corrected. This meant that not only should the water users be given priority in the access and utilisation of water resources for their benefit (human basic needs) but also the environment for ecosystem sustainability (by setting the ecological reserve).

1.1.1 Access to water for irrigation

Management of irrigation infrastructure and distribution of water amongst resource users has been an old age water management challenge. Over centuries, investment in irrigation infrastructure has been funded by governments which have often taken the burden of management and maintenance with the hope that the water users will eventually take over this responsibility. In the case of South Africa, investment in irrigation infrastructure dates back to the 1880s with the establishment of irrigation districts before the promulgation of the Irrigation and Conservation of Waters Act (Act 8 of 1912). However, this investment was done at a time when South Africa's water laws were in favour of a riparian rights doctrine, where ownership to land was a prerequisite to having ownership and hence access to water. This did not bode well with marginalised groups of society who did not have access to productive land.

Even though the changes to water allocation brought by the new National Water Act (Act 36 of 1998) signalled much needed new perspectives and hence hope to the water resource users who were marginalised with the past water regimes, sharing of benefits from the government-funded irrigation and water infrastructure has continued to be a glaring challenge with many emerging farmers struggling to get equal access to water (Fanadzo and Ncube, 2018, Kemerink et al., 2013). While the government's efforts to reform water allocation and achieve equity through the transformation of irrigation boards into water user associations were received with much optimism amongst scientists and practitioners within the water sector, there has been undeniably very slow progress to this, prompting an outcry from the marginalised groups, for decisive action from the Department of Water and Sanitation.

Huge problems have been experienced in the conversion of IBs to WUAs, with most IBs continuing to function separately and others refusing to be transformed. This, together with Existing Lawful Use (ELU), has maintained the inequalities resulting in limited access to agricultural water (Ncube, 2018, Sadiki and Ncube, 2020). A report by the then Minister of Water and Sanitation to the Parliamentary Committee in 2017 indicated that despite concerted efforts by the DWS and related institutions to facilitate the transformation of irrigation boards as per the requirement of the NWA, only 36% of irrigation boards were transformed into WUAs (99 out of 278 IBs).

Several questions have thus baffled researchers and practitioners within the water sector in relation to irrigation board transformation issues. What does the transformation of an institution such as an Irrigation Board entail? What are the facets of this transformation, and how do they affect the governance of water in South Africa? What is the best model of managing water resources whose storage and conveyance infrastructure was funded through private users' funds? In case of a transformation of an institution with communally funded infrastructure (where new members have been incorporated), how will the liabilities be managed? How can government and the public ensure that there is equity in the benefits accruing from government-funded infrastructure whose limits have been reached with the current user base while a whole group of new users lie on the peripheral of this infrastructure? Is the current WUA model appropriate for the context of South Africa's challenges as far as equity and redress in water allocation are concerned? Responding to these questions might provide scientists, policymakers, implementers, and other practitioners with a better understanding of the dynamics within the space of institutional development for water governance. In order to do this, one would have to revisit the process of transformation of irrigation boards where insights from both users and government stakeholders can be used to generate lessons and new knowledge.

1.1.2 Institutions and institutional arrangements

There is an enormous amount of literature that suggests that the sustainability of water resource systems is dependent upon the strength of the concomitant institutional arrangements. According to Heltberg (2002), institutions may shape the actions and expectations of actors in a particular context and may, therefore, serve important functions such as encouraging cooperation among resource users. These functions are deemed significant because they can lead to reduced uncertainty among resource users and improved water use efficiency. The term institutions as used in this paper has been defined in a variety of ways particularly in common property literature (Bromley, 1989, Gerber et al., 2009, Heltberg, 2002, Ostrom, 2005). However, for this study, institutions broadly refer to the rules, norms, habits and formal hierarchies that influence actors' actions and expectations (Heltberg, 2002). In the context of water resources management, Saleth and Dinar (2004) state that this definition presents institutions as entities defined by the water law, water policy and water administration at the micro as well as macro levels. Based on this understanding, therefore, institutional arrangements are presented herein not only as organisational and structural entities that are responsible for the governance of water resources management in the country but also include the set of rules and regulations that delineate action sets for individual water users and their collective decision-making (Saleth and Dinar, 1999). As such, institutional arrangements provide the platform and structure on which members of the society interact with each other.

1.2 RATIONALE AND OBJECTIVES OF THE PROJECT

The slow rate of transformation of Irrigation Boards to Water User Associations has been attributed to numerous factors. These include the slow pace of land, agrarian and water allocation reforms, and the difficulties of achieving the required representativity on Management Committees of Water User Associations (Kemerink et al., 2013, Msibi and Dlamini, 2011). There are also capacity challenges in the form of shortages of human, financial and technical resources to support new 'developmental' WUAs, and obstacles in accessing capital to develop a new class of irrigation farmers. Delays in establishing Catchment Management Agencies (CMAs) have also contributed, as have policy uncertainty and bureaucratic delays within the Department of Water and Sanitation (DWS) subsequent to Irrigation Boards submitting transformation proposals. Unresolved concerns also persist regarding the transfer of communally-owned assets and liabilities to wider groupings, and potential changes in conditions of service for staff employed by Irrigation Boards managing Government Water Schemes. All these challenges have resulted in a deadlock in the Irrigation Board transformation process. The Water Research Commission (WRC) is, therefore, supporting DWS in revisiting the process.

Several documents to support the Irrigation Board transformation process were prepared by the DWS, including guidelines and a draft transformation charter. These documents however require revisiting, testing and further refining using practical cases. The project also provides an opportunity to further develop potential

mechanisms by which water governance research funded by the WRC can be more responsive, solution-oriented and rooted within real-life contexts. The focus on equity and sustainability in institutional arrangements for local water resource management is also linked with the Ecological Infrastructure for Water Security (EIWS) project, funded by the Global Environment Facility through the Development Bank of Southern Africa and South African National Biodiversity Institute.

The general aim of this project was thus to consolidate and expand the knowledge base on the transformation of Irrigation Boards to Water User Associations and facilitate the inclusion of this knowledge in current and future transformation processes.

Specifically, the project aimed to achieve the following.

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2. Undertake one detailed case study of the Irrigation Board transformation process underway in the Breede-Gouritz Water Management Area in the Western Cape.
3. Provide expert, evidence-based advice to the key stakeholders in these processes.
4. From the knowledge review and case studies, synthesise recommendations and indicators for enhancing and measuring redress and equity through the transformation of Irrigation Boards across the country
5. Using the case studies, further develop the concept of embedded research in the context of water governance in South Africa, along with a critique of the potential that this approach offers to bridge the gap between generators and users of knowledge.

In order to attain these objectives, the study undertook a case study at the Central Breede River Water User Association within the Breede-Gouritz Water Management Area. The results from this study informed the development of a Transformation Charter which aims at addressing the issues of inequality within the water sector with a particular focus on Water User Associations. The lessons generated from the process of transformation currently ongoing within the case study were also useful in the update and development of guidelines for use by the Department of Water and Sanitation and its partners in the transformation of Irrigation Boards into WUAs.

1.3 LAYOUT OF THE REPORT

This report has been organised as follows. The next chapter presents the literature review conducted on the available literature on issues of transformation and equity within the water sector of South Africa. It starts by tracing the history of water resources management in the country and identifies the progress and challenges faced within the sector in the transformation drive. This chapter is followed by a case study analysis chapter which investigates the process of transformation in the Central Breede River WUA. Chapter four (4) presents an overview of the transformation charter and associated guidelines that have benefited from the lessons obtained from the study. The detailed Transformation Charter and Transformation Guidelines have been included as Annexures 1 and 2 to this report. The final chapter 5 presents the conclusions and recommendations emanating from the study to inform future transformation process and water governance while also looking at the gaps that exists for further research.

2 LITERATURE REVIEW

2.1 INTRODUCTION

This chapter presents a review of the current state of knowledge relating to the transformation of Irrigation Boards (IBs) to Water User Associations (WUAs) in South Africa. The review covers a brief history of the origins of Irrigation Boards. The water policy review, the legislative framework and water allocation reform processes developed post-1994 to correct the inequalities caused by previous local water management models are analysed. The challenges posed by attempts to transform IBs are explored. Dependencies with other processes such as the land and water allocation reforms are also explored, including the extent to which these have been accommodated within existing Department of Water and Sanitation (DWS) guidelines and the guidelines for Irrigation Board transformation. Key themes emerging from the literature and key informants will be developed for further exploration. Thereafter, a synthesis of the findings of the review paper will be produced with proposed recommendations for specific revisions to the Department of Water and Sanitation (DWS) guidelines, templates, and the Transformation Charter for Water User Associations.

2.2 HISTORY OF WATER RESOURCE MANAGEMENT IN SOUTH AFRICA

The history of water management in South Africa mirrors the political dispensation that has taken place in the country. It must be acknowledged that water has played a vital role in shaping the social and economic development of many nations (Magrath, 2007). According to Swatuk (2010), the management of water resources in South Africa has to a larger extent been informed by the extent to which the interests of dominating actors are met or not. Swatuk argues that the change in the political landscape of South Africa has often mirrored the changes in the way water resources have been developed and managed over the centuries.

2.2.1 The 1652 to 1805 Era

The history of water resources management in South Africa is perhaps incomplete without the recognition of the arrival of the Dutch East India Company (DEIC) at the Cape of Good Hope in 1652 (Swatuk, 2010). This arrival marked the beginning of productive land acquisition earmarked for agricultural production to provide food and goods for the white settlers at the Cape. However, this was not possible without the role of water. As such, the water law during this era was developed to serve the interests of the white settlers, and Tewari (2009) notes that throughout this period, the colonial government did not make any attempts to create a uniform policy for water use between the white and native communities. The author recounts that during the settlement of the white migrants in the Cape as well as other locations such as Transvaal and Natal, the Roman-Dutch Law was prominently applied which was at the height of its recognition in Europe. It must be highlighted, however, that the emergence of water use regulation in South Africa was a result of this settlement, most especially in the Table Bay Valley with the first efforts occurring between 1655 and 1740 (Thompson, 2006). Thompson recounts that it was not until the 1760s that the colonial government started to officially allocate water use entitlements in an attempt to resolve prevailing water use conflicts between users within the same river system.

While irrigation and pastoral farming proliferated within the Cape and some parts of the inner country (occupied by the *Trek-Boers*), one new challenge arose, pollution to the river systems used for irrigation and milling by the DEIC. Thus, it became apparent that issuing use entitlements (referred to as *placcaets*) was not sufficient in the management of water within the water-scarce South Africa (Tewari 2009). Even though penalties were often issued to the would-be offenders, the authorities found it difficult to manage water flowing through peoples' properties/farms hence the introduction and strengthening of the principle of *Dominus fluminis*, which meant that the colonial state held the power to control the use of water (or literally the state is the owner of water), thereby allowing the state to issue and withdraw water use entitlements whenever required to do so within its laws. However, it should be highlighted that the principle of *Dominus fluminis* only applied to perennial flowing rivers while seasonal streams were considered private.

2.2.2 The 1806 to 1911 Era

As indicated earlier, the management of water resources mirrored the political dispensations within the country to such an extent that when the British trekked down and colonised South Africa, there was a new dimension to the way water was managed. In the previous section, it was shown that the Dutch colonial state preferred the *Dominus fluminis* principle in the management of water. However, the change of governance in the Cape meant that the British had to introduce the laws that were in tune with English Laws, departing from the Roman-Dutch law which was used to translate all water management challenges within the country.

The falling away of the state control on water resources meant that a new principle that was based on land ownership would take centre stage – the Riparian Principle. With this new principle, landowners who had perennial streams passing through their land had the first right to use the water for productive purposes even though a distinction was placed on whether the purpose was for the support of human and animal life, vegetable life, and promotion of mechanical appliances. While no formal institutions of water management existed at that time, Thompson (2016) provides a collection that the courts served as principal institutions that dealt with water management issues to a greater extent. The courts were at the centre stage in translating the water allocation principles that were being followed by the colonial government. Tewari (2009) concluded that it was through the court ruling on cases that made the water management in South Africa to be recorded in the literature. For instance, he notes based on Hall (1933) of the ruling of the court perhaps stands as the basis of water management in the context of irrigation that transcended the ages. The court ruled that based on riparian principle, *“by or through which a public stream flows, is entitled to divert a portion of the water for the purposes of irrigation, provided – firstly, that he does not deprive the lower proprietors of sufficient water for their cattle and domestic purposes; secondly, that he uses no more than a just and reasonable proportion of the water consistently with similar rights of irrigation in the lower proprietors; and thirdly, that he returns it to the public stream with no other loss than that which irrigation has caused”* (Hall 1933 cited by Tewari 2009). Nonetheless, it was not until 1897 that Act 8 of 1897 was promulgated within the Cape Colony by the British colonial government (Visser, 2018). The Act, among other things, established irrigation districts and irrigation boards for ease of management of irrigation water along river courses. Soon after the Irrigation Act, the British colonial government established through Act 40 of 1899 of the Cape Colony, the water courts to preside over water-related disputes. The work emanating from these two Acts led to the promulgation of the Cape Irrigation Act of 1906, which was directly meant to translate the riparian principle of water use within the country (Thompson, 2006). It must be reiterated here that while these developments were initially concentrated in the Cape Colony, the British opening up of land settlements in the Transvaal, Orange Free State and Natal colonies would soon see the application of the laws developed in the Cape Colony to the rest of the colonies especially after the Anglo-Boer war. However, before fully incorporating these, an initial attempt for water management institutional development in the inner lands of South Africa was the promulgation of the 1908 Irrigation Act of Transvaal. The challenge emanating from these Acts, Cape Colony Irrigation Act of 1906 and Transvaal Irrigation Act of 1908 was the application of different standards by the same government when the Union of South Africa was formed in 1910 necessitating the promulgation of the new Act, the Irrigation and Conservation of Waters Act in 1912, which precluded the beginning of a new era in water management within South Africa.

2.2.3 The 1912-1994 Era

A change of government occurred in 1948 and this came with an increase in the number of water resource projects as a way of economic development. Several Acts were enacted including the Water Act of 1956 (Funke et al., 2007a). The 1956 Water Act entrenched riparian rights, which resulted in inequalities in water access across races (Kidd, 2016), mostly the black communities to the extent that access to potable water and sanitation was also reduced (Msibi and Dlamini, 2011). Irrigation Boards (IB) were established under Section 79 of the Water Act No. 4 of 1956 to manage water resources within an irrigation district. Until the democratic dispensation in 1994, a large portion of South Africa’s water resources continued to be utilised by a minority of water users under the premise of the 1956 Water Act.

2.3 WATER RESOURCE MANAGEMENT POST-1994

When government changed in 1994, one of the urgent activities was the review of water policy which was necessitated by the new Constitution, which brought in a new system of intergovernmental relations, along with the articulation of human rights to access to water and environmental protection, and imperatives for the redress of the effects of past racial discrimination. The water law review process was intended, among other things, to enable the redistribution of rights of access to water in a way that redressed a water resource allocation landscape that was highly skewed (Funke et al., 2007a).

2.3.1 Water Policy Review

South Africa set up a water law review panel in 1995 and a public booklet was developed to stimulate debate on water rights and solicit comments which were incorporated into a set of principles (Seetal and Quibell, 2005). The White Paper for National Water Policy for South Africa was published in 1997. The main objectives of the document were to promote equity and access to water and ensure benefit for all South Africans, and to make sure that the needs and challenges of water management were addressed. Some of the key proposals which were to guide water management included:

- Water as a national resource, where water is part of the common resource, and the national government is the custodian of the water that exercises the powers of a public trust.
- Water as a right that is granted to meet basic human needs and maintain environmental sustainability
- Obligations to South Africa's neighbours, where the government will manage water in such a way that it will ensure that the requirements of neighbouring countries are met, and water management is carried out in regional or catchment water management areas.
- System of allocation which abolishes the Riparian System and, allocations will be made on the basis that it promotes water use that is optimal and for the achievement of equitable economic and social development
- Water charges to promote equity of access to water for basic human needs and provision is made for some or all water charges to be waived, and promote the access to water for disadvantaged communities
- Water resource protection where water use conservation and protection policies will be developed.

2.3.2 The National Water Act (1998)

The Guide to the National Water Act of South Africa describes the National Water Act as an act that deals with the water resources, that is rivers, streams, dams, and groundwater. The act contains rules about the way that the water resource (surface and groundwater) is protected, used, developed, conserved, managed and controlled in an integrated manner (De la Harpe and Ramsden, 2006).

The main purpose of the National Water Act (NWA) of 1998 is to provide for fundamental reform of the law relating to South Africa's water resources; to repeal certain laws; including redressing the issues of past racial and gender discrimination, promotion of equitable access to water and facilitation of social and economic development are part of the issues that the act takes into account (Republic of South Africa, 1998). The 1998 Water Act takes into account several factors, including meeting the basic human needs of present and future generations, promoting equitable access to water, redressing the results of past racial and gender discrimination, promoting the efficient, sustainable and beneficial use of water in the public interest, facilitating social and economic development, providing for the growing demand for water use, protecting aquatic and associated ecosystems and their biological diversity, reducing and preventing pollution and degradation of water resources, meeting international obligations, promoting dam safety, and managing floods and droughts (Republic of South Africa, 1998).

2.3.3 The Role of Catchment Management Agencies

The establishment of the catchment management agency (CMA) falls under Sections 77-90 of the 1998 Water Act. The original purpose of the catchment management agencies was to delegate water resource

management to the catchment level and to involve local communities within the framework of the national water resource strategy.

According to the NWA, the creation of a catchment management agency can be initiated by the community or stakeholders of an area. They can then communicate the information to the minister. The minister can also initiate the process. A proposal needs to be written, usually by the minister. The proposal should contain the following:

- a proposed catchment management name and the description of the area in which the CMA will serve
- the description of water resources in the area and these resources are managed, controlled, developed, protected, and conserved
- the description of the proposed CMA functions and how it will be funded
- the feasibility of the proposed CMA in terms of technical, financial, and administrative matters
- the indication of stakeholder, community and any interested and affected parties' consultation.

The complete proposal is then published in the Government Gazette and opened for comments for 60 days. The proposal and the comments are then taken into consideration, and a decision is made for the CMA to be established and published. The minister appoints a board that performs the initial functions of the CMA. The CMA board members are then elected by various water users. The minister can also elect and appoint board members, the chairperson, deputy chairperson and a chief executive officer. The CMA establishes committees that help in performing the functions of the CMA.

After establishment, the CMA then performs initial functions which are:

- to investigate and advise interested and affected persons on the protection, use, development, conservation, management, and control of the water resources in its water management area
- to develop a catchment management strategy
- to co-ordinate the related activities of water users and the water management institutions within its water management area
- to promote the coordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act, 1997 (Act No. 108 of 1997)
- to promote community participation in the protection, use, development, conservation, management, and control of the water resources in its water management area.

Additional functions can be assigned to the CMA by the minister. These may include the establishment of water use rules and management systems, directing users to terminate illegal water use, temporarily limit water use during periods of shortage. The CMA may be financed by the state from water use charges made in its water management area or from any other source. However, the CMA also needs to raise funds to support its functions.

2.3.4 Water User Associations

Water user associations are enacted under Chapter 8 (Sections 91-98) of the Water Act of 1998. Water user associations are defined as co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit, and they operate at a localised level. Others define water user associations as formal organizations that bring together farmers for the purpose of managing a common irrigation system (Aarnoudse et al., 2018). The NWA also encourages individual water users who wish to undertake water-related activities for their own benefit to form cooperative associations (Masangu, 2009). In WUAs where there were emerging farmers the expectation was that the more experienced farmers would assist them in skills transfer (Saruchera, 2008). A WUA may exercise water resource management powers and duties only if delegated.

The establishment of the Water User Association (WUA) follows the same process as that of CMAs, i.e. proposal writing and submission, and publishing in the Government Gazette (NWA, 1998). A proposal for the establishment of a water user association should contain the following:

- the reason for making the proposal
- a proposed name and area of operation for the association

- the proposed activities of the association
- a description of any existing or proposed waterworks within the proposed area of operation which is relevant to the proposed activities of the association
- a description of the water use licences and any other authorisations which the proposed members hold or intend applying for
- the proposed constitution and a list of members of the association
- indication whether there has been consultation in developing the proposal and the results of the consultation

Some WUAs in South Africa are established from transformation of Irrigation Boards. However, according to section 8 of the NWA existing irrigation boards, subterranean water control boards and water boards established for stock watering purposes were to continue in operation until they were restructured or transformed into water user associations. Unfortunately, this resulted in unintended consequences where more than 20 years after the enactment of the act, irrigation boards continue to function as before.

2.3.5 Water access mechanisms

The NWA has mechanisms through which water can be accessed. The mechanisms are largely determined by the intended use of the water:

2.3.5.1 Schedule 1

Schedule 1 permissible use of water covers the water that is used for domestic purposes. According to the NWA examples of this water include:

- water for reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access
- Water for use on land owned or occupied by a person for reasonable domestic use, small gardening not for commercial purposes, and the watering of animals (excluding feedlots)
- store and use run-off water from a roof
- emergency situations, take water from any water resource for human consumption or firefighting
- recreational purposes
- discharge of waste or water containing waste; or run-off water, including stormwater from any residential, recreational, commercial, or industrial site

2.3.5.2 General authorisation

Part 6 defines that *a general authorisation may be restricted to a water resource, a particular category of persons, a defined geographical area, or a period of time, and requires conformity with other relevant laws.* General Authorisation can also be for a large number of people to take up water from watercourse without the need to apply for a water use licence. Conditions under which general authorisation can be issued include the following:

- existing lawful water uses
- the need to redress the results of past racial and gender discrimination
- efficient and beneficial use of water in the public interest
- the socio-economic impact – if the water use or uses is authorised or failure to authorise the water use or uses
- any catchment management strategy applicable to the relevant water resource
- the likely effect of the water use to be authorised on the water resource and on other water users;
- the class and the resource quality objectives of the water resource
- investments already made and to be made by the water user in respect of the water use in question
- the strategic importance of the water use to be authorised

- the quality of water in the water resource which may be required for the Reserve and for meeting international obligations
- the probable duration of any undertaking and which a water use is to be authorised

2.3.5.3 Water use licence

Section 21 of the NWA lists all water use activities that require a water use licence (WUL) and are subject to a water use licence application (WULA) process. A water use licence is required under the following conditions:

- if the water use exceeds the parameters of Schedule 1 water
- if the water use took place or was planned to take place after 1998
- the water use exceeds the parameters set out in the General Authorisation

A water use licence is inter alia specific to a particular user, property, and use, must be reviewed every five years and is valid for a specific time period which may not exceed 40 years. The process of authorizing water use began with the registration of all water users and it was supposed to be followed by compulsory licensing (Backeberg, 2005).

2.3.6 Existing Lawful Use

An existing “lawful water use” means a water use:

- which has taken place at any time during a period of two years immediately before the date of commencement of NWA. This corresponded to authorizations that were granted from October 1996 to September 1998, just before the application of the NWA. Existing lawful users are usually not required to apply for licenses (except in water-stressed situations), but they must be registered (Perret, 2002).
- which has been declared an existing lawful water use under sections 33
- which was authorised by or under any law which was in force immediately before the date of commencement of the NWA, which was identified as a stream flow reduction activity in section 36(I) or controlled activity in Section 37(1).

The “existing lawful water use” of riparian rights, water quotas or pumping permits held by all farmers could, therefore, continue under the same conditions, until such time that it was formally licensed (Backeberg, 2005). Relevant records such as irrigation infrastructure designs need to be in place to prove the water use occurred before 1998 and the existing lawful use must be verified and validated by the Department of Water and Sanitation (DWS). All existing lawful uses need to be verified and registered (Kapangaziwiri et al., 2018). The existing lawful use was based on the principle that it was ‘critical to address equity needs, but attempts to deal with this must be balanced with the consideration that many existing lawful water users were making productive, efficient and beneficial use and were contributing to socio-economic stability and growth’ (Movik, 2012). Unfortunately, it later turned out that the *state effectively tripped itself up with the retention of existing lawful uses and the reliance on scientific certitude to determine unlawful use that ignored dynamics* (Movik, 2012). Most water use is still taking place under the existing lawful use clause, while the historically disadvantaged individuals who were denied any formal water right before 1998 are now supposed to obtain licenses for pre- and post-1998 water uses (Schreiner and van Koppen, 2020).

2.3.7 The National Water Resource Strategy (2004)

The development of the National Water Resource Strategy (NWRS, 2004) is defined in Section 5 of the National Water Act (Act 36 of 1998). The strategy is the legal instrument for implementing or operationalising the National Water Act. The strategy is a document that provides the framework for the protection, use, development, conservation, management, and control of water resources for the country as a whole, at the regional or catchment level (NWRS, 2004). The NWRS also outlines the future plans and proposes arrangements with neighbouring countries for managing shared rivers (Maharaj and Pietersen, 2004).

The purposes of the National Water Resource Strategy include:

The national framework for managing water resources

The NWRS provides the framework within which water resources are to be managed throughout the country, as outlined by section 5(3) of the NWA. The document is legally binding, but it could also be amended to suit changing circumstances after mandatory consultations with stakeholders, which take place at least every five years.

The framework for the preparation of catchment management strategies

The NWRS provides the framework for the preparation and implementation of all catchment management strategies in a manner that is consistent throughout the country. A catchment management strategy cannot conflict with the NWRS.

Provision of information

The NWRS also ensures that all aspects of water resource management that will affect other organs of State, water users and the public, in general, are brought to their attention. The South African society is informed of the Minister's intentions concerning water resource management through the NWRS and every subsequent edition of the NWRS was also required to be made publicly available. Everyone must be afforded the opportunity to comment during the process of the establishment of each edition of the NWRS.

Identification of development opportunities and constraints

The NWRS makes it possible to identify the areas of the country in which water resources are available to support social and economic development initiatives, as well as areas in which limited water resources may be a constraint to development. The purpose of the NWRS is also to strategically direct the management of water resources from a national perspective.

When the review of the NWRS was carried out a number of challenges were found to be still outstanding. Outstanding relevant challenges from NWRS1 included the following:

- Streamlined water allocation reform to redress past racial and gender imbalances in access to water for productive uses and to address poverty and inequality

2.3.8 Establishment of water management institutions and the decentralisation of water resources management

The NWA provides for establishment of water management institutions to, amongst others ensure the following:

- Strengthening of regulation of water resources and water quality
- Improvement of technical and management skills to implement developmental water management
- Improvement in the integration of monitoring and information management
- Reduction in the backlog of infrastructure maintenance

2.4 WATER ALLOCATION REFORM

The National Water Act, Act 36 of 1998 provides thus “...in issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including the need to redress the results of past racial and gender discrimination (NWA, Section 27. (1) b). In pursuance of this legislative imperative, the Department of Water and Sanitation (then Water Affairs and Forestry) published a Water Allocation Reform Strategy in 2008 in which it states the strategic objective of Water Allocation Reform (WAR) is to “promote equitable social and economic development in the WMA with a special focus on women and Blacks”. In the 2005 Draft Position Paper for Water Allocation Reform, the objectives are stated as follows:

- To take proactive steps to meet the water needs of historically disadvantaged individuals and the poor
- To ensure participation by the poor and Historically Disadvantaged Individuals (HDI)
- To promote the sustainable use of water resources; and

- To promote the beneficial and efficient use of water in the public interest.

2.4.1 Mechanisms and targets

The 2008 strategy highlights several mechanisms and approaches by which WAR can be achieved. These are:

- Setting aside specific allocations in a catchment to black people and women
- General authorisations
- Strategic alignment with other national initiatives
- Compulsory licencing
- Development support
- Partnerships
- Business enterprises using water as a productive asset

The 2008 Strategy set the following targets for water allocation to black people:

- By 2014, 30% allocation to black people
- By 2019, 45% allocation to black people
- By 2024, 60% allocation to black people

The strategy set the following targets for women:

- By 2014, 30% allocation to women
- By 2019, 40% allocation to women
- By 2024, 50% allocation to women

2.4.2 Challenges in implementing WAR

Several studies have been undertaken on the challenges of achieving water allocation reform and the set targets of the 2008 WAR strategy. Kidd (2011) argues that the highly technical nature of the hydrological process in the process of determining the Reserve and water resource quality objectives in the different water management areas contributed to the failure of the WAR programme. He further warned that the IWRM approach was intricate and required a thorough understanding of the hydrological cycle for it to be successfully implemented. Movik (2009) observed from her studies of the WAR programme in the Inkomati WMA that contestation in terms of the inability of the scientific and technological expertise to determine use rights led to an impasse in terms of redistribution efforts. Most importantly, the study identified the following factors that contributed to poor WAR implementation including:

- Lack of capacity is further exacerbated by leadership challenges at both the ministerial and director-general level.
- Inability to strike the right balance between technical or scientific quality and the ability to manage a process enabling implementation.
- Attempting to implement all the changes brought about by the NWA at once with limited capacity.
- The Department's tardiness to adhere to and swiftly implement decisions

Funke and Jacobs (2011) were of the opinion that the Department of Water Affairs (DWA) lacked the capacity to apply and enforce the licensing process and, due to administrative pressure, seemed to award licences as requested without due consideration. They further stated that any prospect of transformation was diminished due to the legal complexities of water allocation.

In their WRC study, Msibi and Dlamini (2011) identified the following challenges:

- Insufficient guidelines.
- Unwillingness to contribute to redress and equity amongst some stakeholders.
- Delayed inputs from other departments.
- Incomplete documentation from applicants, probably brought about by inadequate assistance to HDIs.

Hollingworth and Matsetela (2012) argued that the mechanisms for effective inter-departmental cooperation had deteriorated nationally and in several provinces. On the one hand, the Department of Water Affairs and Forestry was attempting to drive black irrigated agriculture through water allocation reform. On the other hand, the national and provincial departments of agriculture were concerned with the whole spectrum of agricultural activity and, if anything, had de-emphasised irrigated agriculture as a development mechanism.

The studies point to the following as probable causes of WAR not being achieved as planned and the targets not being met:

- Lack of institutional capacity to plan and implement the programme
- Complex legal framework for water allocation
- Weak cooperation between the different government departments, which contribute to a successful water use application
- The administrative burden of water applications
- The dependencies with the land reform process and impediments due to the lack of integration between land and water reform

2.4.3 The National Water Resource Strategy 2 (2013)

National Government approved the Second National Water Resources Strategy in 2013. This strategy factored in the 2013 Ministerial Policy Positions which demanded, amongst others, that water allocations that were not being utilised should be withdrawn and reallocated. The NWRS-2 made the following commitments on Water Allocation Reform:

- DWS will develop WAR Implementation Plans and ensure the consequent mobilisation of resources to realise programme implementation.
- DWS, in a consultative process, will determine specific race and gender water re-allocation targets for each project area, using the national WAR target as a baseline (currently 30%).

The NRWS2 has strategic aims for the protection, use, development, conservation, management, and control of South Africa's scarce water resources towards achieving the 2030 Vision (NDP). The NWRS2 aims to ensure that water serves as an enabler for inclusive economic and social development and not a hindrance. Objective 1 of the strategy states "*Water supports development and elimination of poverty and inequality*".

Some of the strategic themes include:

- Water Resources planning, development, and infrastructure management
- Equitable Water Resource
- Managing Water Resources for climate change
- Regulation of the water sector

Proposed execution methods include:

- Institutional arrangements
- Monitoring and information management
- Research and innovation

The NWRS2 adopts the principle of 'source to tap and back to source' and the maximisation of local water resources to improve access to adequate water for domestic and productive use, particularly in rural communities.

2.5 CHALLENGES OF IRRIGATION BOARD TRANSFORMATION

2.5.1 Context and charter for Irrigation Board transformation

The transformation of Irrigation Boards to Water User Association has a wide context and requires a broad understanding of the historical events which prompted its conceptualization and specific legislative provisions to support its implementation. Many scholars have documented the history and the path to this process and

this section will seek to trace the rationale and context but also discuss some of the challenges pertaining to the transformation process.

The background to the water management issues in South Africa stems from the pre-1994 era when the economy was relatively well developed in terms of its organisation and production, and which according to Muller (2012), concealed the true picture which is, while South Africa was deemed the largest economy on the African continent with the highest average income per capita, it was and continues to be – among the most unequal in the world.

Faysse and Gumbo (2004) reveal that, in the apartheid era prior to 1991, South Africa was a country driven by formal racial divisions and under a comprehensive policy of racial segregation, implemented in an attempt to isolate and subjugate the indigenous black majority. There was the rich group, initially largely white, minority enjoying European living standards while the living standards for many of the black majority were at the level of sub-Saharan Africa. However, it can be observed that the status quo has not changed much. Agriculture was and continues to be dominated by a small number of large-scale commercial farmers, who are mainly white, supported by well-developed private-sector financial and technical institutions. Muller (2012) further notes that this group of farmers enjoys the benefits of a century of substantial investments in public infrastructure – roads, electricity and particularly water which small scale agriculture have not enjoyed to any great extent.

A new Constitution was promulgated post the advent of democratic dispensation, with the primary aims of (a) redress of past inequities based on race and gender and (b) poverty eradication. The basic human right that “everyone has the right to have access to sufficient food and water” is firmly anchored in Section 27 of the Constitution (Republic of South Africa, 1996).

The National Water Act (1998) was also enacted and this piece of legislation provides strong tools to redress inequities inherited from the past was also formulated during the transition to the post-apartheid era and is widely recognized in policy circles as one of the most comprehensive water laws in the world (Merrey, 2008). The potential for water resources to be used as a lever for rural transformation was considered and the National Water Act contains provisions that enable the government to support previously disadvantaged communities and to ensure that their needs are prioritized when water-use licenses are allocated (Mike Muller, 2012). Seshoka et al. (2004) further observe that the transformation from IBs to WUAs as provided for with the National Water Act (1998), was supposed to enable better participation of ‘historically disadvantaged individuals’ (HDIs) in the management of their water resources, however, and sadly so, more than two decades after the introduction of the Act, access to water is still skewed along racial lines and the legacy of the apartheid era still dominates the current political and economic reality in South Africa.

Kemerink et al. (2011 p592) comments in the context of the above stated scenario and say, ‘water legislation on paper is not sufficient, as it is not implemented and enforced in a vacuum, but in a society thick with historically entrenched socio-economic and political inequities. The transition from apartheid to post-apartheid South Africa has been characterized by a negotiated transformation with an emphasis on reconciliation. As a consequence, the legacy of apartheid and the nature of the transitional arrangement still determine, to a large extent, today’s political and economic reality.’

2.5.2 The Challenge of the transformation process

Molle (2008) contends that any understanding of water problems is based on representations and always implies a set of assumptions and (implicit) social and political choices. The knowledge produced on water is not merely neutral or scientific; it does not emerge by chance but, rather, is the emanation of complex webs of interests, ideologies, and power as an inherent part of the water sector. Kemerink et al. (2011) opines that recognition and understanding of the challenges met in the reform process could shed light on the forces at play in the resistance to redistribute the water. These insights can potentially contribute to better comprehending the struggles in society at large. Goldin (2010) suggests that the dynamics and outcomes of

land and water reforms need to be understood as embedded in historically evolved and locally specific patterns of use that form an important part of and co-constitute relations of power.

2.5.2.1 Ideological context and promotion of the status quo

Mosse (2008) believes that actors with vested socio-political and economic powers can exert their stronger leverage position to influence which normative orders will prevail in the negotiations over water policy or governance options. Often the leverage position is closely linked to some form of benefit or rights that may become concretized over time. However, the necessary goal of redressing past racial and gender inequality means that South Africa's water reform is expected to deliver on process changes (holistic, decentralized, participatory and economically cost-effective), and social outcomes (Woodhouse, 2008).

Kemerink et al. (2011) makes this unfortunate observation that, although the National Water Act (Act 36 of 1998) directly aims at redressing the injustice of the past, inequities in access to water still exist in the various catchments and so far, the commercial farmers have kept their entitlements to the water and the water allocations to the smallholder farmers have not increased. Research conducted in the northern parts of South Africa shows that wealthier people are better able to capture the available resources (Mosse, 2008). This is in contrast to the objective of the National Water Act which, if it is correctly interpreted, will result in those who were marginalized in the past increasingly being empowered by using more water more productively for multiple purposes. They will also be able to negotiate a better share in water and water-related benefits in a new dialogue with the large-scale users who less than one decade ago held virtually exclusive control over water resources in South Africa (Van Koppen et al., 2002).

Bond (2006) offers some explanation as to the lack of progress pertaining to transformation and places the challenge on the dominance of the neo-liberal political ideology and the discourse which becomes visible in the chosen approach for the implementation of the National Water Act and the priorities set for the water allocations and thus the difficulty in achieving developmental and transformative objectives as envisaged in the National Water Act, (Act 36 of 1998). For example, the choice of a sectoral approach to water delivery might be suitable for the high-volume users in the better-served areas, but in the rural areas, water resources are often used for multiple purposes and integrated service delivery would be more effective.

Doyer (2004) noted the power asymmetries in the agricultural sector, which includes an alliance of conservative landowners, agricultural economists, officials and analysts who have been promoting the need for sustainable commercial viability among emerging farmers but Vink and Van Rooyen (2009) observe that this orientation does not sufficiently capture and address the historical inequities of land and water ownership and rural poverty. There have also been arguments that question the wisdom of transferring land and water to beneficiaries who may not be able to use it productively. According to such narratives, attempts to address equity needs must be balanced with the consideration that many existing lawful water users are making productive, efficient, and beneficial use and are contributing to socio-economic stability and growth (Forsyth, 2004). Funke and Jacobs (2011) believe that all the narratives alluded in this subsection, have influenced government thinking and contributed to the maintenance of the status quo instead of rapid allocation of water use entitlements to the "new" farmers.

2.5.2.2 Apartheid legacy

Article 21 of South Africa's Constitution states that 'everyone has the right to take part in the government of his/her country directly or through freely chosen representatives'. Yet, the historical layers of institutional, structural, and systematic challenges, remain important determinants of these in the realization of the rights conferred by this article and their outcomes. In practice, many communities lack the capacity to engage with and construct forums for meaningful political action. Rural areas and thus the water resource management associations are most affected, especially socially marginalized, less connected rural households (Perret et al., 2000).

The legacy of apartheid militates against effective participation as poor basic education, a history of dependency and a general lack of interest in politics and policies strongly limit the involvement of grassroots rural users and citizens. There are exceptions, but in practice, local communities, especially rural and peri-urban poor, still struggle against a range of inherited disadvantages, which form a web of limitations to meaningful and constructive participation (Wilson and Perret, 2009).

2.5.2.3 Lack of information

The fact that HDI's have not been previously exposed like their white counterparts to water management practices, constitute a challenge in engaging fully with the water management process and governance. A general lack of knowledge prevents emerging farmers from really taking part in the discussions. Information is not only asymmetric; it is often non-existent at the rural community level where most of them reside (Wilson and Perret, 2008). Meaningful participation of users in the management of water in the basin is therefore constrained by lack of information on the state of the rivers and water use, as well as the historical absence of information and dialogue relating to the management of natural resources, this makes new information difficult to contextualize and link to embedded institutions and systems. In many areas, a significant percentage of the population over the age of 20 had no formal education, and information vacuums strongly exist and are characterized by uncertainty and rumours (Lévite et al., 2003).

2.5.2.4 Lack of Meaningful participation

The new legal system in South Africa makes a major shift in participation in decision-making processes in comparison to the apartheid era in which Black South Africans were excluded. Even though the formulation of the Water Act incorporated public views, and public participation during the implementation phase is stipulated, the decision-making spaces are still dominated by Whites and some Black elites (De Lange, 2004).

The historical background of marginalization of HDIs still negatively affects their effective participation in the IB transformation processes and WUA activities. Wilson and Perret (2010) contend that participation and representativity are scarce resources over which actors compete and come into conflict and that power asymmetries and embedded social practices hamper fair and inclusive participatory processes. The extent of damage in terms of the esteem and self-belief among the black folks stemming from the long period of subjugation cannot be underestimated. Newly established legal frameworks and structures, such as catchment management agencies and water user associations, do not in themselves ensure authentic participation nor do legislative, ethical, and democratic imperatives. Facilitation and capacity building are needed, and this pertains especially to methods that facilitate the flow of information and the co-production of knowledge. (Wilson and Perret, 2008).

2.5.2.5 Legislative impediment to redress allocation patterns

Compulsory licensing is an integral part of the Water Allocation Reform programme. This allows for water currently allocated to users to be re-allocated to previously disadvantaged people. All commercial water users must now register their water use and will have to apply for a water use license. The National Water Act recognizes all existing water use in the two years preceding the promulgation of the Act as lawful and, hence, also accepts the inequities prevailing at that time. The acceptance of "existing lawful use" as the starting point of institutionalizing formal water rights favours those who had written documents, such as permits recognized under apartheid law in the white areas (Faysse and Gumbo, 2004). Existing Lawful Use (ELU) was intended as a transitional arrangement, however, 20 years after the NWA was promulgated, and ELUs authorize the biggest volume of water used in the country (DWS, 2018). In practice, Funke and Jacobs, (2011), highlights that not much re-allocation of water has occurred. According to the National Water and Sanitation Master Plan (2018), water is an important catalyst and driver of socio-economic development and at present, water allocation to agriculture is approximately 61%, but little has been achieved in reallocating water to historically disadvantaged individuals in this sector because of the prevailing legislative regime.

Poor people tend to lose out if they have to compete with the privileged large-scale water users, such as mines that over-abstract groundwater used by poor communities, or large-scale farmers who claim their former lawful use vis-a-vis the poor who want to use the same water source for cattle, homestead gardening and even for domestic purposes (Van Koppen et al., 2002)..

2.5.2.6 Administrative capacity challenges within DWS

There is a perception that commercial farmers enjoy some advantage in submitting their water license applications because of their understanding of the system of water management. van Koppen (2009) argue that for administration-proficient, larger-scale users, obtaining a license simply means submitting an application. The DWA appears to have very limited capacity to evaluate and judge each application on its own merits, check on-site or enforce the licensing process. Administrative pressure, and the proven threat that vested applicants can report any delays to the Water Tribunal, pushes officials towards allocating whatever is being asked for. The redistributive potential of water allocation reform risks fading away amid these legal and administrative complexities and to the detriment of small-scale users. The Surplus People Project, (2007) corroborated this fact and indicated that based on their research with emerging farmers, very few water-use licenses have actually been awarded and taken up by emerging black commercial farmers. This means that farmers often have to put production on hold until a license is granted even though other infrastructure may be in place).

2.5.2.7 Systematic exclusion of HDIs

The National Water Act (Act 36 of 1998) provides opportunities for citizens to contest unequal access to water resources through a bottom-up approach (Kemerink et al., 2011). There remains a subtle but real systematic and social barrier that serves to exclude those that are less privileged in the water management discourse and decision-making platforms. According to the National Water Act, governance bodies should be representative in terms of including sections of the population that were previously unrepresented in governance forums--especially, blacks and women (Van Koppen et al., 2002). The same authors further submit that decision making spaces are often exclusive in the sense that some people are allowed to enter and participate in them and others not and that exclusion may be direct, based on class, gender or ethnicity.

More equitable participation in the sector is particularly difficult to achieve where historical users remain relatively highly capacitated in the face of more equitable but fledgling Water User Associations and Catchment Management Agencies (Wilson and Perret, 2009). However, often exclusion is less direct and hidden in membership criteria, location of the meetings or language used (Kemerink et al., 2011).

a. Long term relations and influence on institutional processes

The relationship developed over a long time provides an advantage to those who had been interacting and part of the Irrigation Board for longer and seem to supersede any input from any new members who are mostly emerging farmers incorporated in terms of the Irrigation Board transformation process. Wilson and Perret (2010) observe that challenges associated with participation float in a larger context where cultural divides and capacity deficits, especially in rural areas, profoundly distort and disrupt the institutional vision for the water sector, including its democratic aspirations. Cornwall (2003) then concludes that being included in participation processes does not necessarily guarantee one's voice is heard as participation in decision making is determined by social relationships of power and dependency.

b. Membership

The other criterion that has been used to lessen contribution and sometimes exclude new participants who are mainly black is membership. Membership criteria have been used to limit the influence of those with lesser entitlements which in itself perpetuates the marginalization of the HDIs and only serves to maintain the status quo of dominance by predominantly white farmers. This has also been acknowledged by the recent cabinet approved National Water and Sanitation Master Plan document that, the transformation of representativity in

water governance has been slow and that membership of water user associations generally reflects land ownership and water use so that the governance of those associations is often focused on the interests of white commercial farmers (Department of Water and Sanitation, 2018b). Van Koppen et al. (2002) further contend that disempowerment occurs when formal entitlements to water are a precondition for membership of, for example, former Irrigation Boards and current Water User Associations. The same author's assets that other forms of entitlement should ensure that the formal rights of poor, small-volume water users-versus high-volume users-become stronger than what they were under apartheid. Faysse and Gumbo (2004) report on their research conducted in the on the transformation process of Umlaas Irrigation board that the existing members would prefer that the control of the Management Committee remain in the hands of people who pay for water, rather than people whose interests are, by comparison, relatively peripheral in terms of their entitlements and use of water as this could lead the majority making irrelevant decisions. Wilson and Perret, (2010) offer caution that, water use is not necessarily the most important determinant of stakeholders' identity and as such, people's motives for participation go beyond concerns about the resource itself, it is also linked to the past and to the moral geographies used to look into the future.

c. Language

Language can remain a barrier and a tool for exclusion of people from understanding the issues and therefore meaningful engagement. It has been reported widely that most meetings are conducted in the former colonial languages and most indigenous languages are hardly used to deliberate on issues by the Irrigation Boards and some WUAs. Faysse and Gumbo, (2004) record that in facilitating the transformation process to WUA, the Lomati Irrigation Board hired an English- Siswati translator so that emerging farmers who were not fluent in English could understand the more technical issues and could also feel more comfortable when asking questions. This gesture allowed participants to communicate in the language they were more comfortable with and thus engage effectively on all processes pertaining to the transformation of the Irrigation board.

d. Gender representation

The National Water Act (Act 36 of 1998) is explicit in its aim to redress the inequities based on gender and mainly refers to providing domestic and productive water to poor women in rural areas. However, some cultural values obstruct the participation of women in decision making (Republic of South Africa, 1998). Penzhorn (2005) observe that unfortunately even though water resources are mainly used by women for domestic purposes, and growing crops is regarded as a female activity, women are not involved in the maintenance and future planning of the water resources and have a low political status. The participation in the local water governance institutions have been mainly white men with a few black men now being incorporated through the transformation process, but more needs to be done to ensure that women participate in the decision-making structures. The current guidelines required for the transformation of an Irrigation Board to WUAs state that, if no woman is elected through the normal process, a list of nominees is to be compiled and the chairperson of the WUA has to organize a meeting where a female representative will be chosen by drawing lots.

2.6 WATER AND THE LAND REFORM PROCESS IN THE TRANSFORMATION PROCESS

2.6.1 Background to the land reform process

The relationship between land and water is politically, economically and culturally complex and this complexity is expected to increase with the progression of growing populations, increasing water scarcity, growing demand for water, and food security concerns (Funke and Jacobs, 2011).

South Africa's water development path (and land ownership) reflects a history of 350 years of settler colonialism and nearly half a century of institutionalized state racism followed by (as to date), only 26 years of non-racial democracy (Muller, 2012). The apartheid government actively promoted the appropriation and use of land and water by White farmers, not just by allowing them to use the land, but also by subsidizing the construction of irrigation infrastructure (Goldin, 2010). It is interesting to note that, in South Africa, water and land reform policies have been embedded within a complex socio-political and socio-economic environment,

and yet have occurred largely independently of one another but that the inequity in land and water resources is closely linked, with the smallholder farmers mainly relying on green water resources (Funke and Jacobs, 2011). Hope et al. (2008) emphasize that significant increases in access to water cannot be achieved in the overpopulated former homelands unless the inequity in land distribution is also simultaneously addressed.

2.6.2 Lack of coordination between water and land reform

Despite the fact that the interconnectedness of water and land and the relevance of these resources for sustainable development have been well-documented, both resources are still largely managed as isolated policy issues and there is still a weak link between land reform, agricultural support and water resource provision (Greenberg, 2010). In South Africa, many land reform farms have failed because of water not being available for production. Groenewald (2004) asserts that the synchronization between water allocation and land reform programmes in irrigation areas has to be improved to ensure that beneficiaries hold secure land and water use rights once they have been allocated their land. While the restitution of agricultural land has been slower than intended, the reallocation of water has not always even kept pace with the transfer of that land. In some instances, the previous owners traded away their existing lawful water use rights, so that the water allocation was not transferred to land reform beneficiaries (Department of Water and Sanitation, 2018b). A recent study has identified a number of bottle necks in the attempt to align land and reform processes and developed guidelines that can be used to address this (Reddy et al., 2020).

2.6.3 Land and water reform policies

The post-apartheid South African government of the 1990s formulated land and water reform policies to redress historic race and gender inequities, as part of a broader commitment to achieving a more equitable and fair distribution of the country's wealth. In 1994, the Reconstruction and Development Programme of the African National Congress (ANC) proclaimed land reform the "central and driving force of a programme of rural development".

The land reform programme in the country has three different dimensions namely, land restitution, land redistribution and tenure reform. The restitution component of the policy aims to return land that was taken away forcibly from black people during apartheid or to provide those affected with financial compensation. It targets both rural and urban lands. The land redistribution dimension aims to equitably share resources by transferring land from white to black people so that the land ownership share of black people is increased. This is considered necessary because black people make up the large majority of the South African population but have less land compared to the white population (Lyne and Darroch, 2003).

Water and land reforms, and the nature conservation goals related to those policies, are intimately interlinked. Negotiations about land redistribution and the conservation status of land are often (just or also) about the use of water, and vice versa. Hence, access and ownership patterns of the one resource cannot be understood or altered, without also understanding or altering the other (Liebrand et al., 2012). Understanding the actual patterns of water distribution requires looking at how people gain and maintain *the ability* to access water, instead of just looking at their *rights* to it (Ribot and Peluso, 2003).

2.6.4 Government reform initiatives and stunted reform progress

South Africa's overarching policy priority has been to redress the society's historic inequities. While access to land is a fundamental measure of the inequities imposed by settler colonization and the policy of apartheid, the Constitution recognizes that other natural resources, including water, are also involved. While it provides for the protection of property rights, Section 25 (8) specifically allows the state to take 'legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination' (Republic of South Africa, 1996).

The transition from the past oppressive regime to the democratic dispensation required new legal instruments. In the immediate post-1994 period, the water sector focused on immediate practical redress – but unfortunately, new water laws and policies fail to produce transformative impacts (through registration of water use and changing irrigation boards into WUAs) when leaving existing water use formally unchallenged through “existing lawful uses” (Kemerink et al., 2011). The National Water and Sanitation Master Plan document that more than 70% of commercial farms in South Africa are still owned by white farmers, who also use 95% of the water allocated to the agricultural sector (Department of Water and Sanitation, 2018b).

The land reform programme in South Africa has been characterized by a slow pace of land redistribution and has failed to impact significantly on the land tenure systems prevailing on commercial farms and in the communal areas (Hall, 2012). In addition, Walker (2005) contends that the “willing-buyer-willing-seller” approach is only able to transfer modest amounts of land to a small minority of the rural population while leaving the underlying structure of the agrarian economy largely intact.

2.6.5 Levers for the reform process and IB transformation

In South Africa, the 1998 National Water Act launched an in-depth reform of water resource management. The Act defines the state as the custodian of the nation’s water resources and only water required to meet basic human needs and maintain environmental sustainability is guaranteed as a right. This fundamentally moves away from the previous water acts which were largely based on riparian water rights (Van Koppen and Jha, 2005).

The National Water Act is in line with other international reforms in water management also prioritizes decentralized water management and common property aspects of water; separates ownership of land from ownership of water (DWAF, 1997). At the local level, all the Irrigation Boards (IBs), which used to be managed by large-scale farmers, are to be transformed into Water User Associations (WUAs). These WUAs are expected to incorporate all users in the defined area of jurisdiction, whether they have a formal water entitlement or not. It is believed that this transformation will enable better participation of historically disadvantaged individuals (HDIs) in the management of water resources. It will also provide a basis for improving local integrated management of water resources (Faysse and Gumbo, 2004).

2.6.6 Integrated approach in land and water reform to drive impetus for reform

Recognition and understanding of the challenges met in the reform process could shed light on the forces at play in the resistance to redistribute the water. These insights can potentially contribute to better comprehending the struggles in society at large (Kemerink et al., 2011)

Negotiations on water resources and conservation area claims, and on what is considered fair based on what grounds, are a prerequisite for land transfers, rather than issues that can be dealt with separately from (after or parallel to) land reforms. Hence, land transfers are likely to become less cumbersome, and land and water reforms may become more transformative when negotiations over water resources and the status of nature conservation areas in relation to equity perspectives are thoughtfully planned for as part of land reforms (Liebrand et al., 2012). Evidence is increasing that many water and land reform projects are not leading to meaningful and efficient productivity on most of the “new” black-owned irrigated farms. The challenge is, amongst others, to synchronize reform programmes in irrigation areas and ensure that beneficiaries hold secure land and water use entitlements (Funke and Jacobs, 2011, Reddy et al., 2020).

According to van Koppen (2009) in implementing land restitution and redistribution as part of the land reform programme, there was at first little collaboration between the former Department of Land Affairs (DLA) (now Department of Agriculture, Land Reform and Rural Development) and the former Department of Water Affairs and Forestry (DWAF) (now Department of Water and Sanitation). Riparian water rights were not always completely registered as part of the land entitlement. Also, in a few cases, water rights tied to land under claim

were sold, leaving an asset of lesser value. Without readily available registers of land under claim, the DWAF could not easily track this problem.

Currently, the distribution of land under the land reform programme is based on the neo-liberal 'willing seller, willing buyer' principle, in which land is bought in conformity to market prices. However, this approach results in a slow pace of the land reform process. It is slowly being acknowledged that, based on market prices, the Government will never be able to afford to buy sufficient land to radically address the existing inequity.

2.6.7 Validation and Verification

South Africa is a water-stressed country and has, over the years, strived to adopt a rational, just, and equitable way to manage this limited resource. This has been a challenging undertaking, not least because of the legacy of inequitable water allocations, through legislation promulgated during the pre-democracy era. The NWA thus has the objective of providing the legal framework for managing this limited national resource. The national process to validate (confirm the quantum of) and verify (establish the lawfulness of) water uses commenced in 2003 (Kapangaziwiri et al., 2018).

The radical provisions of the National Water Act fundamentally changed the nature of water rights, going so far as to remove the concept of a 'right' and introducing instead the concept of temporary permission to use water (Muller, 2012). According to the National Water Act (1998), except for the water required for the Reserve and Schedule 1 uses, all water use must be authorized. Entitlements to use water are as follows:

- Schedule 1 use – small volumes of water for household use with little potential for negative impacts on the water resource, for which no application for authorization needs to be made
- General Authorizations – larger volumes of water with some potential for negative impacts on the water resource which may be generally authorized in any catchment or for a specific type of water use anywhere in the country.
- Existing Lawful Use – which is a water use that lawfully took place in the period two years before the commencement of the National Water Act, and
- Licensed Water Use – larger volumes of water or other water use authorized in terms of a license issued under the National Water Act, and upon approval of an application by a responsible authority.

A key weakness of the pre-democracy legislation and approach was the absence of a national inventory and database of water use and users, particularly in a water-scarce country. The validation and verification process seeks to rectify this situation where:

- validation is a determination of who is using water, what the water is specifically used for, the quantum of water that is being used and the geographic location where this is taking place; and,
- verification establishes whether the water use is lawful or not, according to applicable legislation

The Department of Water and Sanitation embarked on a 'stock-taking' program of the use of the water resources of the country by citizens in an effort that identifies the amount of water that is used, the legality of this use and, in the process, frees up unused and unlawfully used resources for reallocation. The primary purpose of the V&V exercise, carried out throughout the country, is to therefore to determine the Existing Lawful Use (ELU) of water resources, in accordance with previous water laws (Kapangaziwiri et al., 2018).

3 CASE STUDY – TRANSFORMATION AND EQUITY IN THE CENTRAL-BREEDE WUA

3.1 RESEARCH CONCEPTS

This research is about addressing the issues of redress and equity in the access to agricultural water by historically disadvantaged individuals (HDIs), particularly emerging farmers, smallholder farmers, and other resource-poor farmers. The main objective was for us to form a sound basis of analysis of the access to productive water challenges. Before doing so it was important to understand the working definitions of the concepts that were used in this study, equity, transformation and embedded research. From the definitions provided here, it is posited that the study will be able to situate the discussion within the theoretical and conceptual underpinnings that guide the conversations as applied within the South African water sector.

3.1.1 Redress and equity

The concept of equity is somewhat ambiguous and therefore difficult to provide a simple but concise definition. While defining equity, some authors focus on the equity strands such as social, social and gender (Scardigno et al., 2014) while others consider equity across economic sectors (agriculture vs industry), or among different users within a sector (i.e. commercial vs smallholder farmers) or indeed among resource users of different social classes (i.e. rural vs urban) (Gaur et al., 2008). Nonetheless, some authors have encapsulated the issues of equity and redress in the context of social justice (Mestry, 2014). It is argued that achieving equity in an economy means that social and economic benefits are distributed fairly amongst the citizenry and that the least advantaged benefits the most from common resources such as water. From a water sector perspective, the question of equity and redress are well entrenched in the National Water Resources Strategy 2. According to the National Water Resources Strategy second edition (NWRS 2) “special attention must be given to the needs of those that were historically denied access to water or the economic benefits of water” (DWA 2013). Generally, equity implies a concept of fairness, which allows for different practices in the management of water in response to different social, economic, and environmental needs within a given scale of consideration. Thus, for the purposes of this research, equity within the confines of access to water shall be defined by the following characteristics, (i) access to water services (for domestic use), (ii) access to water resources (for productive use), and (iii) access to benefits from water resources (social and economic accruals). It must be argued though that since the democratic dispensation and promulgation of the new water legislative framework post-democracy, South Africa's efforts to address the issues of equity have been hampered by several obstacles more pronounced by a lack of synergy between programs run by different government departments such as DALRRD, and DWS.

3.1.2 Transformation

The concept of transformation as used in South Africa borrows its origins from the concept of affirmative action. Rosado (1997) defines affirmative action as social policies that encourage favourable treatment of socially disadvantaged groups, especially in employment, education, and housing, without regard to race, colour, religion, sex, or national origin, to reverse historical trends of discrimination and to create equality of opportunities for qualified persons. According to Lange (2020), the usage of the term transformation dates back to around the 1990s. It is argued that South Africans started using the term during the democratic dispensation and its usage has continuously evolved with the changing political landscape. Initially focusing on the political revolution of the 1990s, the concept became institutionalised in the government business as evident in the government policies across all sectors post-democratic dispensation. Lange (2020) posits that transformation as a concept can best be understood if defined with respect to the particular sector whose context is being considered. While the generic issues and historical challenges are mostly asymmetrical in various sectors, the defining transformation metrics will surely be different as we move from one sector to

another. Thus, considering transformation within the water sector requires understanding the different facets that can be defined by the history of water use in South Africa. This history, unfortunately, cannot be separated from the issues of equity of access and use of water by the black farmers in the country.

3.1.3 Embedded research (ER)

The use of the embedded research (ER) approach emanated from the need by both the users and producers of knowledge to participate in the creation of that knowledge as one way of making research more impactful (Marshall et al., 2016). Thus, as a research approach, embedded research is considered a mixed research methodology whereby the researcher is part of the team that generates and uses the research results. Some researchers (Cheetham et al., 2018) have found ER to be useful in the development and integration of evidence into policy and practice. Within the context of this study, understanding the concept of transformation and redress within the water sector has been a quest that has attracted interest, not only within the academia but also the industry due to the implications that it has on the governance of water in South Africa. More so, South Africa is considered one of the driest countries in the world such that issues of access to water have become more sensitive due to the history that the South African society was bred in. Understanding, and hence addressing these challenges requires a better lens not only from a researcher's perspective but also from the stakeholders who are the water users and the regulators of water use. In this research, this means working with these groups to understand how these concepts have been applied at their various levels and outcomes emanating from there.

3.2 METHODOLOGY

3.2.1 Selection of the case study

The research is based on a Case Study Approach. A case study was selected in the Breede-Gouritz Catchment Management Agency (BGCMA) in the Western Cape province with a specific focus on the Central Breede River Water User Association (CBRWUA). This WUA was selected amongst many other similar institutions for two main reasons. Firstly, the study is looking at aspects of equity through the process of the transformation of irrigation boards to water user associations. The CBRWUA is one such institution that is currently undergoing this process and was considered as an institution that would provide rich insights into the process and lessons learnt therefrom. At the time of the study, the CBRWUA was considering incorporating the McGregor Irrigation Board and the Upper as well as the Lower Breede River area to form part of the association.

In undertaking this research, three key guiding questions were used.

- i) What were the experiences of the respondent in the process of transformation of the institution from the Irrigation Board to a Water User Association?
- ii) To what extent does the process of transformation tackle the issues of equity within water user associations?
- iii) What implications does the process of transformation have on the governance of water resources in this area and South Africa?

3.2.2 Data collection and analysis

The research team used a mix of tools to generate data that informed our analysis while also being cognizant of the challenges that were presented by the current Covid-19 pandemic. The following tools were therefore used for data collection:

- (i) **Key informant interviews:** Interviews were conducted with Key Informants from within the case study area – the Central Breede WUA and other practitioners and experts within the water sector. The study gathered data from a total of 20 Key Informants of whom seven (7) were females. The study sample included farmers operating within the Central Breede WUA area of operation as well as key informants within the BGCMA. In addition, some key experts within the water sector were engaged to contribute to

the study. These were selected amongst the water resource users (segregated by category of user – i.e. commercial farmer, smallholder emerging farmer, municipalities, representatives of domestic suppliers/user and any other category applicable to the case study), actors within the case study area such as academics and other practitioners (e.g. non-governmental organisations, etc.) and representatives from the CMA. Due to the Covid-19 pandemic, 2 channels were explored for conducting these interviews. Firstly, where the interviewee had access to internet facilities, Zoom and Google Meeting Interviews were conducted. Secondly, where the interviewee did not have stable access to the internet, some telephonic interviews were conducted. Upon the easing of the Covid-19 restrictions, some more physical interviews were conducted within the case study area. All efforts were made to ensure that the interviews did not last for more than 40 minutes. Before the start of the interview, a request for consent to record the discussion was requested, either verbally or by requesting the interviewee to sign a consent form for physical meetings. The interviewees could stop the process if they felt uncomfortable. The interviews were conducted within a familiar environment for the interviewee and privacy was ensured during the discussion.

- (ii) **Focus Group Discussions (FGDs):** To gain wider perspectives, the researchers attempted to facilitate focus group discussions (FGDs). However, the restrictions due to Covid-19 made it extremely difficult to successfully organise FGD meetings. As a result, this method of data collection was not pursued during the study.

The data and information collected during the interviews were analysed using qualitative methods such as Word Cloud, where themes emanating from the discussions were developed. These themes provided important insights into the social dynamics within the case study.

3.3 RESULTS AND DISCUSSION

3.3.1 Characteristics of the case study

The Central Breede River Water Users Association was partly formed from one of the oldest irrigation boards in the country, the Breede River Water Conservation Board, established in 1898. The institution converted to a Water Conservation Board in line with the then new Irrigation and Conservation of Waters Act of 1912 and reverted to the status of an Irrigation Board in 1917. The CBRWUA was established in September 2000 when the transformation and amalgamation of 4 irrigation boards was approved. These were the Breede River Water Conservation Board, Le Chasseur & Goree Irrigation Board, Robertson Irrigation Board and Angora Irrigation Board. The Business Plan (2012-2015) of the WUA acknowledged three characteristics:

- The water users, and thus most of the members, were white male farm owners. Accordingly, the Management Committee members were predominantly white male farmers.
- There was no community farming or settlements of any kind within the Association's area of operation. A small number of joint ventures between members and their workers had recently been established.
- Only raw water suitable for irrigation was supplied to its members. The farmers, municipalities and wine cellars were responsible for supplying clean water for human consumption and industrial use.

Section 2.5.6. of the Business Plan was about the transformation where it was stated that "*ownership of land and type of water users determine the representativity in the Association, and in particular the MANCO. The only way the association can effectively change its representativity is with land ownership reform. Although one of the Association's objectives is to contribute to land and water reform, it is not the responsibility of the Association to drive this process*". The plan also stated other administrative challenges such as delays in the new licensing application approvals from the DWS which hampered in particular the transformation and economic development objectives of the WUA. The WUA, however, recognised the importance of transformation and committed itself to undertake activities to foster transformation including:

- Assisting several institutions with the settlement of beginner farmers from the previously disadvantaged groups
- Contracting a training institution to develop training materials to train farm workers and expose them to the background of water supply and water management institutions

- To encourage local authorities to nominate women and members of disadvantaged groups to serve as their representatives on the MANCO and to become involved in water use operations
- To identify any associations established by disadvantaged groups that might have an interest in water use and encourage them to be represented on Committees
- To assist and encourage emerging farmer committees to nominate representatives who want to become involved and not lose interest in the cause

The Central Breede River Water User Association seems to have been committed to the transformation process if we look at these commitments.

The WUA currently serves farmers and other water users from the towns of Robertson, Worcester, Ashton, Montague, MacGregor, Rawsonville and Bonnievale. The WUA is also involved in the potential expansion of the borders to incorporate other water users. This study, therefore, provides an opportunity to understand the complexity of the expansion process, as well as to explore the knowledge gaps and outcomes at stake for the DWS in implementing the WUA transformation process across the country.

3.3.2 Characteristics of the respondents

Table 3.1 shows the characteristics of the respondents that informed the results of this study and their roles in water resource management.

Table 3-1: Profile of respondents

No	Respondent Characteristic	Role
1	Western Cape Department of Agriculture Official (Worcester)	Responsible for supporting emerging farmers
2	Breede-Gouritz CMA Official	Responsible for supporting water users on issues of access to water
3	Stakeholder No 1	Involved in river health management issues
4	Stakeholder No 2	Involved in the affairs of the smallholder farmers
5	Stakeholder No 3	Involved in the distribution of potable water for domestic use
6	Commercial farmer 1	Supports emerging farmers with mentorship
7	Commercial farmer 2	Supports emerging farmers with mentorship
8	Commercial farmer 3	Black farmer working with fellow emerging black farmers
9	Smallholder farmers (5)	Emerging farmers working on various smallholding plots
10	Central Breede Representatives (2)	Responsible for the operations of the WUA
11	Key Informant 1	Water Sector expert
12	Key Informant 2	Water Sector Expert
13	Key Informant 3	Water Sector Expert
14	Key Informant 4	Local Government
15	Key Informant 5	Agricultural Specialist

While efforts to undertake a Focus Group Discussion were put, there was reluctance from respondents especially water users to gather physically even though the country had moved to COVID-19 restriction Level 1. The researchers also attempted to organize an online session but again, this effort was hampered by some technological hitches where some of the respondents could not access online platforms for the sessions. The researchers then ended up relying on the use of key informant interviews.

3.3.3 Themes emanating from the interviews

Figure 1 shows the word map of the themes that were prominent during the interview discussions and that were used to provide the basis for the synthesis of the results.

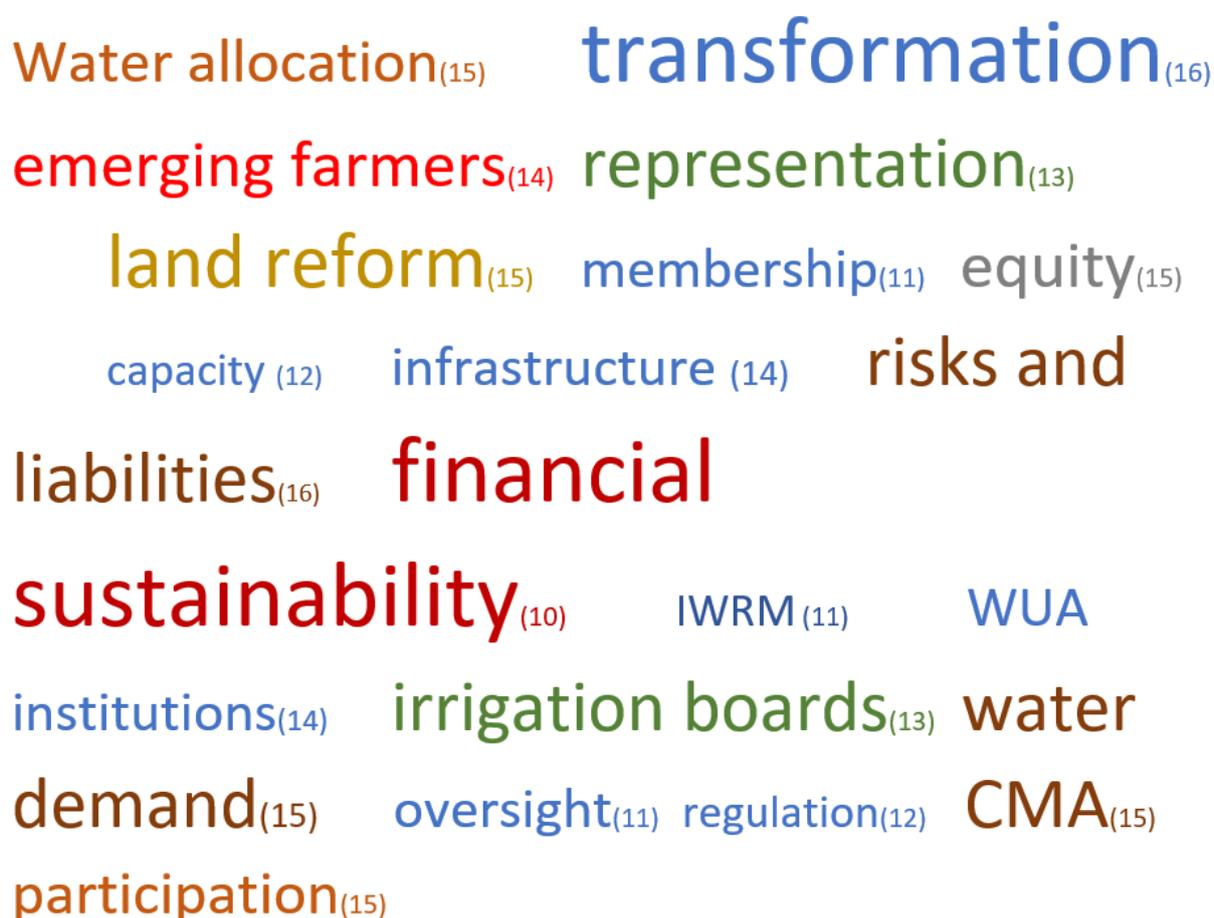


Figure 1: Themes from the Interviews

3.3.4 Equity and Inclusion within the case study

3.3.4.1 Representation

The CBRWUA created a Management Committee (MANCO) which incorporates the representation of all user groups including emerging farming communities. The current MANCO has 2 representatives who are black on the MANCO and ensure active participation of the smallholder farmers. However, it must be pointed out that while there are efforts to ensure that the emerging farmers are represented at this level, the WUA's ability to ensure the increased presence of black water users on the board is often hampered by the limited number of users that have water use licenses within the current area of operation. The representative from the WUA was quoted as saying *"our efforts to ensure better representativity falls short as many other emerging farmers are in areas where there is no coverage of a WUA. This is why we want to expand the area of operation so that we can be as inclusive as possible"*. When interviewed, one of the emerging farmers indicated that it was difficult for them to easily get a position on the board despite being invited to elect one because they perceive that the MANCO requires someone with years of experience in irrigation farming. According to the emerging farmers, the ability to participate in the discussions during the MANCO meetings is to some extent dependent on their experience and familiarity with the operations of the WUA. This view was corroborated by the

representative from the WUA who gave an example of one current MANCO HDI who could not participate in any discussions in the past but has now grown to be a key member of the institution.

3.3.4.2 Access to information

Members of the WUA depend on the administration of the WUA to obtain information regarding the availability of water within the Breede River, most especially during the times of low supply as well as the bills for their water use. From the study, it was found that while smallholder emerging farmers largely depend on support from the Western Cape Department of Agriculture and the DWS, the commercial emerging farmers had great interaction with the WUA management. One emerging commercial farmer indicated that he accesses all information regarding his needs for water use from WUA. At the time of the study, the user was in the process of applying for a water use license for his newly developed farm where he indicated to be working with both WUA and the officials from the BGCMA in the process. On his part, the ease with which one can ably access information from the WUA is largely dependent on the relationship that exists between the water user and the institution. When asked whether the smallholder emerging farmers would have the same ease of support from the WUA, it was noted that only those farmers that had working relationships with some commercial farmers (with a partnership arrangement) had easy access to information from the WUA. Access to information was identified as one of the major challenges faced by smallholder farmers in another WRC project (Ncube, 2018, Ncube and Lagardian, 2018). As a result of that project, the BGCMA established an information portal for emerging farmers, and in collaboration with other institutions, information roadshows were conducted across the CMAs area of the jurisdiction from 2016-2018 (<https://breedegouritzcma.co.za/EFSP/index.html>).

3.3.5 Factors affecting equity and inclusion in the CBRWUA

3.3.5.1 Social dynamics

The CBRWUA has demonstrated its desire to ensure that all water users within the Breede river basin are included within the WUA. This has been demonstrated by their desire to expand the boundary of the WUA to include the users from the lower Breede River section to the upper river section. According to the CEO of the WUA, this would ensure that every user irrespective of their ethnic background can participate in the affairs of the institution. However, he lamented that there exist some water users within the basin (operating in existing irrigation boards) who have expressed unwillingness to work together with other users within the river basin. This was again corroborated by the representative from the BGCMA who indicated that some users feel that they will lose their competitive advantage if they combine with another institution in the process of transformation of the irrigation boards to a WUA.

From the discussions with some commercial as well as emerging smallholder farmers, one could easily deduce that the situation of mistrust results from the existing history and social dynamics within the area. For some smallholder emerging farmers, white commercial farmers within the WUA cannot be trusted as they only represent their interests and not those of emerging farmers. A respondent from one of the historically disadvantaged communities was quoted saying “*the white farmers will enter into a partnership with you if they see that they will benefit something from the arrangement, and not necessarily that they want to uplift you*”. On the other hand, the commercial farmers could cite issues of lack of commitment by the smallholder farmers as affecting the success of the partnership arrangements. Trust issues in access to water were also identified by previous studies (Kemerink et al., 2013, Ncube and Lagardian, 2018, Ncube 2018, Joshi et al., 2018, Williams, 2019)

3.3.5.2 Land and water allocation reform challenges

One way to address the issues of inequality within the space operated by the WUA is to ensure that new and emerging water users have access to water for productive use. Despite the efforts by the government through the DWS’s policy on water allocation reform to open up excess water to the new water users, experience from

many catchments has shown that reforming water allocation alone is not a sufficient avenue for addressing the existing challenges. The representative from the CBRWUA pointed out that despite the efforts to free some of the allocated water within the WUA to emerging farmers, the lack of available productive land made it very difficult for the emerging farmers to access this available water for productive use. It was lamented that while freeing allocated water for use by emerging and historically disadvantaged individuals can easily be dealt with by the CMA and the DWS, ensuring that the users have access to productive land on which the water use license can be applied is beyond their responsibility, a situation also identified by Ncube and Lagardian, 2018. The representative from the Western Cape Department of Agriculture pointed out that while water use licenses can be issued without any need for large capital investment, access to productive land, especially within the Breede area, require a significant capital injection as most of the available land is already developed with some permanent crops such as table grapes and citrus fruits.

3.3.5.3 Institutional membership diversity

During the conversation with some of the members of the WUA and representatives from the BGCMA and Western Cape Department of Agriculture, it was generally noted that the area under which the CBRWUA operate is dominated by white farming communities. In addition, most of the land within this area has already been occupied and developed by white commercial farmers. As such, it was considered difficult to achieve some targets of membership diversity within the institution as most of the established water users are inherently dominated by white commercial farmers. Even though efforts to include other races within the area exist, these are often hampered by the unavailability of land and exacerbated by lack of excess water to be allocated to those people who would improve the membership diversity within the WUA. Studies by Msibi and Dlamini identified these issues as far back as 2011.

3.3.5.4 Individual members' capacity

During the interviews with the key informants within the CBRWUA, it was also noted that the degree of participation of different members of the association in the affairs of the institution has been associated with the capacity of the individual members themselves. For instance, it was noted that water users that were commercial farmers were keen to engage in the conversations that shaped the decisions of the institution. While every member of the MANCO has the same vote as the other members, it was noted that representatives of smallholder emerging farmers failed to engage due to their limited experience and understanding of the agricultural water use issues which dominated the conversations during MANCO meetings. As time progressed, the nominated members began to gain an understanding of the issues and were thus able to engage and contribute meaningfully to the discussions within the meetings. From this, it can be argued that building the capacity of the individual water users who are new to the institution is of vital significance if we have to achieve equity within WUAs.

3.3.6 Challenges in the transformation process

3.3.6.1 Ambiguity of the transformation concept

It is evident from this study that the concept of transformation is ambiguous. The National Water Act of 1998 (Act 36 of 1998) stipulates that all irrigation boards must be transformed into water user associations. Thus, according to some members of the transformed institutions, the mere change of the institutions from the Irrigation Boards to a WUA means that the institutions have achieved transformation. On the other hand, members of the institution that are mostly from the historically disadvantaged sect of the society have decried the practice of these institutions on the basis that they have continued to operate in the same manner as the former irrigation board. This has been translated by the Department of Water and Sanitation as an indication of a lack of transformation in this particular institution.

During the interviews with some farmers at CBRWUA, it was clear that while there is agreement on the need to ensure that HDIs are given more support to access water for productive use, there was a lack of convergence on whether the expectation of the DWS on the role of WUAs on transformation is justified. For instance, it was claimed by the representatives from the WUA that they tried to avail some water for use by the emerging farmers. However, it took the DWS more than five (5) years to ensure that the water is available to the emerging farmers most of whom did not have land where this water could be used. It was further argued that in all this, the onus of ensuring that the emerging farmers have access to water is placed on the WUA who do not have any mandate on issues of water allocation. Indeed, while water allocation is one facet of transformation within the water sector, the question of how to operationalise this particular metric at this level remains outstanding.

3.3.6.2 The scale of operation of the institution in the catchment

As pointed out earlier, the CBRWUA has been operational in the central area of the Breede River Valley. This has meant that the members of the institution can only be those who are plying their trade within this jurisdiction. While smallholder and emerging farmers within the Central Breede River Valley have been roped in as members of the WUA, most of these have little or no influence in the affairs of the institution either due to their low level of water use or indeed inexperience in agricultural water use. Save for two interviewed emerging farmers, most of the black farmers are practising backyard gardening without any water use license. According to the representative from the WUA, this challenge has made it difficult for the WUA to achieve some of their transformation targets such as representativity. Experience from other institutions within the BGCMA operational area has shown that achieving representativity within the current landscape is challenging more especially due to the issues of land availability (Ncube and Lagardian 2018, Ncube, 2018). Most of the areas where WUAs operate have over 90% of the land used for commercial agriculture which is practised by primarily white farmers. Efforts to change this landscape are done by the DALRRD. However, despite years of efforts by these government departments, the status quo has remained. For the CBRWUA, a solution to ensure that there is the increased participation of HDIs has been proposed as an expansion of its area of operation to go beyond its borders.

3.3.6.3 Infrastructure financing arrangements

In other circumstances, the arrangements for financing the infrastructure have made it very difficult for achieving some transformation targets within WUAs. While this has not been a particular case for the CBRWUA, lessons from other WUAs such as Lebalelo WUA in Limpopo and Pongola in KwaZulu-Natal have shown that privately funded infrastructure has set limitations on beneficiation to the entire water use population within the institution (Department of Water and Sanitation, 2018a). While arrangements have been made in some instances for the benefit of the poorer and emerging farmers, sometimes this has affected issues of equity within the space. It should be pointed out that, where the government has provided the financing for infrastructure, sharing of water from this infrastructure has not been difficult, e.g. in the Vaalharts WUA where farmers in the Taung area have easily benefited from the northern canal constructed by the DWS (ibid).

During the process of transformation of the institution, one of the stumbling blocks has been the issue of infrastructure ownership. As the CBRWUA is looking to expand its operational area by combining with other existing Irrigation Boards, the question of infrastructure ownership becomes relevant. While this issue did not feature prominently during the interviews by the WUA and other members, one member of the WUA pointed out that existing IBs with their own infrastructure sometimes prove difficult to work within the transformation process. It was argued that these IBs do not find incentives in the process of transformation as they would lose control over the collection of levies from their members, especially where amalgamation with another institution such as the CBRWUA is proposed.

3.3.6.4 Operational risks and liabilities

One critical challenge affecting the transformation of IBs to WUAs has been the issues of risks and liabilities. During the discussions with some officials from the DWS as well as CMA representatives, it was noted that most of the failed transformation initiatives of Irrigation Boards were due to outstanding liabilities which posed a risk to the new institution. The respondents indicated that at the time of proposal development, some IBs had loans with banks that financed some of the infrastructures and these would be transferred to the new institution as per the National Water Act (Act 36 of 1998). In cases where amalgamation was being proposed, those institutions that did not have liabilities did not respond positively to absorbing this type of liability. On the other hand, some institutions indicated to have reserves within their coffers which could upon amalgamation be absorbed into the new institution. This again posed to be a challenge affecting the transformation process. At the time of this study, the CBRWUA had not yet undertaken an assessment of the extent of any liabilities that were there in the IBs that were to form part of the new WUA. While discussing this potential with the BGCMA, it was indicated that this challenge has been rectified in the past by ringfencing the liabilities within the affected institution.

3.3.6.5 Financial sustainability

The concept of managing water at the local level involving water users has been derived from the White Paper and enshrined in the National Water Resources Strategy 2. In this thinking, water resources should be managed at the local level while involving all water users without considering their social and economic status. In some instances, WUAs have been established by members and these WUAs have failed to realise their potential a few years down the line mainly due to lack of financial resources. A conversation with the representation from the South African Association for Water User Associations (SAAFWUA) brought two things to the fore. Firstly, there is a group of water users who cannot run a full administrative office and, therefore, rely on support from volunteers to switch on the pump to supply water to its members. Another group is there which is composed of all resource-poor farmers who are not able to even keep up with their water use charges. When these institutions are transformed into WUAs, they are quick to fail due to their inability to sustain themselves financially. An example was given of the Ncora Water User Association in the Eastern Cape which was established as a government-built irrigation scheme for the resource-poor farmers. This WUA failed to survive as the farmers could not run such an institution despite being given support by both the DWS and the Department of Agriculture.

3.3.6.6 Inadequate oversight and regulatory capacity

The Department of Water and Sanitation through the Minister is the overall custodian of water resources in South Africa and bears responsibility for the regulation of all manner of water use. This responsibility can be delegated to a functional CMA or any relevant institution. While the CBRWUA falls under the BGCMA who provides oversight and regulatory function to them, the situation is surely not the same across the country. The DWS is lean on the ground. Monitoring water use license conditions and illegal water use has been a great concern. The CBRWUA representative also bemoaned the withdrawal of crucial delegation powers from the CMA by the Minister as a big setback in managing water at the local level.

4 TRANSFORMATION CHARTER AND TRANSFORMATION GUIDELINES

4.1 INTRODUCTION

One of the critical issues that has emanated from this study is the convergence on the fact that the transformation of irrigation boards into WUAs is a complex process. While challenges to do with water allocation and land reform have been highlighted as having an important hand on the issues of equity for emerging water users, the ambiguity of transformation as a concept has led to some transformed WUAs conduct their business as usual. This has meant that without properly defining the metrics for transformation, the transformation of irrigation boards to water user association shall not achieve the intended equity and redress objectives as per the National Water Act (Act 36 of 1998).

Against the foregoing background, the Department of Water and Sanitation developed a preliminary draft Transformation Charter which should provide the direction and define the meaning of transformation within the space operated formerly operated by Irrigation Boards and hence WUAs. With lessons from this project, the preliminary draft charter was reviewed and updated. In addition, these lessons also fed into the guidelines to be used by the DWS in the process of transforming irrigation boards into WUAs.

4.2 PROCESS OF REVIEW AND UPDATING THE TRANSFORMATION CHARTER AND GUIDELINES

As indicated, the transformation charter was developed in order to provide a guide in the manner in which transformation is defined and understood with the aim of achieving equity objectives within the context of water user associations. The development of this charter and the associated guidelines benefited from a three-level process as depicted in the *Figure 2* below

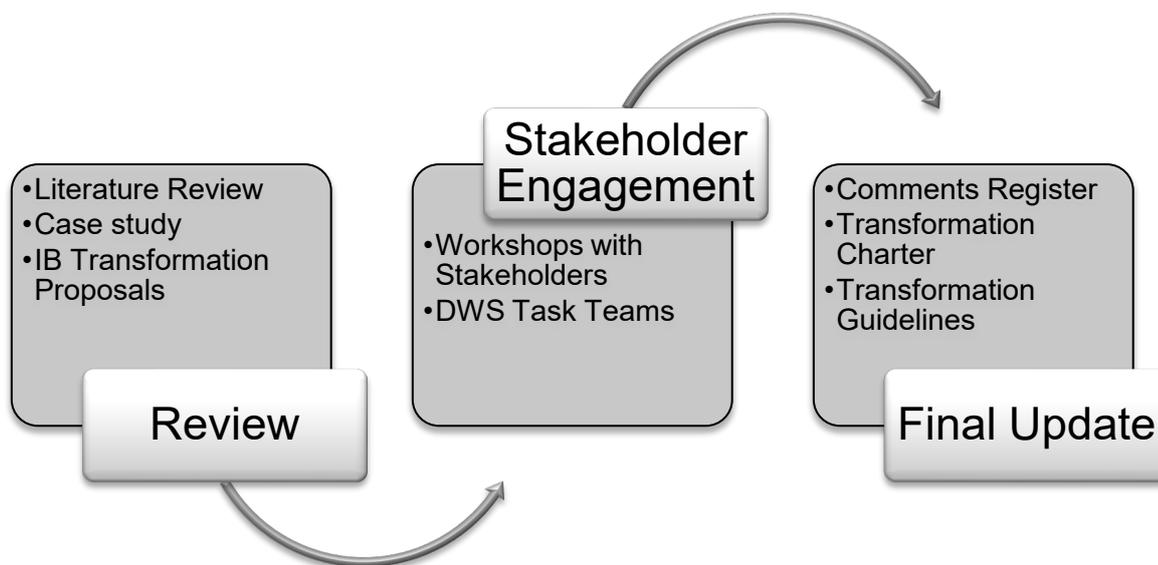


Figure 2: Process of developing the Transformation Charter and Guidelines

4.3 BRIEF CONTENT OF THE TRANSFORMATION CHARTER

The transformation charter starts by outlining the rationale for the development of the charter. This WUA Transformation Charter seeks to design, structure and implement a range of institutional transformation initiatives within existing Water User Associations as part of a process of re-organising the operational and strategic initiatives of integrated water resources management in South Africa. The purpose of the process is the creation of new water management institutions focused on the principles of democratisation, human capital development, equitable resource distribution, elimination of all inequalities and increased access to participation opportunities and good governance – all which must help address outstanding issues of equity within the water sector.

It draws from the various legislations that support the transformation and equal distribution of opportunities and benefits from South Africa's resources and economic exploits. These legislative frameworks have been outlined *Figure 3* below

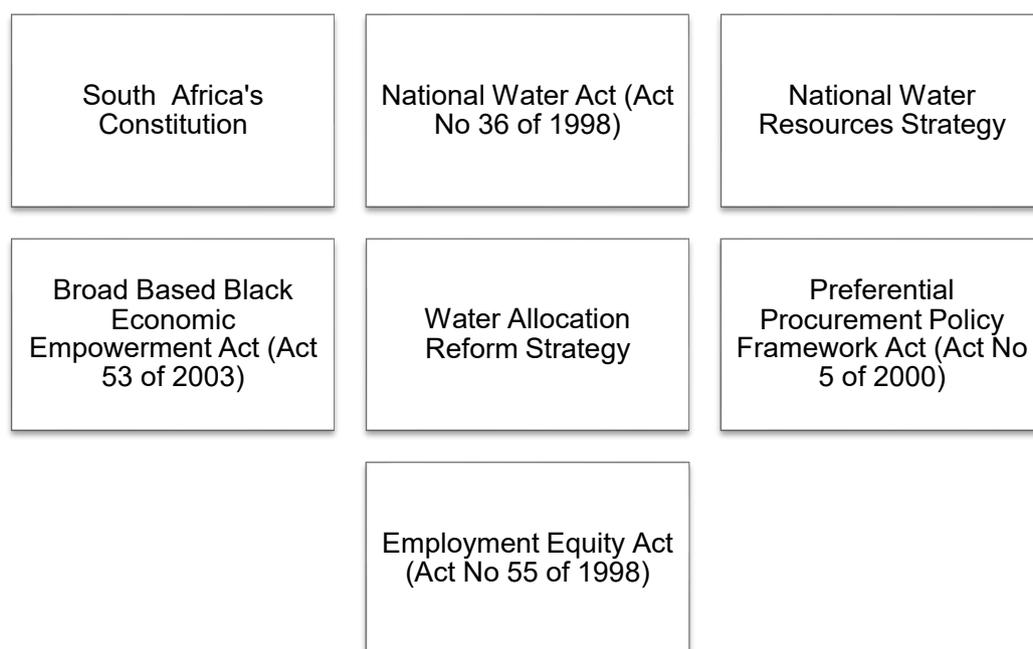


Figure 3: Legislative Frameworks underpinning the Transformation Charter

The detailed transformation charter has been attached to this report as an Annexure 1.

4.4 BRIEF CONTENT OF THE TRANSFORMATION GUIDELINES

Building onto the Transformation Charter for WUAs, the experience by the DWS and as observed during the study, the process of transformation of irrigation boards to WUA needed to be streamlined. While the DWS had developed guidelines for IB transformation soon after the promulgation of the National Water Act (Act No 36 of 1998), the implementation of these guidelines exposed some shortcomings of these guidelines. Essentially, these guidelines had to be reviewed based on the lessons from this study.

The guidelines have been developed around four key areas.

- Managing the risks emanating from assets and liabilities
- Development of a proposal for transformation of irrigation boards
- Review and development of model constitutions for transformed WUAs
- Instruments for monitoring issues of equity and transformation in WUAs

For more details on these guidelines, see Annexure 2 of this report

4.5 RECOMMENDATIONS AND CONCLUSIONS FROM CONSULTATIONS

Several rounds of consultations took place during the development of the charter. Stakeholders from key water user institutions such as South African Association for Water User Associations (SAAFWUA), AgriSA, NAFU, AFASA, CMAs, etc. There were also task teams that were composed of representatives from various DWS regional offices and departments. From these consultations, the following were recommendations and conclusions on the transformation charter and guidelines.

4.5.1 Transformation Charter for the Water Sector

While the DWS intended to develop the charter in response to the transformation challenges within the Irrigation Boards and Water User Associations, stakeholders felt that developing a charter targeting WUAs alone might be a lost opportunity to achieve equity within the broader water sector. It was argued that perhaps developing a charter for the entire sector would be ideal as issues to do water allocation and equity transcends the breadth of the sector. In addition, it was argued that for the charter to be implementable, it would require to be approved by the Department of Trade and Industry. In its current state, this would not be possible unless it has been developed for the entire sector. As such, there was a recommendation that while this document has been developed as a Charter for WUAs, it can be used as a precursor to the sector-wide charter. Such being the case, it was proposed that the current charter should be renamed to avoid the confusion created.

4.5.2 Water Allocation Reform

Some stakeholders felt that the charter should be framed in the manner that recognises the role of WUAs in water allocation reform. There was a strong view that the WUAs have a role to identify opportunities towards reallocation of water to historically disadvantaged individuals within their area of operation. This should not imply that WUAs are legally responsible to allocate water. However, there is a need to explore possibilities on how WUAs can contribute to WAR considering all factors.

4.5.3 Membership of WUAs

Membership of WUAs is a critical factor in transformation of WUAs as institutions and how they operate their business. It is through change of membership, especially where transformation of irrigation boards was the key trigger, that more diversity is achieved regarding racial profile, gender profile and water use sector profile. Noting that membership is defined by the legal definition of a water user, concerns raised included whether the current legal categorization of water use was not going to either become exclusive and restrictive or become too open to include individuals or groups with limited interest and impact on water use activities within a WUA's area of operation. The charter should ensure that issues of membership are addressed in a manner that helps achieve representativity across the users' social profile of the WUA institution.

4.5.4 Scorecard

Defining and let alone understanding transformation within the water sector has been challenging as the study has indicated. As such, defining the metrics with which one would measure transformation and equity within water user institutions is of vital significance. However, stakeholders felt that the current scorecard has limitations. Firstly, there does not seem to have been scientific and comparative determinations of the scores per indicator. Secondly, the scorecard includes indicators that link the WUA to its members on actions that are not fully within the control of the WUA. The argument advanced is that a WUA will be "penalised" for not contributing to WAR if its members do not implement water use efficiency measures, donate water or set aside under-utilised water. The third issue was that scoring should consider capacity or size of an institution to ensure that smaller institutions are not given same targets as bigger institutions. Although a number of transformation laws such as the Employment Equity Act addresses this, other areas such as membership profile may benefit from a differentiated target setting.

5 CONCLUSIONS & RECOMMENDATIONS

5.1 WHERE ARE WE NOW?

Although the National Water Act is comprehensive in its legislation and provides powerful legal tools to address poverty eradication and redress inequities inherited from the past, in reality, little transition in the access to and control over water resources has been achieved (Bond, 2006, van Koppen and Schreiner, 2020)

Water reforms were treated separately, largely through the National Water Act of 1998. Although widely hailed as comprehensive and politically progressive and in spite of its explicit focus on equity, the National Water Act did little to bring about a more just allocation and use of water (Van Koppen and Jha 2005, van Koppen and Schreiner, 2014). Indeed, access to both land and water in South Africa continues to be concentrated in the hands of a privileged few, and highly skewed along racial lines (Chikozho, Managa and Dabata, 2020; Hall, 2010)

To date, the implementation of this legislation has been slow and problematic (Funke et al., 2007a). Challenges include high staff turnover and lack of institutional capacity in numerous government departments, resulting in these departments being overburdened. Some attribute this lack of success to the strong neo-liberal flavour of new policies and laws (Chikozho, 2008). Most analysts identify weaknesses in implementation and enforcement as the major causes of failure

Effective methods and skill development are needed to resolve conflicts between large-scale and small-scale water users. Legal tools to support equitable water allocation will also be indispensable. A better understanding of local notions of registration of use, legitimacy of use, allocation principles, dispute resolution mechanisms, and communities' collective rights vis-à-vis outsiders according to local law would inform policymakers about how to specify new regulations that effectively empower poor people (Van Koppen et al., 2002).

The World Bank suggests that the dynamics and outcomes of land and water reforms also need to be understood as embedded in historically evolved and locally specific patterns of use that form an important part of and co-constitute relations of power (Goldin, 2010). Actual water use and distribution come about through more or less legitimate forms of appropriation and access, whereby opportunities are importantly shaped by historically evolved patterns of use that are embedded in (and constituted by) prevailing social relations of power (Liebrand et al., 2012).

It is also important to be aware of the largely political nature of water reform processes, such as proposing a profound realignment of decision-making power and decentralizing management to the lowest possible level, in already fragile, underdeveloped states (Funke et al., 2007b).

In South Africa, the realization that one is dealing with two vastly different social and economic realities is crucially important. The level of socio-economic and infrastructural development in areas that were under white control far exceeds even the current state of development of areas that were under the former Homelands (Van Koppen et al., 2002)

Until now, the government has done little to reinstall farm support systems and to accord farmers formal title to water and land rights. In some cases, large-scale farmers, white or sometimes black, have used this legal impasse to occupy the collapsed schemes and start cultivating, using the idle irrigation infrastructure, and extracting water without any payment (Van Koppen et al., 2002).

The support to the transformation of IBs to WUA is crucially important if the objectives of transformation have to be realized. The engagements with various institutions should be sustained to ensure that common ground is achieved on key fundamental issues of transformation. The commercial farmers should not fear the

empowerment of the HDIs as a necessarily zero-sum game (i.e. what one wins, another loses). There might be win-win solutions, and discussions at the WUA level between large-scale users and well-informed small-scale users will probably be the most efficient tool to find these win-win possibilities. Moreover, the DWS will delegate its powers of decision as soon as it feels that there is a level playing field for large and small-scale users (Faysse and Gumbo, 2004).

5.2 CONCLUSIONS

So far, the challenges facing the transformation process in the attempt to achieve equity and redress within the water sector in South Africa have been highlighted in water governance literature (Backeberg, 2005, Fanadzo and Ncube, 2018, Faysse and Gumbo, 2004, Funke and Jacobs, 2011, Funke et al., 2007b, Kemerink et al., 2011, Movik, 2009, Ncube, 2018). How do these challenges affect the governance of water resources in South Africa, and how can policymakers and implementers learn from the current status quo to ensure that the primary goal of the National Water Act (Act 36 of 1998) is achieved? While this study has largely drawn from results from the interviews with respondents from the CBRWUA case study, insights from other industry experts as well as practitioners from the CMA, national government departments of DWS and Western Cape Department of Agriculture have been incorporated from which arise the following critical propositions.

5.2.1 Revisit IWRM

Addressing issues of equity within the country's water sector requires that we revisit the Integrated Water Resources Management (IWRM) way of managing water resources. South Africa's water governance system has benefited significantly from the IWRM paradigm, which was born almost at the same time as the democratic dispensation. From the International Conference on Water and Environment in Dublin in 1992, the IWRM paradigm was heralded focusing on four (4) specific principles: 1) the finite nature of water and its key role in sustaining life, development and the environment; 2) the importance of participatory approaches in water development and management; 3) the central role played by women in the provision, management and safeguarding of water; and 4) the economic and competing values of water and the need to recognize water as an economic good. One important aspect that cuts across all these principles is the need to involve all relevant stakeholders in the management of water resources and ensure that there is equity in the benefits accruing from the resource. With IWRM, governance of water resources entails allowing resource users to participate in decision making on issues of water allocation and quality monitoring. Water allocation in stressed catchments like the Breede River becomes contentious when the needs of competing water use sectors are not properly considered in the management of water resources. Important decisions on water re-allocation should consider the implications of relationships between water users in a catchment, especially where historical water use differences exist. On balancing the water allocation equality using the IWRM paradigm, it is important that water resource managers work along the parameters embedded in the IWRM principles that centre around accountability and transparency.

Closely linked to IWRM are issues of transparency and accountability in water resource management. The problems of corruption and maladministration in the water sector hurt the poor the most (Hara et al., 2020). In addition to building capacity, there is a need for the government to instil accountability and integrity in the water sector.

5.2.2 Bringing back the commons

The results obtained in this study reveal the deficiencies of the manner in which irrigation boards have operated for the past century despite a shift in policy. The institutional arrangements for water management within agriculture have for long been centred around irrigation infrastructure and not water as a resource. Transformation of irrigation boards to WUAs accords us an opportunity to work the institutional arrangements around water as a resource. Of course, it has been reported by researchers that when a resource such as water is in abundance, there is little or no conflict over its use and hence no need to institute regulations over

the allocation of the resource (Bruns and Meinzen-Dick, 2001). As noted in the preceding sections there was laxity on the need to define water allocation rules in South Africa during the early colonisation period due to low demand for water resources. When water demand soared, the increasing realisation that South Africa is water-scarce, and that water use need to be regulated for the greater population became apparent. This was also exacerbated by the changes in the dynamics after the democratic dispensation whereby the economy where water is an important input was opened to the entire population. However, as noted by Flack (2007), other than supply and demand dynamics in a catchment, the development of water allocation policies and regulations depends on the political authority, social needs, technological advances, population growth, and environmental considerations. It has thus been posited that the spirit of the National Water Act in repealing the riparian principle of water allocation was in fact in the quest to achieve equity within the water sector in the wake of competing water demands. As posited by some scholars, the NWA recognises water as common property (Perret, 2002), and it follows thus that institutions were developed, and users should collaborate around utilisation and management of water. Most importantly, beyond focusing on prescribed panacea in dealing with issues of equity in the access to water, authors such as Ostrom (2007) argue that it is high time practitioners start thinking of novel ideas such as adaptive governance.

5.2.3 Institutional development: for whom?

As the narrative goes, water user associations should aid in ensuring that the injustices of the past have been dealt with within the agricultural water use space in South Africa. Despite the conversion of irrigation boards to water user associations in some parts of the country, the disparities in the access to water for productive uses has remained the same. So, the question is whether water user association is the right institutional model to ensure equal access to water for productive use by all at the sub-catchment level. Since the promulgation of the NWA (Act 36 of 1998), there are several WUAs that have been established by the DWS. Despite this, some serious allegations of continued segregation amongst water users especially against black smallholder farmers have been brought to the fore. Why then, despite the intent entrenched in the NWA, has the WUA seemed to fail to live up to the expectation of bridging the divide between black and white water users?

While trying to respond to some of these questions, one is quickly taken to the theory of institutions. Authors such as Agrawal (2001) have argued that scholarship on the commons has brought about evidence that suggests that resource users often create institutional arrangements and regimes that help allocate benefits from the resources equitably. Institutional arrangements are very important as water demands continue to grow as Barrett et al. (2005) contended that good institutions are catalysts for getting incentives for good water resource utilisation among water users. From the results presented in this study, most challenges to do with the transformation processes and the resulting failures to achieve equity result from the historical dynamics. According to Saleth and Dinar (2004), it is important to understand the historical background of the institutional arrangements because this mirrors the scope and direction of the institutional changes that occur in society. Noting that IBs have operated for many years with an established culture, breaking this culture requires the state institutions/regulator to provide incentives that do not only create an enabling environment for equity but also achieve optimal water use in the presence of scarcity. As Sarker and Itoh (2001) argue, an external solution where the government provides a coercive force is required to ensure that individuals within institutions achieve common interests while benefiting from common-pool resources such as water. The principal argument for establishing WUAs around water as a common pool resource is best summed up by Ostrom (2007) who posits the activity of one user within the catchment creates negative externalities for other users within the same catchment. In addition, creating equity in water allocation entails ensuring that the resource units are valued equally amongst the resource users, and this can only happen if the users belong to the same institution, and they enjoy equitable access to the resource.

5.2.4 Demand-side or supply-side debacle

From the results presented in this study, one can quickly come to terms with the fact that indeed South Africa is a water-scarce country. It was noted in this case study that while efforts to avail extra water to emerging and smallholder farmers exist, the current water demand outweighs the available supply in most river basins. To

an extent, one can argue that the country's water policy landscape has been shaped to a larger degree by the surging demand for water by competing uses, i.e. agriculture, domestic, industry, etc. The post-democratic policies were made to accept the fact that water is an input in all productive economies while at the same time serving as a social good. This is evident in the way the free basic water policy of 2001 was initiated ensuring the supply of water to every household for free. This policy could not be replicated in the agriculture and other sectors though, whereas evident in this study, have seen predominant water users continue to do so even after the drive for equity came to the fore.

The challenges and failures of the verification and validation exercise towards equitable water allocation is another evidence of the pressure that the water resources of South Africa have come under. Indeed, the country's water resources have never been under huge demand to meet societal aspirations thus far.

While the conventional approach to deal with increasing water demands has been to increase supply through infrastructure development for dams and new water supply schemes (Brooks, 1997), this has become a pecuniary expensive alternative over time as water resources have been affected by multifaceted challenges which include climate change, demographic changes and pollution. There is, therefore, a consensus amongst water scientists and managers that a changed focus from managing the water supply to managing the increasing water demands is needed and hence encouraging water users to conserve the water they use (Molle and Turral, 2004). Managing water demand has been exhorted as probably a more beneficial alternative to the water users, the environment, and water supply and management institutions. For the water users, effective water demand management would enable equity among them and aid in financial savings that would emanate from water use bills (Tate, 1990). In addition, water supply and management institutions would be saved from making huge infrastructure investments like dam constructions, new water schemes and inter-basin transfers. More importantly, the river basins would have enough water resources for all the competing uses and some to flow downstream for ecosystem sustainability.

From the foregoing, it can be argued that water resource managers should move from just looking at the supply side of the resource but rather consider the management of the surging demands. Studies have shown that management of water demand can ensure that existing water sources be equitably allocated to competing uses and users. This would surely be one of the means that can aid in bridging the divide between established water users and emerging water users within the catchment as the extra saved water can be reallocated to the other new users.

5.3 RECOMMENDATIONS FOR FURTHER RESEARCH

5.3.1 The need for a water sector charter

The conversations regarding the issues of equity within the water sector of South Africa have begged the question as to whether we are doing enough on transformation. From the research study, it has come clear that there are different configurations and hence expectations from the concept of transformation as applied within the water sector between different actors. During the interviews, the colleagues from the CMA as well as DWS stressed the importance of a generally accepted guiding document for transformation within the water sector so that issues of equity and inequality can be addressed. The same sentiments were aired by some actors who participated in the review of the transformation charter for water user associations. However, one would be inclined to think that the sector unlike other sectors such as Mining are mostly run by government institutions (water boards, CMAs, etc.). Research would be needed to understand how such a charter would work in a sector-wide set-up considering the mix of public sector and private institutions. How can a sector-wide charter contribute to issues of equity within the water sector?

5.3.2 Water user associations

Since democratic dispensation, water resources managers and actors have leaned on the belief that water user associations can be used as instruments to curtail injustices of the past, hence addressing issues of equity within the sector. However, since the promulgation of the National Water Act (ACT 36 of 1998) and the conversion of some irrigation boards to WUAs, issues of inequality have continued even in the new institutions. From the current study, it was further found that emerging farmers do not find it easy for them to participate in the activities of the institution. Against the foregoing, is a water user association, in its current configuration, an appropriate tool for sustainable water resource management and aid in equitable access to water for all? In its current configuration (with compulsory membership and the nature of state involvement) does it conform to institution development theories? Is there perhaps an institutional model that is suitable to the challenges unique to the South Africa's water sector? From the results obtained in this study, it is suggested that a further study be conducted to respond to these questions as they are pertinent to the governance of water resources in the country most especially as the issues of equity hinge on the functionality of a water user association.

5.3.3 Technical and Financial Support for Emerging Farmers

The study has revealed some deficiencies in the manner in which historically disadvantaged farmers are supported to achieve their potential. This is more pronounced in areas where they have inherited land reform farms which have huge production potential but are failing to achieve this. As found in the study, most of these emerging farmers fail to even participate and hence contribute to the operations of the WUA due to their lack of capacity – both technically and financially. While it can be speculated here that good technical and financial capacity can be an enabler for achieving equity within the water sector, this study did not attempt to establish the extent to which the current inequalities to access to water for productive use can be linked to technical and financial capacity. Against this background, it is recommended that further research be conducted to examine whether access to technical and financial resources can be a key enabler for transformation and hence addressing the outstanding issues of inequality in the access to water within the water sector especially amongst smallholder emerging farmers.

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APPENDICES

NOTE

Report C2020/2021-00636 contains the following two appendices of which Appendix 2 has 4 Annexures:

Appendix 1: Transformation Charter

Appendix 2: Guidelines for the Transformation of Irrigation Boards

Annexure 2.1: Tool 1 – Pro Forma for Transformation of Irrigation Board

Annexure 2.2: Tool 2 – Checklist to Evaluate Proposals for Transformation of Irrigation Boards to Water User Associations from 2020 and beyond

Annexure 2.3: Tool 3 – Proposed Revised Sample Constitution for a WUA

Annexure 2.4: Tool 4 – WUA Performance and Compliance Monitoring Tool

As each of these Appendices/Annexures are individually numbered, starting from page number 1, and each has a separate Table of Contents, the sequential page numbering of Report C2020/2021-00636 ends on page 44.

APPENDIX 1: TRANSFORMATION CHARTER

STRENGTHENING THE KNOWLEDGE BASE AND CAPACITY TO SUPPORT THE TRANSFORMATION OF IRRIGATION BOARDS TO WATER USER ASSOCIATIONS

APPENDIX 1 TRANSFORMATION CHARTER FOR WATER USER ASSOCIATIONS FOR THE DIRECTORATE WATER RESOURCE MANAGEMENT INSTITUTIONS

VERSION: FINAL DRAFT
(Third Revision)

Boloka Development
1560 Whitby Crescent
Fourways, 2055

Project No. **C2020/2021-00636**

FEBRUARY 2022

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ACRONYMS

AFS	Annual Financial Statement
AGM	Annual General Meeting
B-BBEE	Broad-Based Black Economic Empowerment
CMA	Catchment Management Agency
DWS	Department of Water and Sanitation
EWSETA	Energy and Water Sector Education Training Authority
HDI	Historically Disadvantaged Individual
IB	Irrigation Board
MANCO	Management Committee
NDP	National Development Plan
NWA	National Water Act
NWSMP	National Water and Sanitation Master Plan
NWRS	National Water Resource Strategy
SA	South Africa
SMME	Small, Medium and Micro Enterprise
WAR	Water Allocation Reform
WCWDM	Water Conservation and Water Demand Management
WMA	Water Management Area
WUA	Water User Association

1 PREAMBLE: MORAL AND STRATEGIC BASIS FOR TRANSFORMATION OF THE WATER SECTOR

1.1 INTRODUCTION

This WUA Institutional Transformation Charter seeks to design, structure and implement a range of institutional transformation initiatives within established Water User Associations as part of a process of re-organising the operational and strategic initiatives of integrated water resources management in South Africa. The purpose of the process is the creation of new water management institutions focused on the principles of democratisation, human capital development, equitable resource distribution, elimination of all inequalities and increased access to participation opportunities and good governance.

Water User Associations are established by public law and carry functions in the public interest and be delegated functions to undertake public functions such as operation and maintenance of government water schemes, collection of levies and execution of compliance monitoring and enforcement. In this regard, it is important to ensure that WUAs operate as if they were a government agency where they carry out a delegated function. This includes compliance with existing laws governing employment and procurement. Post-establishment transformation of WUAs must lead to the following:

- i) New institutions must govern a **full water resource** in addition to irrigation water and related water works based on redefined boundaries
- ii) Membership of the association must be diverse (different users, different racial groups, different gender groups, etc.)
- iii) There must be improved organisational governance, for instance
 - a) **All members must be able to influence decisions:** Several stakeholders, with diverse interests in water management, including municipalities, environmental practitioners, and community groups must have a seat at the table and are able to influence the decision-making process through participation in the WUA.
 - b) **Conflict Resolution:** WUAs must be able to resolve conflicts amongst diverse water users without involvement of the Department or a CMA.
 - c) **Equity:** Despite differences in how people use and value water, all water users must feel that they are treated fairly.
- iv) **Balanced Leadership:** Balanced leadership involves making difficult choices in a transparent, unbiased and democratic way. This means that the views of all stakeholders must be taken into cognisance and the most efficient decisions are taken to the benefit of proper management of the resources within the sphere of operation of the WUA.
- v) **There is diversity in management of the institution.** This includes staffing of the institution at managerial and operational levels. Issues such as secondment and transfer of staff from the Department are fairly dealt with.
- vi) The institution is **responsive to its environment** and water the needs of the various sectors within the area of its operation and actively develops means of responding within its capacity to such needs.
- vii) **Partners with government** (national, provincial and local) to implement water allocation reform. The institution appreciates the challenges of water allocation reform and the inequities of previous water allocation regimes. It works in partnership with government to identify opportunities for implementation of water allocation reform within its area of operation and partners with local government to address access to water for domestic use within its capacity.

1.2 HISTORICAL CONTEXT OF WATER MANAGEMENT IN SOUTH AFRICA

South Africa's successive colonial, segregation and apartheid regimes produced a water sector that embodied racial stratifications and inequalities in its institutions, laws and policies. The continued unequal access to resources dates to the 17th century in 1652 with the arrival of the Dutch settlers in SA. The lands, water resources and pastures were changed from common ownership into a system of private ownership. The indigenous people found it increasingly difficult to sustain themselves in a place in which access to land and water resources was limited.

The British settlers then took over in 1806, allocated vast tracks of productive land to mainly white settlers and introduced the riparian principle of ownership. With this new principle, landowners who had perennial streams passing through their land had the first right to use the water for productive purposes. The Irrigation and Conservation of Waters Act in 1912, precluded the beginning of a new era in water management within South Africa.

A change of government occurred in 1948 and came with the enactment of the 1956 Water Act which further entrenched riparian rights and resulted in the deepening of inequalities in water access across races in which mostly the black community's access and use of water resources was reduced. Irrigation Boards (IB) were established under Section 79 of the Water Act No. 4 of 1956 to manage water resources within an irrigation district in which water resources were inequitably allocated to white farmers.

A new democratic government was established in 1994 and one of the urgent activities it did was to review policy and legislation. The initial task was to develop a constitution that guarantees equal rights and access to sustainable use and benefits of all natural resources to all citizens. The water law review process then ensued and was aimed at enabling the redistribution of rights of access to water in a way that redresses the water resource allocation landscape that was highly skewed. Over the period, government has enacted various legislation in various sectors to drive the transformation and to ensure that redress and equity is achieved in the way resources are allocated and that equal opportunity for participation in the economy and meaningful governance of institutions is achieved.

The National Water Act, Act 36 of 1998 was one of the first and most critical transformative laws which affirmed the Constitutional values to which South Africa subscribes.

1.3 THE CRITICAL ROLE OF WATER IN ECONOMIC TRANSFORMATION AND DEVELOPMENT

Institutional transformation of Water User Association is inevitably linked to the primary role of these institutions in the value chain of water management and the contribution of water to economic development.

The Water for Growth and Development Strategy (2008) widely centres water a catalyst and a baseline resource for socio-economic development. In this context, effective water resources management (based on transformational policies, legislation, strategies and institutions) must contribute towards the following:

- a) **Economic development** – when effectively and efficiently managed, water contributes to economic development that responds to social and environmental needs.
- b) **Integration** – effective management of water leads to integrated development through balanced allocation of the resource and effective partnerships of water management institutions.

- c) **Poverty alleviation** – access to water for household and productive purposes is the foremost prerequisite to alleviating poverty and sustaining development.
- d) **People-centred development** – through the effective involvement of communities in water resources management, responsive and sustainable development could be achieved.
- e) **Decentralisation** – allowing water to be managed by local water management institutions ensures ownership by communities and allows the government to focus on policy, regulation, support, coordination and oversight.
- f) **Good governance** – water governance must be lawful, transparent, open, accountable, participatory, communicative, incentive-based and equitable. It must also have low transaction costs, be integrative and ethical.

Equitable access to water for all, or to the benefits derived from using water, is critical to eradicating poverty and promoting the sustainable growth and development of any nation. This is particularly important for South Africa, which still faces significant challenges of inequality, poverty and unemployment.

1.4 GAPS IN IMPLEMENTATION OF LEGAL AND POLICY INSTRUMENTS

The National Water Security Framework (2020) indicates that “the South African water sector has not significantly transformed as was envisaged when the policies and legislation were developed in the mid to late 1990s”. The NWSF further decries that transformation of representivity in water governance has also been slow

Institutional transformation is also impacted by challenges in transforming the water sector which include amongst others:

- a) balancing necessary redress to achieve equity without destabilising productivity
- b) institutionalising collaboration with water use sectors such as agriculture, mining and local government both within and outside of government
- c) coordinating reforms in the water sector with land and agrarian reform
- d) identifying data gaps and completing a critical task of verifying and validating water use to improve proper planning and management
- e) developing capacity within the Department and its institutions for the implementation of water sector reforms including water allocation reform.

2 THE LEGAL FRAMEWORK FOR TRANSFORMATION

2.1 THE SOUTH AFRICAN CONSTITUTION

The South African Constitution is a legal framework underpinning the socio-economic transformation of South African society from its unequal and unjust past. It lays the foundation for participatory and deliberative processes and forums to imagine and conceive what is required to transform the SA society. The basis and the rationale for a transformation charter, therefore, derives from the very foundation of the supreme legal instrument for the protection of rights and freedoms of the democratic society created post-1994. It is also widely acknowledged that the South African Constitution is a progressive and transformative legal instrument, and as the supreme law, its purpose is not only to regulate public power but to also frame an objective, normative value system in a post-apartheid society.

The heart of South Africa's transformative Constitution, therefore, lies in its ability to confer equal benefits to all and to ensure an equitable and just distribution of resources to enable development for all. The Constitution embraces notions of participatory democracy, social and economic equality, openness, and transparency and it is a foundation for the transformation charter. The Constitution of the Republic of South Africa, 1996 makes provisions that transformation is a prerogative and that it cannot be denied.

- a) The Preamble of the Constitution of the Republic of South Africa, Act 108 of 1996, states the following: *"We the people of South Africa, recognise the injustices of our past; Honour those who suffered for injustice and freedom in our land; Respect those who have worked to build and develop our country; and believe that South Africa belongs to all that live in it, united in our diversity"*.
- b) Section 9(1), stipulates that *"Everyone is equal before the law and has the right to equal protection and benefit of the law."*
- c) Section 9(2), emphasizes equality which includes the full and equal enjoyment of all rights and freedoms, and it reads, *"To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."*
- d) Section 9(3) reads: *"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."*

2.2 NATIONAL WATER ACT 36 OF 1998

The main purpose of the National Water Act (NWA) of 1998 is said to be the provision for fundamental reform of the law relating to water resources, to repeal certain laws, including redressing the issues of past racial and gender discrimination, ensure the promotion of equitable access to water and facilitation of social and economic development. The NWA strongly promotes equitable access to water, redressing the results of past racial and gender discrimination, facilitating social and economic development for the beneficial use of water in the best interests of all South Africans. The Act also stipulates that the above needs to be achieved through the establishment of suitable water management institutions.

Established under the NWA, Water User Associations were to provide an institutional form that ensures inclusiveness, representativity, subsidiarity, devolution and democratisation of local-level water resource management. The NWA empowers the Minister to issue directives to a WUA on several transformation issues:

- a) Section 92(1) gives the Minister to determine membership,
- b) Section 92(1) allows the Minister to determine or approve a WUA's area of operation,
- c) Section 93(2) empowers the Minister to direct a WUA on which provisions must be included in a constitution, and
- d) Schedule 4 empowers the Minister to regulate a WUA must conduct its affairs of including governance, business planning and reporting.

2.3 NATIONAL WATER RESOURCE STRATEGY (NWRS)

The strategy is the legal instrument for implementing or operationalizing the National Water Act. The strategy is a document that provides the framework for the protection, use, development, conservation, management, and control of water resources for the country as a whole, at regional or catchment level. The NWRS is a legally binding document and an important tool which has key provisions to propel the water sector's transformation agenda forward through the following:

- a) The NWRS makes it possible to identify the areas of the country in which water resources are available to support social and economic development initiatives, as well as areas in which limited water resources may be a constraint to development.
- b) NWRS addresses streamlined water allocation reform to redress past racial and gender imbalances in access to water for productive uses and to address poverty and inequality.
- c) NWRS gives direction on the establishment of water management institutions and the decentralization of water resources management.

Although the NWA requires that the NWRS be reviewed every five years, the last revision was in 2013.

2.4 WATER ALLOCATION REFORM STRATEGY OF 2008

The National Water Act, Act 36 of 1998 provides that, in issuing a general authorization or a water use license, a responsible authority must take into account all relevant factors, including the need to redress the results of past racial and gender discrimination.

In pursuance of this legislative imperative, the Department of Water and Sanitation (Then Water Affairs and Forestry) published a Water Allocation Reform Strategy in 2008.

This strategy states that the strategic objective of water allocation reform (WAR) is to "promote equitable social and economic development in the water management area (WMA) with a special focus on women and blacks."

In the 2005 Draft Position Paper for Water Allocation Reform, the objectives are stated as follows:

- a) To take proactive steps to meet the water needs of historically disadvantaged individuals and the poor
- b) To ensure participation by the poor and historically disadvantaged individuals (HDI)
- c) To promote the sustainable use of water resources; and
- d) To promote the beneficial and efficient use of water in the public interest.

WAR has not achieved the objectives stated above for many reasons. The recognition and understanding of the difficulties encountered in the reform process could help develop a more practical and realistic charter to effect tangible transformation results and redistribute water in a measured and equitable manner.

Although Water User Associations do not have powers to allocate water, they remain critical players in unlocking opportunities for water reallocation through various means.

2.5 BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT 53 OF 2003¹

Broad-based Black Economic Empowerment (B-BBEE) is a requirement of the South African government to address the inequalities created by the apartheid system by attempting to implement redress and achieve equitable allocation and use of all resources for the development of all its people and the advancement of the country's social and economic objectives.

Broad-based black economic empowerment means opening and providing tangible opportunities for the economic empowerment of black people, including Black women, Black workers, Black youth, Black people with disabilities and Black people living in rural areas, through diverse but integrated socio-economic strategies that include but are not restricted to the following:

- a) Increasing the number of black people that manage, own and control enterprises and productive assets.
- b) Facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises.
- c) Facilitating human resources and skills development for HDI's
- d) Achieving equitable representation in all occupational categories and levels in the workforce.
- e) Providing preferential procurement for companies owned by HDI's
- f) Investment in enterprises that are owned or managed by black people.

Section 11 of the B-BBEE Act 53 Of 2003 stipulates that the Minister must issue a strategy for broad-based black economic empowerment and that the strategy should provide for an integrated, coordinated and uniform approach to broad-based black economic empowerment by all organs of state, public entities, the private sector, non-governmental organizations, local communities, and other stakeholders:

- Section 12 of the B-BBEE Act empowers the Minister of Trade and Industry to publish in the Gazette for general information and promote a transformation charter for a particular sector of the economy if the Minister is satisfied that the charter (a) has been developed by major stakeholders in that sector; and (b) advances the objectives of this Act.
- Section 10 of the Act requires that every organ of state and public entity must consider and as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act. Whereas WUAs are by interpretation not organs of state or public entities, they operate in accordance with public law under which they are established and serve public interests which may include amongst others – managing government infrastructure, providing a public service, and undertaking public functions.

2.6 EMPLOYMENT EQUITY ACT NO. 55 OF 1998

The Employment Equity Act 55 of 1998 provides a framework and clear guidance pertaining to the achievement of transformation outcomes in terms of the human resources that achieves redress of past injustices of discrimination and gives equal opportunity to all. The issue of equity in the employment of personnel within the water management institutions requires close investigation, especially related to the Water User Associations.

¹ As amended by Act 46 of 2013

The Employment Equity Act provides a legal basis for pursuing a transformative agenda in the recruitment and appointment of staff within all water management institutions. The main purpose of the Employment Equity Act is, therefore, to achieve equality in the workplace by:

- a) Promoting equal opportunity and fair treatment through the elimination of unfair discrimination.
- b) Implementing positive measures (affirmative action) to ensure the equitable representation of black people, women and the disabled at all levels in the workplace.

All designated employers² as defined by the Act are required to implement the Employment Equity Act. This implies that not all WUAs are compelled by law to implement the Act if they do not fall in the category of designated employer.

2.7 PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, ACT 5 OF 2000

Procurement is central to the government service delivery system and the overall transformation of business transactions. Due to the problems faced in South Africa, especially because of the country's inequality in the past, preferential procurement was deemed necessary. Prior to 1994, public procurement in South Africa was geared towards large and established contractors which were mostly owned by the white minority. The Preferential Procurement Act was enacted to address past discriminatory policies and practices in awarding tenders and giving work opportunities to small businesses in which predominantly HDIs operate.

Through the transformation charter, the water management institutions will have to take cognizance of the preferential procurement framework act and its provisions to align with the broader goal of empowerment and the redistribution of resources and opportunities to reduce the economic imbalance and privilege given to only a few within the sector. The strategic objectives of the Act can be summarized as:

- a) The alignment of procurement levers to optimize local industrial development,
- b) Capacity building in local content management, planning, sourcing and supplier development,
- c) Creation and retention of decent jobs,
- d) Promotion of Small, Medium and Micro Enterprises (SMMEs), geographic spread, technological capabilities, and
- e) Alignment of B-BBEE Scorecards (enterprise and supplier development) and Competitive Supplier Development Programme.

² Designated employer must have 50 or more employees or a revenue of over R5 million per annum (water).

3 ESTABLISHMENT OF WATER USER ASSOCIATIONS

A WUA is established by statute of Parliament to serve public interests related to management of shared water resources and related water works of abstracting and distributing water to authorised users. It is established as a body corporate that is an association of water users formed to pursue common interests of the water users related to permitted water use activities. Irrigation Boards (IBs), which were established under the Water Act (Act 54 of 1956), should have - in accordance with the NWA - been transformed into WUAs within six months, which was further extended by another 12 months. However, despite significant progress, over 200 irrigation boards (as at end of 2020) have still not transformed to WUAs. It is important to note that the transformation of an IB to a WUA is the first transformation step, after which this charter defines further transformation requirements. It should be noted that being established by the NWA, a WUA is subject to regulation by the Minister of responsible for national water resources and can be characterised as follows:

- a) Being created by means of a decision of the government or a government official such as a Minister or Minister's delegate,
- b) Having independent legal personality.
- c) Conferring specific legal rights and duties on their members,
- d) Being generally representative of water users,
- e) Undertaking specified tasks in the public interest and may be granted special powers or privileges,
- f) Often using public resources; and
- g) Being subject to specific government supervision to ensure that they fulfil their tasks properly.

Any restructuring must, therefore, follow the provisions of the Act that established these, being the National Water Act (Act 36 of 1998). Even where WUAs were established to develop and/or operate and maintain mostly communally funded irrigation and water supply infrastructure, they are still established by a statute of Parliament and therefore under direct supervision by the Minister responsible for national water resources. The Minister approves or directs the establishment of a WUA and may direct it to do certain functions, including delegating public functions, such as operating government water schemes (GWS), collecting charges on behalf of the Department or CMA and regulating water use activities in its area of operation. Therefore, the institutional transformation of Water User Associations in their business applications and processes is critical for implementing equitable access and redress of water resources and contributing to national development through supporting rural economy growth, improving rural livelihoods and securing inclusive participation and decision-making of historically disadvantaged individuals in water resource management. The Department therefore provides the following framework, targets and undertakings for transformation of water management institutions which will promote transformation and broad-based black economic empowerment. The transformation charter is envisaged as an integrated tool for addressing transformation challenges and equips Water User Associations with the necessary instruments and targets to support institutional effectiveness required to unlock targeted and broad-based socio-economic growth and development.

4 INSTITUTIONAL TRANSFORMATION OF WATER USER ASSOCIATIONS POST-ESTABLISHMENT

4.1 CONTEXT OF THIS TRANSFORMATION CHARTER

Demonstrable experience indicates that whilst some irrigation boards have been successfully transformed into Water User Associations from a structural perspective (change of form), these institutions have not managed to properly re-orientate their functions and re-position their status within communities as responsible, accountable and accessible water management institutions. Whereas clear commitments have been made by some in their constitutions to achieve institutional and functional transformation, many still continue to operate as if they are irrigation boards with changed names. The inclusion of new members (non-irrigators) has not changed the institution's focus beyond irrigation water management. The implementation of outwardly focused activities such as facilitating access to additional or under-utilised water and improving understanding of water resource management within host communities is not being given adequate attention. The charter is therefore developed with an understanding and within the context of the following critical elements.

- (i) That water belongs to all the people of South Africa and that government is the public trustee thereof;
- (ii) South Africa is a highly water-stressed area that is prone to droughts.
- (iii) Competition for water resources is fierce and such competition is likely to increase in light of a growing population and climate change effects.
- (iv) The social stability created through food security and the need for food production to increase can only be achieved through efficient management and effective use of the scarce available water resources

This transformation charter therefore seeks to develop an understanding of key commitments and expectations that are associated with all entities established by public law. It further provides guidance on all issues that the Department of Water and Sanitation and the Catchment Management Agencies will seek to monitor to ensure compliance with all applicable legislation, policies and strategies.

For transformation efforts to be effective a fundamental shift in the way the whole organisation is structured, governed and managed; the way in which it deals with its constituent members; how WUAs are viewed as opposed to how irrigation boards were viewed; and how all component water management structures collectively act and position themselves.

The next section will present some instruments developed by government to guide but also to nudge all stakeholders towards the transformation agenda.

4.2 PURPOSE OF THE TRANSFORMATION CHARTER

The purpose of this charter is to define the transformation requirements of Water User Associations that should contribute to progressively achieving institutional transformation of the South African water sector and contribute to overall transformation of the South African society.

4.3 GUIDING PRINCIPLES FOR TRANSFORMATION OF WUAS

The following principles will guide the transformation of Water User Associations:

- a) Re-inventing, re-organising, restructuring and rejuvenating the overall water management system as well as its component institutions.
- b) Changing the demographic profile of water users and therefore the membership profile of institutions that serve water users.
- c) Ensuring equitable access to all resources including finance, facilities, support services, infrastructure, and participation opportunities in all areas and at all levels.
- d) The sustainable improvement of human capital in all areas on the basis of skill, expertise and capability development and improvement inside and outside of water management institutions.
- e) Improving the administration of South African water management institutions according to acceptable governance principles and procedures.
- f) Accelerating socio-economic development through the establishment of suitable responsive institutions and the development of infrastructure.
- g) Ensuring equitable distribution of all resources – finance, facilities and support services – and redressing backlogs experienced in and by disadvantaged communities.
- h) Bringing about equitable representation of historically excluded people in all spheres of water management.
- i) Accelerating, advancing and managing the transformation process on the basis of a measurable targets, to monitor and analyze trends towards pre-set transformation goals.
- j) Implementing a performance measurement and monitoring/auditing system to ensure progress and positive trends in all transformation dimensions selected and introducing interventions as and when required.

4.4 TARGETED OUTCOMES

The National Water Act (Act No. 36 of 1998) stipulates equity, sustainability and efficiency as the key guiding principles for water resources management and development in South Africa. The framework aims to achieve the following outcomes:

- i) increase in equitable access to water,
- ii) social and economic development,
- iii) broad participation and involvement by water users and impacted stakeholders,
- iv) institutional efficiency, effectiveness and a professional service ethos,
- v) application of democratic, non-racist and non-sexist policies, practices and values,
- vi) achievement of mutual understanding and respect, and tolerance for diversity,
- vii) empowerment of previously disadvantaged and marginalised groups and redress of past racial and gender discrimination,
- viii) quality and cost-effectiveness in human resource utilisation, and
- ix) equity of access by all at all levels to meaningful training opportunities relevant to WUAs

The Transformation Charter outcomes contribute to transformation of host communities, the water sector and the South African society at large.

4.5 OBJECTIVES OF THE CHARTER

The objectives of this Charter are guided by the National Water Act (Act No. 36 of 1998), the Broad-Based Black Economic Empowerment Act (53 of 2003, as amended by Act 46 of 2013), the National Development Plan (NDP), the second National Water Resource Strategy (2013), including various policies and strategies that inform the Department's programmes. Therefore, the objectives are as follows:

- i) ensure the promotion of social and economic development in the work of Water User Associations,
- ii) institutionalise redress in the establishment and operation of Water User Associations,
- iii) improve compliance within the statutory requirements of Water User Associations
- iv) increase accessibility of Water User Associations by all current and future water users of the water resources in the area of operation considering past imbalances by improving access to water use by historically disadvantaged individuals,
- v) actively promote increased productivity and efficiency of water used within the water area and within the resource constraints by implementing programs that:
 - encourage more efficient water use by existing users, and
 - make water savings from efficiency available to new users focussing on emerging and small-scale farmers and businesses, and
- vi) establish mechanisms to empower historically disadvantaged individuals within Water User Associations.

5 WUA TRANSFORMATION FRAMEWORK

5.1 WUA TRANSFORMATION SPECTRUM

The following diagram depicts the transformation spectrum of Water User Associations:



5.2 STRUCTURAL TRANSFORMATION

5.2.1 Membership

Although established by a Minister according to the National Water Act, the establishment and operations of a Water User Associations depends on its membership. Membership of a WUA is determined by two factors. The first and primary factor is authorisation of water use. In this regard, members of a WUA are those are authorised to use water in accordance with permitted water use activities described in the NWA. However, the Minister has the power to direct a WUA to accept another party as a member even though such a party does not qualify as a water user according to Section 21 of the NWA. WUAs may themselves identify, invite and accept such parties as members in their Constitutions. Only parties within a WUA's area of operation qualify to be invited by the Minister to participate as members of a WUA.

The following activities listed in Section 21 describe water use activities for which authorisation may be required:

- a) Taking water from a water resource
- b) Storing water
- c) Impeding or diverting the flow of water in a water course,
- d) Engaging in a stream flow reduction activity contemplated in Section 36.
- e) Engaging in a controlled activity
- f) Discharging of a waste of water containing waste into a water resource through a pipe canal, sewer, or other conduit

- g) Disposing of any waste in a manner which may detrimentally impact on a water resource
- h) Disposing of any waste from, or of which has been heated in any industrial or power generation process
- i) Altering the bed, banks, course, or characteristics of a watercourse
- j) Removing discharging or disposing of water found underground for the continuation of any activity or for the safety of persons
- k) Using water for recreational purposes.

Section 22 of the Act states that:

“A person may only use water

- a) without a licence
 - i. if that water use is permissible under Schedule 1;
 - ii. if that water use is permissible as a continuation of an existing lawful use; or
 - iii. if that water use is permissible in terms of a general authorisation issued under section 39
- b) if the water use is authorised by a licence under this Act; or
- c) if the responsible authority has dispensed with a licence requirement under subsection (3).”

That means that water use authorisations include:

- 1) water use licences
- 2) existing lawful water uses (confirmed through verification in terms of section 35 of the Act)
- 3) generally authorised water use
- 4) water used as defined in Schedule 1 of the Act

Membership of a WUA is linked to water use authorisations. Whereas membership of irrigation boards was largely and directly linked to irrigation farming and proclaimed irrigation districts, membership of Water User Associations is linked to authorised water use regardless of the purpose for which the water is used and covers both consumptive and non-consumptive water use (recreation, stream reduction, etc.).

The second factor that determines membership is the approved area of operation. In the case of irrigation boards, an irrigation district determined who became a member of an irrigation board. The usage of old irrigation districts (areas of operation) and surrounding areas by default to establish new Water User Associations has had its limitations which do not create a solid foundation for institutional transformation.

Due to the apartheid spatial development patterns, usage of irrigation districts directly follows the spatial divisions of the old South Africa with black-only homelands and white-only areas. There is evidence that shows that new Water User Associations have failed to transform as new institutions primarily because membership based on old areas of operation has not changed significantly to influence institutional transformation.

In pursuit of transforming Water User Associations by ensuring all users of a shared resource/defined sub-catchment participate in its management, the following transformation should be incorporated in both the establishment of new WUAs and the review of membership of existing WUAs.

- The area of operation for all Water User Associations (new and established) will be determined by DWS and CMA using suitable catchment boundaries (river drainage boundaries).

- All authorised water users within an area of operation will be required to (or automatically) become members of the WUA
- By direction of the Minister, membership may be extended to other qualifying parties who are directly affected by water use activities in the WUAs area of operation.

5.3 FUNCTIONAL TRANSFORMATION

5.3.1 Governance

5.3.1.1 Governance Obligations

Transformation of the water sector is about ensuring that the use of water for productive purposes is equitable and beneficial, making sure that the governance of water is representative and inclusive. Governance refers to the manner in which organisations are managed and the systems in support thereof. A Water User Association is governed by a General Assembly of Members that meets annually, votes and elects a management committee to oversee the implementation of activities of a WUA. This governance arrangement is provided for and regulated by the National Water Act, 1998 (Act No. 36 of 1998) under Schedule 4. The constitution of a Water User Association regulates its management and institutional functioning. Cognisant of this, the Department recognises that a Water User Association's governance structure is a critical cornerstone for creating an enabling environment for coordinated, effective and holistic transformation. In accordance with Schedule 4 of the National Water Act, a WUA is required to meet the following regarding governance:

- a) Hold Annual General Meetings
- b) Elect a Management Committee annually
- c) Develop and update a business plan to guide its activities for three years
- d) Develop and approve an annual budget
- e) Submit annual report to the Minister or a designated responsible authority

5.3.1.2 Election and Composition of a Management Committee

Transformation in terms of representativity in water governance management structures has been slow. Membership of water user associations generally reflects land ownership and water use, so that the governance and composition of management committees of those associations and its agenda is often focused on (mostly white) commercial farmers' and irrigators' interests. A management committee is elected by the General Assembly in line with the approved Constitution of the WUA.

Evidence shows that there is lack of representation and active participation of historically disadvantaged individuals in the management committees of water user associations and this has curtailed efforts towards inclusive empowerment of historically disadvantaged individuals. Once elected, a Management Committee (MANCO) takes over the governance responsibilities and oversees the running of the WUA which includes:

- a) Appointing and overseeing the Chief Executive Officer (where applicable)
- b) Overseeing appointment of senior managers and staff
- c) Overseeing finances according to financial management policy

- d) Developing necessary strategies and plans for organisational sustainability

The role of the MANCO is important in ensuring key thrusts to achieve organisational sustainability covering the following:

- a) representation of the general membership in decision-making to retain organisational relevance
- b) directing the organisation to implement its business plan, and
- c) maintaining relationships with general membership, other stakeholders (e.g. Catchment Management Agencies) and the Department (Minister) through reporting.

Transformation of the WUA membership is expected to directly improve representation of new groups on the management committee including improving racial and gender representation. The limitation of the current membership model is that it is dominated by irrigation users who have majority votes linked to their authorised water use. Continuing with this model will therefore limit the influence of new members at General Assembly when decisions on budgeting and voting for MANCO members are made. Therefore, this framework provides the following conditions to ensure that Water User Associations work towards promoting diverse representation within the management committee with regards to race, gender and disability involvement:

- a) Composition of a MANCO must achieve balanced representation of different water user groups and demographics in the WUA's area of operation.
- b) Where authorised water user profile does not provide for desired diversity, institutions such as municipalities and companies/organisations must be directed to send proxy representatives who will enable increased participation of blacks and females in the management committee. In the invitations to nominate representatives, such institutions must be asked to provide reasons when and if they are unable to do so.
- c) WUAs must set practical targets for improving diversity of membership (race, gender, water use groups, sectors, etc.) in their business plans which should be reviewed annually.

5.3.2 Management Control

Water User Associations are critical agents for driving and sustaining rural economies as well as improving livelihoods. Therefore, the day-to-day management and control of these water management institutions need to be developmental and promote transformation imperatives as outlined by the various legal instruments to encourage inclusive socio-economic development. Therefore, to improve management and staffing in Water User Associations, the following is proposed:

- a) MANCO to outline management and control procedures which will progressively improve representativity in terms of race, gender and disability.
- b) MANCO must outline the procedural requirements for appointment of employees of the association in accordance with national policies and provisions that give effect to transformation. This must be in the form of Human Resource Management Policies.

Procedural requirements for the appointment of employees of the association must comply with all labour legislations, including the Employment Equity Act, 1998 (Act No. 55 of 1998), Labour Relations Act, 1995 (Act No. 66 of 1995) and Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

The transformation of employment and labour conditions in an institution is vital for ensuring alignment with national objectives towards transformation, eliminating inequalities in the workplace and reducing poverty. Water user associations are required to:

- a) comply with all national labour legislation,

- b) proactively employ HDI people in senior, middle and junior management positions,
- c) develop employment equity plan, and
- d) develop a human resources plan, which provides an indication of the current and future human resources capacity of the WUA and an overview of compliance with labour legislations. The human resources plan should at least contain the following information:
 - i) the organisational structure,
 - ii) the associations approach to human resource development, including details of policies to comply with relevant legislation,
 - iii) include a list of current and planned posts with a description of the roles, responsibilities and skills of senior management,
 - iv) demographics of staff,
 - v) succession planning, and
 - vi) performance management procedures.

5.3.3 Skills Development

Water resource management requires specific skills and knowledge, thus the necessity to develop a pool of human capital through training and mentorship programmes exists. Skills Development Act promotes the enhancement of opportunity for skills development and improved employment portfolios for HDIs. The Department of Water and Sanitation remains critical in identifying skills and development requirements and for providing guidance on compliance mechanisms thereof.

A WUA, as one of the important agents in local water management, is critical in implementing skills development in a manner that supports the transformation objectives of this framework and that of the Department of Water and Sanitation.

The objective for skills and development is to address the development of skills as well as the disparities existing in rural communities to secure the socio-economic development of historically disadvantaged groups.

Therefore, water user associations are required to:

- i) Involve and develop capacity of their members, especially those from historically disadvantaged backgrounds, to advance their participation in governance so that they make a meaningful contribution,
- ii) Develop skills and human resource development strategy of the association that complies with the Skills Development Act, 1998 (Act No. 97 of 1998),
- iii) Identify and allocate resources towards programmes that encourage skills development such as onboarding training for the management committee and management of the association, to equip them with knowledge on the transformation objectives of the institution and overall functioning of the institutions,
- iv) Collaborate with relevant skills development authorities to assist with training and skills development of employees, focusing on HDIs and target HDIs for development of core skills as identified by the institution,
- v) Identify and allocate resources towards programmes that encourage skills and development of historically disadvantaged users to promote their growth and productive use of the water for economic gain, and

- vi) Implement succession planning that specifically identifies HDI employees as possible successors with the assistance of further training and skills development to ensure black employees meet requirements for the post (development of individual employee career paths (focus on black employees at junior level) to assist with career growth and identification of gaps for further training and skills development.

5.3.4 Preferential Procurement

Procurement and supply chain policies targeted at transformation are critical for widening the market access for HDI enterprises and improving the working conditions and sustainability of suppliers. The objective of these policies is to encourage enterprises that contribute towards broad-based black economic empowerment. Preference procurement policies are legally binding to all institutions of government to advance economic benefits and opportunities to especially HDI's. As a result, the Department and water user associations have a critical to play in ensuring that supply chain and procurement policies support national objectives towards transformation.

A WUA is required to:

- i) develop a procurement policy (including financial targets to be spent on capacitation of historically disadvantaged individuals).
- ii) progressively procure services and goods from suppliers with BBBEE procurement recognition levels,
- iii) report on the procurement expenditure on different categories of suppliers

5.3.5 Socio-economic Development

Water User Associations predominately operate in rural communities where host community members are vulnerable to poverty. As a result, the association has a critical role for addressing poverty and reducing inequalities. The association needs to identify and support programme(s) that will contribute to the socio-economic development within the area of its jurisdiction, where the objective would be to support a social welfare course.

The associations are required to:

- a) Identify and allocate financial and non-financial resources towards community socio-economic development programmes linked to productive and beneficial use of water
- b) Support to local communities for non-productive water uses that are important to specific communities, e.g. use of water for cultural, recreational and religious purposes
- c) Linkages and collaboration with other entities for local economic development
- d) Work with DWS to implement water safety initiatives in communities targeting dams and canals.
- e) Contribute to social upliftment by allocating resources towards educational bursaries and learnerships targeted at historically disadvantaged groups, where practical.

5.4 SECTOR TRANSFORMATION

5.4.1 Contribution to Water Allocation Reform

The National Water and Sanitation Master Plan highlights that despite both policy and legislative tools intended to enable the transformation of water allocation to redress the historical racial discrimination in access to water, not enough has been achieved since the National Water Act

(NWA) was promulgated in 1998. This is particularly true in the agricultural sector, where around 95% of the water is estimated to be allocated and used by white commercial farmers.

A Water User Association is responsible for monitoring water use within its area of operation. This involves identifying opportunities where re-allocation of water amongst its membership is possible due to changed water use or changed water requirements. Whereas the responsibility for water licencing remains a national responsibility of the Department and the CMAs, WUAs play a critical role in facilitating negotiations for water re-allocation targeting new users.

Water User Associations are required to:

- a) increase water efficiencies within their area of operation to make more water available and identify where further water can be made available to historically disadvantaged groups, new users, small scale farmers and the poor,
- b) facilitate opportunities for re-allocation of under-utilised water for domestic and productive uses resulting from changed water use needs of individual members
- c) proactively encourage members to voluntarily available water to HDI users within the WUA's area of operation

6 OVERSIGHT RESPONSIBILITIES

6.1 REGULATING AUTHORITY

The Department of Water and Sanitation is the oversight authority for this charter.

6.2 PERFORMANCE MANAGEMENT SYSTEM

DWS will develop a performance management system to monitor the performance of WUAs.

6.3 MONITORING AND REPORTING

A Water User Association is accountable to the oversight authority. The oversight authority will carry out monitoring and evaluate and score compliance to identify areas where improvement is required. The progress for implementation of the transformation will be monitored through the annual reports and the targets be reviewed every three-year period, this will be as per the conditions on submission for the Business Plans of the water user association.

6.4 NON-COMPLIANCE

Non-compliance on transformation requirements for skills development, employment equity and preferential procurement renders the WUA to be in contravention with the law and legal recourse may be undertaken by different authorities. The DWS may report non-compliance to the authorities for further investigation and possible penalisation.

Other areas of transformation such as transformation of membership, contribution to sectoral transformation through water allocation reform and host community development may lead to directives issued to the WUA especially where reasonable expectation for compliance is expected. Section 95 of the National Water Act empowers the Minister to issue a directive if a WUA fails to admit a qualifying person as a member.

7 PERFORMANCE SCORECARD

7.1 OVERVIEW

Element	Key Performance Indicator	Value	Verifiable Data Source	Comment	Sector Target
Governance	Exercisable voting rights in the hands of HDIs as a percentage of total voting rights in WUA membership				25%
	Exercisable voting rights in the hands of females as a percentage of total voting rights in WUA membership				25%
	Members of MANCO who are HDI as a percentage of total MANCO				25%
	Members of MANCO who are female as a percentage of total MANCO				25%
Skills Development	Skills development expenditure on All MANCO Members as per the identified needs (as required by the department) as a percentage of leviable amount				20%
	Skills development expenditure on skills development expenditure on skills development needs for HDI MANCO Members as a percentage of leviable amount using the adjusted recognition for gender as a percentage of leviable amount				10%
	Skills development of staff targeting those from historically disadvantaged communities				30%

Element	Key Performance Indicator	Value	Verifiable Data Source	Comment	Sector Target
Equitable Access to Available Water	Water made available to HDI users as a result of water use efficiency measures implemented within the WUA's area of operation as a percentage of total water allocation in the WUA.				10%
	Water made available to domestic, new productive and HDI users as a result of proactive identification of under-utilised allocations within the WUA's area of operation as a percentage of total water allocation in the WUA.				5%
	Water made available to HDI users as a result of voluntary contributions (donations) by irrigators within the WUA's area of operation as a percentage of total water allocation in the WUA.				5%
Employment Equity	HDI employees as percentage of all employees				25%
	HDI employees in senior management as a percentage of all such employees				25%
	HDI employees in middle management as a percentage of all such employees				25%
	HDI employees in junior management as a percentage of all such employees				25%
Preferential Procurement	Procurement spend from suppliers based on BBBEE procurement recognition levels as a percentage of total measured procurement spend				30%

Strengthening the knowledge base and capacity to support the transformation of Irrigation Boards to Water User Associations

Element	Key Performance Indicator	Value	Verifiable Data Source	Comment	Sector Target
	Procurement spend on qualifying small enterprises recognition levels as a percentage of total measured procurement spend				30%
	Procurement spend on any of the following suppliers. <ul style="list-style-type: none"> • That are more than 50% Black owned regardless of their BEE Procurement Recognition Level • That are more than 30% Black women owned regardless of their BEE Procurement Recognition Level 				30%
Socio-economic Development	Budget spent on social development projects in historically disadvantaged communities within the WUA's area of operation as a percentage of total WUA income for the financial year.				3%

APPENDIX 2: GUIDELINES FOR THE TRANSFORMATION OF IRRIGATION BOARDS

**STRENGTHENING THE KNOWLEDGE BASE AND
CAPACITY TO SUPPORT THE TRANSFORMATION OF
IRRIGATION BOARDS TO WATER USER ASSOCIATIONS**

**APPENDIX 2
GUIDE ON THE TRANSFORMATION OF IRRIGATION BOARDS INTO
WATER USER ASSOCIATIONS
FOR
THE DIRECTORATE
WATER RESOURCE MANAGEMENT INSTITUTIONS
DEPARTMENT OF WATER AND SANITATION**

VERSION: REVISION 3.5

Boloka Development
1560 Whitby Crescent
Fourways, 2055

Project No. C2020/2021-00636

24TH FEBRUARY 2022

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1 INTRODUCTION

This guide aims to assist irrigation boards in preparing and submitting responsive and compliant proposals for transformation to water user associations (WUA). The guide builds on the proposal evaluation and facilitation experiences spanning over more than twenty years since the promulgation of the 1998 National Water Act. The guide addresses areas where most irrigation boards failed to understand and develop qualifying proposals leading to over 200 irrigation boards remaining untransformed as at the end of 2020.

2 CONTEXT: WHY TRANSFORMATION OF IRRIGATION BOARDS TO WUAS?

The National Water Act of 1998 is premised on several principles, some informed by the Constitution of South Africa, and others by international integrated water resource management. From a national perspective, the 1996 Constitution of South Africa actively promotes the following:

- 1) Democratisation of South Africa and a move away from separate development and domination of one population group by another. This includes the establishment of public institutions that are open to anyone without using race, gender and physical ability as qualification criteria.
- 2) Equality in the application of the law including ensuring that those who pursue similar interests are treated equally and not on the basis of financial capacity or other criteria.
- 3) Addressing historical inequalities through redress measures with a full understanding that apartheid favoured and advanced certain population groups to the disadvantage of others.

The international principles of integrated water resource management promote the following amongst others:

- 1) Management of water resource using hydrological boundaries
- 2) Devolution of management functions to the lowest practically possible level
- 3) Participation of users in the management of a resource that serves them
- 4) Water is finite and vulnerable resource that needs to be shared and managed collectively
- 5) Recognition of water as an economic resource with competing needs but also cultural, social and ecological values

The institutional reform and realignment project undertaken by the Department of Water and Sanitation in 2008 strengthened a position that emerged from interpretation of the 1998 National Water Act which held that by determining the areas of operation of WUAs along hydrological boundaries of shared water courses, the number of water user associations established as a result of transformation of irrigation boards will be significantly lower than the number of irrigation boards that existed before the 1998 National Water Act was promulgated. A key principle that emerged from the institutional reform and realignment project was the need to reduce the number of institutions reporting to the Minister of Water and Sanitation to ensure effective monitoring, regulation and support.

The introduction of Water User Associations in the 1998 National Water Act envisages amongst others the following:

- e) A move from single-sector institutions whose common interest is irrigation management to multiple-sector institutions whose common interest is the shared water course

- f) A move from areas of operation determined by “irrigation districts” which were provided for in the 1956 Water Act to areas of operation determined by hydrological boundaries
- g) A move from institutions whose primary focus was irrigation management to institutions that manage a shared water course and related shared water works
- h) A move from institutions which represent apartheid separate development by serving only a defined population group to institutions that serve all qualifying water users indiscriminately

With this vision, the 1998 National Water Act provided for the transformation of irrigation boards to water user associations with changes regarding the following:

- 1) **Determination of membership** – membership of WUAs is determined by water use authorisation but further considers other users and affected parties who do not have authorisation but are impacted directly by water use activities in the shared water course. This directly means that unlike irrigation boards, water user associations must have diverse water users
- 2) **Determination of area of operation** – the area of operation is determined largely by a defined shared water course. In establishing WUAs through transforming irrigation boards, the area of operation is most likely to change to cover a bigger area and by implication more water users.
- 3) **Principal and ancillary functions** – although the principal functions of irrigation boards remain largely similar to those of water user associations, some of the powers and functions have been removed with the introduction of Catchment Management Agencies. Additional ancillary functions extend the utilisation of the institutions as agents of government with the understanding that although these institutions are not state agencies, their public interest allows for additional functions to be undertaken to assist government to implement development programmes such as alien plant clearance to save water or increasing access to domestic water supplies in communities adjacent to WUA water works.
- 4) **Election and composition of management committee** – unlike irrigation boards that have board members from a single water use group, water user associations are expected to have all different users being represented on the Management Committee. This is important to ensure a balanced management of the water course to benefit all diverse water users – irrigation, domestic, industry, recreation, conservation, etc. in addition to representation of different water users, water user associations are expected to strive to ensure that different racial and gender groups are represented.
- 5) **Appointment of Chief Executive Officer** – the provision for appointment of a Chief Executive Officer elevates the management of WUAs above how irrigation boards were managed. This formalises the institution along corporate management principles and standards and ensuring separation of governance at MANCO level and executive management at administration level.

The National Water Act (Act 36 of 1998) also elevated the institutional planning and management responsibilities of a Water User Association to comply with generally accepted corporate governance standards by requiring water user associations to operate according to Schedule 4 of the National Water Act where a Management Committee of a WUA has the same status and governance responsibilities as a Governing Board of a Catchment Management Agency.

3 DIFFERENT FORMS OF TRANSFORMING IRRIGATION BOARDS TO WUAS

By addressing areas of operation and membership, transformation of irrigation boards will take one of two forms:

- 1) **One irrigation board transforming into a WUA with expanded membership and area of operation.** This applies where a defined area of operation has only one irrigation board regardless of the size of the area of operation. The determination of the area of operation may impact on the post-transformation structuring of a WUA considering the diversity of users impacted and the footprint of water use activities. In some circumstances the WUA may operate in the same area of operation as the transformed irrigation board if the old irrigation district boundaries are the same as the defined hydrological boundaries of a WUA that emerges from the transformation process.
- 2) **Several irrigation boards amalgamating to form one Water User Association.** The determination of an area of operation using a boundaries of a shared water course may necessitate that a number of irrigation boards that operated within the shared water course get transformed to form one WUA whose area of operation follows the boundaries of a shared water course.

4 WHAT SHOULD TRANSFORMATION OF IRRIGATION BOARDS TO WUAS ACHIEVE?

Structural transformation of irrigation boards to water user associations is intended to achieve the following:

- a) Reduced number of local water management institutions
- b) Increased focus on managing the resource given the challenges of water scarcity in addition to water works
- c) Diversity of membership and management committee composition both in terms of water use groups and population groups
- d) Increased participation of different water use groups and historically disadvantaged individuals in the governance and management of local water management institutions
- e) Seamless rationalisation of water management institutions by ensuring that functions and responsibilities are undertaken at appropriate levels by Catchment Management Agencies and WUAs, and that no institution performs functions that are not intended for that institution.
- f) Water user associations are designed and oriented towards taking responsibilities meant to advance the implementation of the National Water Resources Strategy in accordance with their powers, functions and capacity

5 LESSONS LEARNT

The following lessons inform the content and structure of this guide to make it more relevant to irrigation boards that are proposing transformation.

- a) Proposals need to include **practical commitment to achieve diversity** in terms of representation of water users and different population groups (race and gender) especially where these cannot be achieved at a point of submitting a proposal.

- b) Irrigation boards as initiators need to **implement effective stakeholder consultation and engagement** measures prior to submitting proposals for transformation. These measures must be comprehensive and not rushed. The measures must provide platforms for the many water users within a specified area of operation to participate in the proposal development process even if the affected irrigation board(s) lead(s) the stakeholder engagement process. The responsibility to lead the proposal development remains with the irrigation board(s) that is/are undergoing transformation. These institutions also form the institutional foundation for the next institution as provided for in the 1998 National Water Act.
- c) Irrigation boards need to **build in a transitional period** where matters affecting rights, properties and liabilities are considered and concluded before they are disestablished and replaced by a WUA. This period must address settlement of debts and revision of other contractual commitments.
- d) The introduction of sub-areas must be accompanied by **clear agreements between the WUA MANCO and sub-area committees** with clear separation of roles and responsibilities and discharging of executive powers and functions.
- e) **Suitable institutional models** must be considered to manage diverse interests and water works without perpetuating historical management patterns.

6 ACHIEVING EFFECTIVE STAKEHOLDER ENGAGEMENT AND CONSULTATION

6.1 KEY STAKEHOLDERS TO BE CONSULTED

The first group of stakeholders to be mobilised for the proposal development process are the existing members of the affected irrigation board(s). Special general meetings should be held to initiate the process and empower the existing board members to lead the process to identify and consult water users who were not part of the irrigation board. Access to the irrigation water works should be used to limit the stakeholders to be consulted.

The following are key stakeholders to be identified and consulted (only if they use water from the same water course and have authorisation). This list can be generated with the assistance of the DWS offices and CMAs.

- a) Municipalities specifically those with powers and functions to supply potable water to communities (water service authorities)
- b) Water boards supplying bulk water to municipalities and industry
- c) Industries with own water use authorisations (those not supplied through municipality systems or water boards). These include mines, power plants, forestry plantations, and recreation facilities.
- d) Individual irrigators and farmers who do not access water from an irrigation system but abstract and impact the same water course
- e) Small-holder irrigators
- f) Communal Property Associations with water use authorisations

Initiating irrigation boards should also include additional stakeholders that may be impacted by water use activities even if these groups do not hold water user authorisations. These may include the following:

- a) Communities impacted by the water use activities in the proposed area of operation

- b) Local municipalities in the proposed area of operation who do not have water service authority status
- c) Non-governmental organisations interested in the management of the water course

6.2 EFFECTIVE METHODS OF STAKEHOLDER CONSULTATION

The following methods are recommended to broaden stakeholder engagement and consultation during the development of irrigation board transformation proposals:

- a) Public meetings where all affected parties are invited
- b) Bilateral meetings with key government stakeholders such municipalities, government departments and water boards
- c) Community radio
- d) Social media
- e) Public notices
- f) Local Newspapers

7 ADDRESSING THE TRANSFER OF RIGHTS, PROPERTIES AND LIABILITIES

7.1 PROBLEM STATEMENT

The NWA requires that all rights, properties and liabilities of irrigation boards become assets and liabilities of a WUA upon disestablishment of a WUA. This provision presents the following challenges:

- a) For irrigation boards that are required to extend boundaries as a result of transformation to cover shared water courses and diverse water uses, this means that the rights, properties and liabilities are exposed to users/members who did not contribute to their acquisition. In this regard, non-irrigators may have significant influence on irrigation-related rights and properties but may also be negatively affected by liabilities of communal irrigators.
- b) For irrigation boards that are required to amalgamate to form one WUA, they bring different assets and liabilities to be managed under one MANCO. They also bring differing management regimes and rules for irrigation schemes.
- c) When a new MANCO is elected, it often combines representatives of non-irrigation and irrigation users. This MANCO becomes responsible for rights, properties and liabilities of the old irrigation board(s), which is regarded as disadvantageous to irrigators considering that non-irrigation MANCO members are not likely to have high interest in how communal irrigation water works are funded, operated and maintained, yet they are expected by law to own, improve, oversee and manage these properties.

Many irrigation boards have been reluctant to extend boundaries or amalgamate as part of the transformation process citing this exposure as a significant risk both to the WUA as a whole, where it is argued that liabilities of one group of users will affect the whole WUA as the legal entity that will inherit or own the assets and liabilities, and to individual members who may be required to contribute to debts or benefit from assets that they did not contribute to.

The Model WUA Constitution contained in Schedule 5 of the National Water Act provides an option for establishment of sub-areas where a significant extension of boundaries or amalgamation of numerous irrigation boards is required. In this sub-area option, operation areas/membership/irrigation water works of disestablished irrigation boards are delegated the responsibility to continue operating and maintaining water works including managing debt, funds, buildings and moveable assets separately from other areas/members. However, this model is deemed inadequate to address the risks of exposure due to the following legal limitations:

- a) Sub-areas are not body corporates, therefore any action against or by them has to be taken against or by the WUA. These actions include acquiring loans, taking court actions, opening accounts, disposing of moveable or immoveable properties, etc.
- b) All rights, properties and liabilities remain under control of the WUA MANCO as the only executive authority of the WUA.

Although some transformation proposals have taken the sub-area route and have not yet reported any incidences of complex legalities, many irrigation boards are raising these as real risks.

7.2 STATUS OF RIGHTS, PROPERTIES AND LIABILITIES OF IRRIGATION BOARDS

Irrigation works that were not developed by the state (not government water schemes) are communally owned and not privately owned. Although individuals contributed towards building of the infrastructure, no person holds shareholding, however users have exclusive right of access and possession. The assets are treated like those of non-profit organisations. With this understanding, the assets cannot be transferred to a private company.

Most of the immoveable properties that are included in the asset registers, has been fully paid off over time. These water works have a specific physical footprint which limits who may use them, meaning they cannot be opened to everyone by virtue of them being inherited by a Water User Association.

Accepting that water works cannot be moved or opened to all members of a WUA after transformation, the biggest concern relates to financial assets and liabilities that are linked to the water works (for improvement, operation and maintenance) and not ownership of the water works themselves. Concerns include the ability to influence how the money is raised and used to improve, operate and maintain the water works, especially noting that a WUA MANCO consisting of representatives of beneficiaries and non-beneficiaries of the water works have executive powers over the water works.

A WUA MANCO, as an executive authority, has powers to delegate functions and finances with these functions through application of ringfencing. Ringfencing of rights, properties and assets is provided for in the Model Constitution through the following:

- Prohibiting the rights of any member to properties and rights of the association, directly ensuring that no member can individually lay claim to any property or right of the association because of their membership of the association.
- Limiting liabilities of any member to the amount that the member owes to the association which implies that no member can be made liable for any debt incurred by the association beyond the amount directly charged to the member for repayment of that debt. Where a member defaults, another member cannot be held liable.
- Providing exclusive access and use of a moveable or immoveable property by members who are responsible for its funding, operation and maintenance. In this regard, the WUA MANCO can ringfence and delegate functions related to the property and its associated liabilities to a sub-area committee established by the Constitution. Liabilities associated with the rights and properties (moveable and immovable) should equally be restricted to those who benefit from the property.

Rights, properties and liabilities of Water User Association are deemed communal and used in the interest of the public given the non-profit stature of the institution. The National Water Act empowers the Minister to direct how rights, properties and liabilities of a WUA will be disposed when a WUA is disestablished.

7.3 POSITION ON STATUS OF RIGHTS, PROPERTIES AND LIABILITIES DURING TRANSFORMATION OF IRRIGATION BOARDS

- a) The rights (including licences), assets (moveable, immovable, financial, etc.) and liabilities are indivisible and acquired by communal effort and must therefore be inherited by the WUA.
- b) Where a significant extension of boundaries or amalgamation of two or more irrigation boards is needed to establish a WUA, establishment of sub-areas and delegation of functions and responsibilities to sub-areas must be considered to ensure ringfencing and to reduce exposure risks associated with the inherited rights, properties and liabilities to non-irrigators, and to increase management control of the properties and liabilities to those who acquired them.
- c) Irrigation water works must remain accessible to all new authorised users who can practically be serviced by the water works if the new users meet fair conditions such as:
 - Contributing to any current debts related to improvements made on the irrigation scheme
 - Paying for cost of extension of the water works, and
 - Paying for operation and maintenance of water works
- d) Where government can subsidise improvement and extension of water works to benefit new HDI users, such must be considered.

7.4 PROPOSED PROCESS TO BE INCORPORATED IN THE TRANSFORMATION PROCESS

Two key instruments should be used to address fears and concerns regarding risks associated with exposing liabilities and assets of irrigation boards when transformation occurs.

7.4.1 Instrument 1: Proposal to be sent by interim management committee

- 1) DWS/Minister gazette a notice to all irrigation boards indicating information that must be contained in the proposal to transform an irrigation board to a WUA and provide for a transitional period of less than 18 months between gazetting of the institution and election of a new MANCO.
- 2) The proposal must include the following:
 - a) Audited Annual Financial Statement at the time of submitting the proposal with an asset register
 - b) Indication of how outstanding debt, investment accounts and surplus cash will be dealt with before the proposed WUA is fully established via election of a new MANCO. The irrigation boards will be responsible for winding up outstanding issues at the affected institutions.
 - c) Indication of existing contracts and agreements, potential implications to the new WUA and how the interim management committee will oversee this.
- 3) After conclusion of all outstanding matters, the interim management committee must submit a report to DWS highlighting how the issues have been addressed and how

other issues will be addressed. Upon approval of the report, a General Meeting will be convened to elect a MANCO.

7.4.2 Instrument 2: Revised Constitution

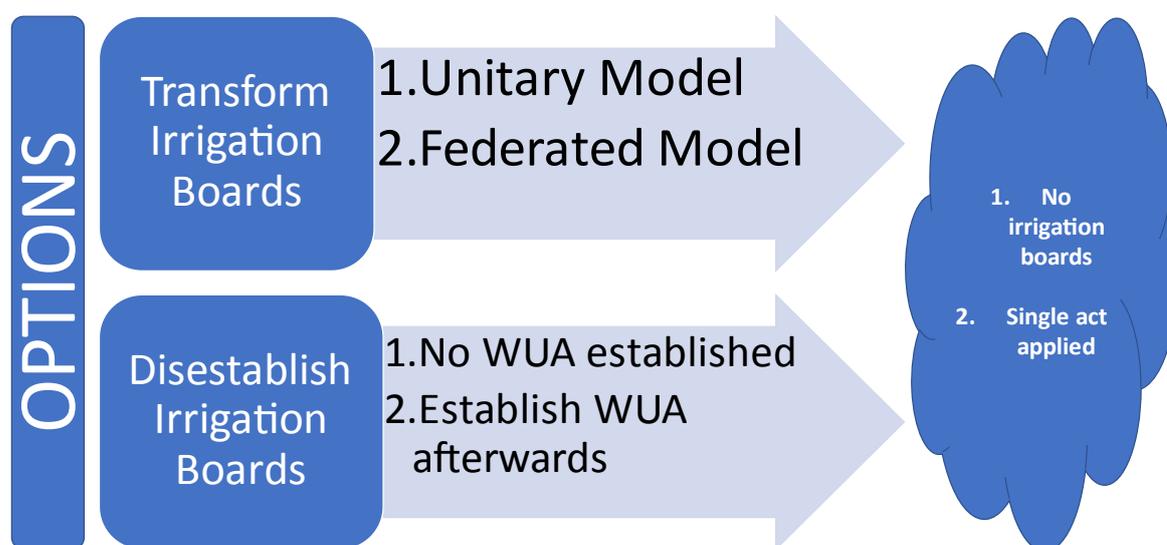
- 1) DWS will, by notice in a gazette, direct all irrigation boards to use a new Model WUA when submitting a proposal for transformation to a WUA.
- 2) The revised constitution will amongst others address rights, assets and liabilities during transformation of irrigation boards, including the following:
 - a) Establishment of sub-areas where such are necessary for management of different areas or schemes
 - b) Delegation of operation and maintenance of existing schemes to sub-areas through clear memorandum of agreements
 - c) Differentiated billing according to each area and each user's water usage profile
 - d) Loan arrangements must include personal surety by each water user who will benefit from the loan. ONLY those affected/benefitting from a loan must be held personally responsible for its repayment.

8 INSTITUTIONAL MODELS FOR MANAGING DIVERSE INTERESTS AND ASSETS

8.1 OVERVIEW

Transforming irrigation boards must consider suitable institutional models to manage properties and liabilities after their conversion to WUAs. Two options must be immediately considered – whether to undergo a transformation process and use the available options provided for by the 1998 National Water Act or to allow the Minister to disestablish the irrigation board, then consider how to address the properties and liabilities without transferring these to a WUA.

This is summarised in the figure below:



8.2 OPTION 1: TRANSFORMATION OF IRRIGATION BOARD(S) TO WUA

Model	Description	Applicability	Advantages	Disadvantages
Unitary Model	One WUA is established to manage a shared water resource and communal water works under one MANCO.	This model is suitable where <u>one irrigation board</u> is transformed, and its area of operation is not largely extended from the pre-transformation area of operation. In this case, the perceived or presumed risks of exposure of water works to “non-irrigation” users are minimal due to their limited numbers. An example is an irrigation board that was already operating within a whole sub-catchment and its transformation leads to an addition of few non-irrigation users (one municipality and few industrial users). Both the management of the resource and irrigation infrastructure are discussed in the general assembly and MANCO.	<ul style="list-style-type: none"> a) Continuity from the irrigation board to a WUA is much easier as there is limited contestation for influence in the institution especially where non-irrigation users allow irrigation to be the dominant focus b) No need to have sub-structures for elections and management – one MANCO, one bank account, shared facilities c) One Annual/Special General Meeting is held by the WUA to approve reports, plans and budgets and elect MANCO. d) MANCO accountable to one General Assembly e) Levy setting and collections done by one MANCO even where these may be differentiated accordance to usage of water works 	<ul style="list-style-type: none"> a) Domination of irrigation in elections of MANCO and operations of the WUA may discourage participation of non-irrigators or irrigators who are not accessing water from a communal system. b) Most WUA membership and MANCO composition may remain largely unchanged and a mirror of the old irrigation board
Model	Description	Applicability	Advantages	Disadvantages

<p>Federation Model</p>	<p>One WUA is established with sub-areas that are then mandated with localised functions such as operation and maintenance of water works and collection of levies from users. Each sub-area establishes its own sub-area management committee which is then represented at WUA MANCO proportionally. The WUA MANCO delegates certain functions such as management of water works, levy collection, and clearing of the water course to the sub-areas.</p>	<p>This model applies in one of the following settings:</p> <p>a) One irrigation board is transformed however the area of operation of the resulting WUA is significantly extended to the extent where the area of operation of the old irrigation board is a small part of the new area of operation leading to the participation of many users in the WUA. In this instance, the influence of the old irrigation board members is significantly reduced and the perceived risks of losing control over management of water works is deemed high.</p> <p>Or</p> <p>b) More than one irrigation board is transformed within a shared catchment and each of the irrigation boards has separate communal water works whose users express a strong aspiration to continue to manage the water works separately even though these are taken over by one MANCO for the entire WUA.</p>	<p>a) Continuation of execution of localised functions at sub-area level</p> <p>b) Separation of management of water works from management of shared water source/course</p> <p>c) Ring-fencing of management of assets and handling of liabilities to sub-areas</p> <p>d) Promotes integration through amalgamation of irrigation boards and reduces the number of institutions reporting to the Minister/CMA (achieves the rationalisation principle)</p>	<p>e) Continuation of separation along old irrigation board boundaries</p> <p>f) Separation of irrigation users from other users</p> <p>g) Weakening of the central structure – MANCO and its powers over sub-areas</p> <p>h) Increases the perceived risks associated with transfer of assets and liabilities from a number of irrigation boards to one WUA</p> <p>i) Sub-area committees remain committees of MANCO and not autonomous legal entities which limits their powers to act as body corporates</p>
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8.3 OPTION TWO: DISESTABLISH IRRIGATION BOARDS

8.3.1 Disestablishment of irrigation boards and no establishment of WUAs

8.3.1.1 Description

Minister follows the process determined by the 1956 Act to disestablish and dispose properties and rights. This should be considered where prospects of succeeding with receiving compliant proposals from existing irrigation boards are limited and there are few risks related to the disestablishment such as:

- Irrigation board does not manage government water schemes
- Irrigation board does not collect water use charges on behalf of DWS
- Irrigation board does not undertake delegated water resource management functions
- There is a CMA established in the water management area to take over the functions related to collection of water levies and delegated water resource management

8.3.1.2 Advantages

- Ends the continuation of irrigation boards especially those that are not willing to work with government in terms of the 1998 National Water Act

8.3.1.3 Disadvantages

- May create a vacuum for management of irrigation water works

8.3.2 Model Four: Disestablishment of Irrigation Boards, and establishment of WUA

8.3.2.1 Description

An irrigation board or several irrigation boards are disestablished by means of the 1956 Water Act. Parallel to this or after disestablishment, a CMA or DWS facilitates establishment of a WUA that is not based on transformation of an irrigation board. The WUA is established primarily to undertake non-waterworks functions within an area determined by hydrological boundaries. This option must be considered where proposals for amalgamation are rejected, and the timeline (determined by the Minister) for conclusion of transformation of irrigation boards cannot be met.

In addition:

- There is a government water scheme and there is no capacity within the state to manage the scheme
- There are significant activities that require management and there is no CMA to manage this effectively.

8.3.2.2 Advantages

- Resistant or non-cooperative irrigation boards are disestablished as local institutions within the timeline set by Minister
- A new institution without the baggage of irrigation board(s) is established through broad stakeholder consultation
- All users become members and are treated equally

8.3.2.3 Disadvantages

- Loss of institutional foundation
- May take time to establish legitimacy and executive authority

9 COMPILING A COMPLIANT AREA-SPECIFIC CONSTITUTION

9.1 NAMING OF A WUA

The transformation process provides an opportunity to revisit the suitability of the name of the present institution. Some of the matters to be considered are whether the present name:

- a) is offensive towards members of the South African community;
- b) is descriptive in terms of the area within which it operates or the source or sources being or to be used;
- c) is not distinctive enough due to possible confusion with another institution with a similar or almost similar name; or
- d) is still appropriate in the light of a possible amalgamation with other institutions or an extension of the area of supply to include other water users.

9.2 OBJECTIVES OF THE WATER USER ASSOCIATION

Objectives of the Association describe the reason for its existence. Focus should be on developmental objectives such as the following:

Examples of developmental objectives

- a) *Organise all water users within our area of operation to collectively manage shared water resources for diverse uses in an effective and efficient manner*
- b) *Ensure that persons use water in accordance with water use authorisations as provided for in section 22(1) of the Act*
- c) *Actively support government efforts in ensuring equitable access to water for diverse needs especially ensuring reform in water allocation*
- d) *Where necessary, develop and manage water works to convey and control water distribution from the shared water course to users*

9.3 DETERMINATION OF AREA OF OPERATION

The Department of Water and Sanitation will work closely with the affected Catchment Management Agency to determine the most suitable area of operation of the WUA using hydraulic boundaries. The description used in determining the WUA's area of operation must be inserted in the constitution specifically highlighting the following:

- The water source to be overseen by the WUA
- Water management area
- Province (if area falls entirely within one province)

Example

The area of operation of the Association includes all properties and water use activities for which persons are entitled to water in accordance with Section 22(1) of the Act described as all water resources within the catchment area of the "A" and "B" Rivers downstream of the

“x” Dam which the Department of Water and Sanitation may require the Association to control, which are situated in the “c” water management area in the “d” Province.”

9.4 PRINCIPAL FUNCTIONS OF THE ASSOCIATION

It is proposed that no changes be applied to the list provided for in the revised Model Constitution in regard to principal functions of the association. An important aspect to remember, is that the listing of functions in the constitution is nothing but the setting of objectives and does not in itself vest those powers and duties in the association on establishment and approval of the constitution.

9.5 ANCILLARY FUNCTIONS OF THE ASSOCIATION

Although two options are given under item 5(2) of the constitution, the Department requires that these options be included in the constitution as some of the other functions that the association may perform if an association has capacity to do so, and can recover the financial costs for undertaking the functions. These functions require contractual agreement between the association and the person or institution under whose behalf these are undertaken.

9.6 FOUNDING MEMBERS

The founding members are the present elected members of the board(s) undergoing transformation. Please note that this requires a minuted resolution by the members to the effect that the elected board members have been authorised to take the process forward. This could be obtained when consultation with the members takes place and the draft constitution is presented for discussion and further inputs by the members.

Also bear in mind that where an amalgamation of different boards is proposed, it would be possible to appoint a representative committee for that purpose who could be regarded as the founding members. It is also possible to allow the elected board members of the respective boards (regardless of the number) to take the matter forward. The draft constitution must reflect the chosen option. This becomes an interim management committee of the proposed association.

9.7 ACHIEVING MEMBERSHIP DIVERSITY AND INCLUSIVITY

For the transformation process the constitution must make the association accessible to all water users of the water resources concerned and protect the interests of the present members of the institution(s) to be transformed by allowing for compulsory membership of the association.

9.8 CHOOSING A VOTING MODEL

It is proposed that the constitution must provide for a balanced outcome of the voting by ensuring the following:

- One vote per authorisation on matters presented at AGM
- Voting per volume of water in the election of MANCO per water use group (internal elections)

The constitution must include an undertaking by the Association under leadership of its MANCO to ensure that voting is not used to preserve domination of one water use group by another and to limit participation of small users in leadership structures of the association.

9.9 LIABILITY OF MEMBERS

In addressing the different interests of differing water use groups, the constitution must provide for protection of each individual member against defaulting members by limiting the members liability to the amount the member owes the association.

9.10 QUALIFICATION TO VOTE AND TO BE VOTED AS A MEMBER OF MANCO

The revised model constitution provides for only members who do not owe their levies for over 180 days to qualify to vote at the general meetings and to be voted as members of the MANCO.

9.11 MANCO COMPOSITION MODELS

The association's proposed constitution must outline how its Management Committee will be constituted to ensure fair representation of different water user groups and different sub-areas where such are established.

9.12 RAISING OF LOANS

The constitution must outline how the MANCO will engage members when loans are considered. In respect of instances where the association is divided into sub-areas, the constitution must outline measures of ring-fencing the loans to specific areas and ensuring that only affected users pay for the loan and make undertakings for possible defaults without affecting the financial viability of the entire WUA membership.

9.13 ANNUAL MEMBERSHIP FEES

The constitution must outline how membership fees will be determined considering volume of water use authorised per member, access to communal water works, and the administrative overhead costs of the association.

9.14 ANNUAL REPORT

Schedule 4 of the 1998 National Water Act requires each WUA to compile an annual report and send it to DWS to submit to the Secretary of Parliament. An annual report must be compiled within three months after the end of the association's financial year. The report must include activities undertaken during the year, budget performance, staff performance, state of the irrigation system(s) and the chairperson's report.

9.15 GENERAL MEETINGS OF MEMBERS

This section must outline how the WUA will convene and run general meetings of the association.

9.16 DISPUTE RESOLUTION

It is the intention of the Act that WUAs retain self-governance and this includes resolving disputes internally before engaging external parties.

9.17 WINDING UP

The wording proposed should not be changed given that this aligns with the provisions of the 1998 NWA regarding the Minister's powers to disestablish an association and distribute its properties.

10 ANNEXURES

10.1 PROPOSAL TEMPLATE

10.2 CHECKLIST FOR EVALUATION OF PROPOSALS

10.3 REVISED MODEL CONSTITUTION

10.4 MONITORING TOOL

ANNEXURE 2.1: TOOL 1 – PRO FORMA FOR TRANSFORMATION OF IRRIGATION BOARD

**STRENGTHENING THE KNOWLEDGE BASE AND CAPACITY TO
SUPPORT THE TRANSFORMATION OF IRRIGATION BOARDS
TO WATER USER ASSOCIATIONS**

ANNEXURE 2.1

**TOOL 1: PRO FORMA FOR TRANSFORMATION OF IRRIGATION BOARD
PROPOSAL
FOR
THE DIRECTORATE
WATER RESOURCE MANAGEMENT INSTITUTIONS
DEPARTMENT OF WATER AND SANITATION**

Version: Revision 3.5

Boloka Development
1560 Whitby Crescent
Fourways, 2055

Project No. **C2020/2021-00636**

24TH FEBRUARY 2022

Regional Director
Department of Water and Sanitation
PO Box _____

Sir/Madam

PROPOSED TRANSFORMATION OF (SPECIFY THE NAME) BOARD(S) INTO A WATER USER ASSOCIATION

1. PURPOSE OF COMMUNICATION

In terms of the provisions of Section 98(4) of the National Water Act, 1998 (Act 36 of 1998) existing irrigation boards must prepare and submit to the Minister proposals for the transformation thereof into Water User Associations in accordance with the provisions of Section 91 of the Act. The purpose of this communication is to obtain the necessary approval to effect such transformation in respect of the (specify the name) board and to address certain appurtenant matters.

2. AREA OF OPERATION

Section 92 of the Act empowers the Minister to determine the area of operation of a Water User Association. We have followed the area of operation determined by the Department in consultation with the _____ Catchment Management Agency). The area of operation has been rationalisation using hydrological boundaries to also include users/properties using water from sources not affected by the waterworks presently operated by the board. Certain authorised water users, whose details are furnished in Annexure A hereof, have been identified and invited to become members of the new association. This follows the decision to include all authorised users in the proposed area as automatic members of the proposed association.

3. SECTION 91 OF THE ACT

In respect of the requirements contained in section 91 of the Act, I can advise you as follows in regard to the proposal for the establishment of a Water User Association:

- a) The reason for the proposal is the requirement contained in section 98(4) of the Act that proposals for transformation of individual boards must be prepared and submitted to the Minister.
- b) The proposed name and area of operation of the Association are respectively contained in items 1 and 3 of the attached proposed constitution (Annexure B).
- c) The proposed activities of the Association are set out in items 3, 4 and 5 of Annexure B. (Proposed constitution).
- d) The Association will be responsible for the continued operation and management of (description of works).
- e) The water use licences and other authorisations relevant to this application, represent permissible water use referred to in section 22(1)(a)(ii) of the Act, i.e. the continuation of existing lawful use as reflected in the Board(s)'s latest list of scheduled properties of which particulars appear in Annexure to the attached proposed constitution. In the case of private persons now to be included particulars of their water use and the authorisations are set out in Annexure A.
- f) The Association's proposed constitution appears in the attached Annexure B. In no respect has the model constitution been principally departed from. However, the following matters added to the model constitution require clarification:

- i. In item 2.1 reference is made to the amended Schedule 4 as well as the fact that the rest of the Act, and not only Chapter 8 thereof, is applicable.
- ii. In item 3.1 a description of the area of operation of the Association has been added to the objectives due to the model constitution being silent on this subject.
- iii. The function in item 4.1(j) has been amplified to avoid the impression that only the Association will be responsible for the erection of devices.
- iv. Item 6.1. of the model constitution is only applicable to newly established water user associations and does not apply to the transformation of an existing irrigation board into a water user association. The wording had to be amended appropriately. Due to the fact that the area of operation is divided into sub-areas, the text of the model constitution also had to be amended throughout to, where appropriate, refer to "Management Committee" instead of "Committee" to promote clarity on whether the reference to "Committee" applies to the management committee or the committee for the sub-area.
- v. Item 7.1. has been amended to provide for compulsory membership of all users with an authorisation to use water within the association's proposed area of operation.
- vi. Item 7.2 has amended to remove the need to apply for membership of the association.
- vii. Items 7.3, 7.4 and 7.5 have been removed to on the basis that membership is now compulsory.
- viii. A new Item 7.3 has been added indicating that the association will allow a new member if directed so by the Minister.
- ix. A new Item 7.4 has been added to provide for succession of membership linked to succession in title of a property with water use authorisation.
- x. The wording of item 9(2) of the model constitution has been changed to fit in with the requirements for membership contained in item 7 of the proposed constitution.
- xi. Item 10 of the model constitution has somewhat been amended to address a member's obligation in terms of section 60 of the Act and also to address the issue of servitudinal rights.
- xii. Items 11 and 12 of the model constitution have been amended to provide for a limited disqualification in respect of participation in elections in the event of default of payment by members and also to provide for a member to participate in the processes within the area where the members' water rights are exercised even though the member may not be residing in the area.
- xiii. In item 13 of the proposed constitution the options given in the model are followed, except that provision is also made for nominated members in order to ensure representation in the Management Committee for water users whose names do not appear on the Association's voters' list. Furthermore, the constitution also departs from the model in order to provide for the functioning of Management Committees on a sub-area basis.
- xiv. Due to the nature of a voters' list and the application of an election process for the appointment of the Management Committee, it will not always be possible to meet the requirements of section 2 of the Act with regard to appropriate community, racial and gender representation. Provision has therefore been made in item 13.6 of the proposed constitution for a declaration of intent to which the Association will be committed. Item 13.7 provides for a mechanism whereby gender representation can be ensured should the election or nomination process not yield the desired results.
- xv. The wording of item 15.2 has been changed to reflect the situation in respect of sub-areas.

- xvi. Item 15.6 has been broadened to specifically refer to amendments required due to new water use authorisations being issued.
 - xvii. Item 18.1 has been added to provide for budgetary arrangements where sub-areas have been established.
 - xviii. For practical reasons additional powers for the collection of outstanding debts are given to the Association in item 18.5 of the proposed constitution.
 - xix. Provision is made in item 21 of the proposed constitution for the amendment of the constitution because the model constitution contains no provision for this.
- g) A list of the proposed members of the Association is appended as Annexure to the attached proposed constitution.

4. PUBLIC CONSULTATION

- (a) The following race groups, women and disabled persons were involved in the affairs of the irrigation board prior to the transformation thereof into a WUA:

(provide all relevant information)
- (b) The following measures were taken to identify all stakeholders within the area of operation:
(name measures)
- (c) The following stakeholders were contacted: (list stakeholders)
- (d) The following measures were taken to inform the following groups of the concept of a WUA:
(indicate measures for each group)
 - (i) Existing small-scale irrigation by historically disadvantaged individuals (HDIs)
 - (ii) Potential agricultural water use by HDIs
 - (iii) Productive water use by the poor
 - (iv) Traditional leaders/authorities
 - (v) Local Government
 - (vi) Civil society
 - (vii) Uneducated persons
 - (viii) Farm workers
 - (ix) Women
 - (x) Disabled persons
- (e) The following representatives of Commercial Agriculture were informed of the transformation:
(name entities).
- (h) Consultation in developing the proposal was done by way of:
 - (i) Internal meetings with all existing members of the (specify the name) Board;
 - (ii) Meetings with all other existing users of water in the area who were interested in becoming members of the association; and

- (iii) Public meeting(s) with all possible interested parties. Copies of the notice of the meeting(s), the agenda(s) and the minutes are attached hereto as **Annexure E** as well as copies of the notices in local newspapers, which appeared on the dates, indicated thereon. In addition, the radio media were used to make the meeting known and pamphlets were widely distributed in the area and were displayed at usual places of gathering.
- (i) An effort was also made to contact the unlettered water users to inform them of the concept of water user associations to get them interested in participating in the activities of the Association (explain what this effort entailed).
- (j) A total number of (number) new emerging farmers have been established in the area of operation.
- (k) The following efforts have been made to establish new emerging farmers in the area of operation: (name the efforts)
- (l) The following measures were put in place to build capacity within the marginalised groups: (name the measures)
- (m) The public consultation process was completed for purposes of transformation of the irrigation board into a WUA. However, public consultation to inform all new water users of the WUA will continue on an ongoing basis.

OR

The following public consultation processes have not yet been completed: (identify outstanding issues)

- (n) The following plan of action has been put in place to address the outstanding issues in (m) above: (indicate clearly defined indicators/goals)
- (o) The result of the consultative process was (indicate level of awareness during meetings)

5. TRANSFORMATION

5.1 The race, gender and disability targets for the first election of the management committee are indicated in the following table:

Occupational Categories	MALE		FEMALE		Disabled	TOTAL
	Black	White	Black	White		
Irrigation						
Other, e.g. Industry, Mines, Forestry, Recreation, etc.						
Individual water users, e.g. farm workers, household users, etc.						
Small farmers						
Local Government						
TOTAL						

- (a) The following entities have been requested to take race, gender and disability into consideration when nominating representatives to serve on the management committee: (name entities)
- (b) The DWS Regional Office will be invited to send a representative to attend the first election meeting as an observer.
- (c) The following demographic data, depicting population groups and gender for the area of operation, were obtained from Statistics SA, Census 2011/2021 and are as follows:

CATEGORY	Male	Female	Total
Black African			
Coloured			
Asian			
White			
Total			

NOTE: This information can be obtained from www.statssa.gov.za

5.2 The category representation on the management committee is as follows:

Category	Number of members on MC
Irrigators	
Other, e.g. Industry, Mines, Forestry, Recreation, etc. (Indicate different categories on separate lines)	
Small Farmers	
Individual Water Users	
Local Government	

- (a) Equal representation for the categories small farmers, individual water users and local government has been assured as far as possible.

NOTE: Please refer to the table in item 3.1 of the Addendum to the Guidelines for the minimum requirements. Should the number of members on the management committee, excluding small farmers, individual water users and Local Government, be five or less, only 2 categories have to be created for the latter mentioned groups. However, a motivation must be provided for the one that has been excluded, e.g. the category for small farmers has been excluded because there are no small farmers in the area of operation at present. However, should small farmers be established in the future, they would either be accommodated in the category for individual water users or a position will be created on the management committee to provide for their representation.

- (b) The category for individual water users includes (indicate number, e.g. one/two) farm workers.
 (c) Local Government is represented by (indicate number, e.g. one/two) persons from (indicate Municipality).

OR

The (name) Municipality indicated in writing that it has no interest in representation on the management committee. A copy of a letter to this effect is attached.

- (d) Invitations for nominations for representatives in the relevant categories on the management committee included a request that gender and disability must be taken into consideration

6. SECTION 93 OF THE ACT

In regard to section 93 of the Act in connection with the minimum aspects to be addressed in the constitution, I can inform you as follows:

- a) Details of the principal and ancillary functions of the Association appear respectively in items 4 and 5 of the proposed constitution (the proposal).
 b) The procedure and requirements for admitting new members to the Association has been removed.

- c) The voting powers of members are contained in Item 15 of the proposal.
- d) The procedures for electing the Management Committee of the Association appear in Item 13 of the proposal, but provision is also made for the appointment of nominated members.
- e) Procedural requirements for the appointment of employees of the Association are contained in Item 16 of the proposal.
- f) The loan aspects are addressed in Item 17 of the proposal.
- g) The financial obligations of members towards the Association are dealt with in both Items 10.1 and 18.0 of the proposal.

7. SCHEDULE 4

- a) Section 94(2) of the Act provides that Schedule 4 to the Act (Management and Planning of Water Management Institutions) applies to a water user association, except to the extent that the Minister may otherwise direct. In order to avoid confusion in terminology it would be appreciated if you would request the Minister to approve that in the case of this proposed Association all references in Schedule 4 to "board" be substituted by a reference to "Management Committee".
- b) Item 21(3) of Schedule 4 requires a WUA to submit a business plan to the Minister on an annual basis. However, the (specify the name) WUA is a relatively small entity operating in a very localised area. No Government infrastructure is being operated or maintained and no Departmental staff will be seconded or transferred to the WUA. A request is therefore submitted that the (specify the name) WUA be permitted to submit its business plan to the Minister every three (3) years.

NOTE: *This extenuation will not apply to WUAs operating government water schemes.*

- c) The (specify the name) WUA has opted, in item 19 of its constitution, to submit its Annual Report to its Management Committee and not to the Minister. Kindly request the Minister to exempt the (specify the name) WUA from item 33(1) to (7), excluding sub-item 33(6) of Schedule 4 of the Act.

8. CHIEF EXECUTIVE OFFICER

As you are aware, the (specify the name) Board already utilises the services of a Chief Executive Officer and this position will be retained after transformation of the Board into a Water User Association. I attach hereto as Annexure D particulars of the incumbent's remuneration package. Will you please, in accordance with item 3(7) of Schedule 4 to the Act, arrange for this to be submitted to the Minister of Public Service and Administration and to the Minister of Water and Sanitation for approval.

OR, if remuneration package will be more than R300 000 per annum, insert the following request:

I attach hereto as Annexure F particulars of the incumbent's remuneration package. Will you please, in accordance with item 3(7) of Schedule 4 to the Act, arrange for this to be submitted to the Minister of Public Service and Administration and to the Minister of Water Affairs and Forestry for approval.

9. TRANSITIONAL PERIOD

Section 98(7) of the Act provides that every property, right and liability of the irrigation board(s) becomes a property, right and liability of the relevant water user association after gazetting of the board(s) to establish a water user association. Noting that this proposal involves (amalgamation of _____(names) irrigation boards to form one WUA or extension of boundaries beyond the current footprint/coverage of the (name) Irrigation Board) which has implications on existing arrangements for management of water works currently managed by the affected irrigation board(s), the Interim Management Committee requests a transitional period not exceeding 18 months from the date this

proposal is approved, and before the WUA is gazetted. This transitional period will be utilised to make suitable arrangements for transfer of rights, assets and liabilities by completing the following:

- i. Completing a due diligence of all rights, assets and liabilities to be affected by the disestablishment of the irrigation board(s) including implications of existing contracts and agreements.
- ii. Ensuring that all outstanding levies are collected and paid to the Department and recording any outstanding payments
- iii. Ensuring that the Annual Financial Statements are completed and submitted to the interim management committee to ensure fairness and accountability before gazetting of the WUA.
- iv. Ensuring that outstanding payments accruing from loans are correctly recorded and allocated to current members of the affect irrigation board(s) and that proper arrangements are made for settlement of the debts.
- v. Ringfencing all assets and liabilities to proposed sub-areas and members to ensure exclusive use of assets and personal liability for debts that cannot be settled before the WUA is gazetted.

Yours Faithfully

CHAIRPERSON OF INTERIM MANAGEMENT COMMITTEE

ANNEXURE 2.2: TOOL 2 – CHECKLIST TO EVALUATE PROPOSALS FOR TRANSFORMATION OF IRRIGATION BOARDS TO WATER USER ASSOCIATIONS FROM 2020 AND BEYOND

**STRENGTHENING THE KNOWLEDGE BASE AND
CAPACITY TO SUPPORT THE TRANSFORMATION OF
IRRIGATION BOARDS TO WATER USER ASSOCIATIONS**

**ANNEXURE 2.2
CHECKLIST TO EVALUATE PROPOSALS FOR TRANSFORMATION
OF IRRIGATION BOARDS TO WATER USER ASSOCIATIONS FROM
2020 AND BEYOND**

**FOR
THE DIRECTORATE
WATER RESOURCE MANAGEMENT INSTITUTIONS
DEPARTMENT OF WATER AND SANITATION**

VERSION: REVISION 3.5

**Boloka Development
1560 Whitby Crescent
Fourways, 2055**

Project No. C2020/2021-00636

24TH FEBRUARY 2022

Strengthening the knowledge base and capacity to support the transformation of Irrigation Boards to Water User Associations

Notes on Criteria and Process

1. The criteria indicated below is to assess the extent to which the transformation principles have been achieved or proposed by the Irrigation Boards (IBs).
2. Each proposal will be assessed based on its merits and each criterion will be responded to by means of a Yes/No with comments where necessary.
3. The criteria will also evaluate public participation process amongst the users based on the participation checklist as reported in the proposals.
4. Each proposal will be recommended for (1) approval, (2) conditionally recommended or (3) not recommended based on the evaluation.
5. Each proposal will be accompanied by a motivation approved by the Provincial Head or a Chief Executive of a Catchment Management Agency recommending the approval or disapproval of the proposals.

1.	DETAILS OF THE PROPOSED INSTITUTION			
1.1.	Name of WUA			
1.2.	Province			
1.3.	Water Management Area			
1.4.	Affected Local and District Municipalities <i>(Indicate if the affected local and district municipalities are Water Services Authorities and if they abstract water for domestic supply from the same source as the proposed WUA)</i>			
2.	AREA OF OPERATION	YES	NO	COMMENT
2.1.	Does the proposal clearly describe the area of operation of the proposed WUA?			
2.2.	Is the area of operation described using hydrological boundaries of shared water resources and sources?			
2.3.	Is the proposed area based on already delineated quaternary/ies?			
2.4.	Was the DWS provincial office and/or the CMA involved in determining the proposed area of operation?			
2.5.	Is there a map attached showing the proposed area of operation clearly?			
2.6.	Does the proposal involve amalgamation of Irrigation Boards to form one WUA?			
2.7.	If yes, is there a proposal for establishment of sub-areas?			
2.8.	If yes, are these clearly described and shown on a map attached to the proposal?			
2.9.	Does the proposal indicate if the proposed area of operation includes areas with users from Historical Disadvantaged Individuals (HDIs) backgrounds?			
3.	DRAFT CONSTITUTION FOR THE PROPOSED WUA	YES	NO	COMMENT
3.1.	Model Constitution: Is the draft Constitution based on the revised Model Constitution issued by the Department with all recommended amendments?			
3.2.	Name: Is the proposed name of the WUA appropriate? <ul style="list-style-type: none"> • is it offensive towards members of the South African community? • is it descriptive in terms of the area within which the proposed WUA operates or the source or sources being or to be used? • is it distinctive enough not to cause confusion with another institution with a similar or almost similar name? and • is it still appropriate in the light of a possible amalgamation with other institutions or an extension of the area of supply to include other water users 			
3.3.	Objectives: Are the proposed objectives of the WUA clear, practical and within the mandate of a Water User Association as defined by the Act?			
3.4.	Principal Functions: Are the proposed principal functions aligned to envisaged functions of a WUA as per the revised Model Constitution?			
3.5.	Ancillary Functions: Does the constitution include the proposed ancillary functions as per the model constitution?			
3.6.	Founding Members: Is there a minuted resolution authorizing the listed founding members to develop and submit the proposal?			

Strengthening the knowledge base and capacity to support the transformation of Irrigation Boards to Water User Associations

3.7.	Membership: Does the constitution allow for compulsory membership of ALL authorized users within the proposed area of operation			
3.8.	Voting Rights: Does the draft Constitution provide for one vote per authorized user?			
3.9.	Management Committee Election: Are MANCO members elected per sub-area?			
3.10.	MANCO: Is there provision in the constitution for additional members from:			
3.10.1.	• Municipalities			
3.10.2.	• Industry/Mines/Power Generation			
3.10.3.	• Non-consumptive users (forestry, recreation, environment)			
3.10.4.	• Small-scale Irrigators			
3.11.	• Schedule 1 Users			
3.12.	• Interested and Affected Parties who have no water use authorisations but are affected by water use activities?			
4.	REPRESENTATION OF HDIs – MANCO			
4.1.	Current Interim MANCO established for purposes of developing and submitting proposal	NUMBER		COMMENT
4.1.1.	• Total number of interim MANCO members			
4.1.2.	• Total number of black interim MANCO members			
4.1.3.	• Total number of female interim MANCO members			
4.1.4.	• Total number of disabled interim MANCO members			
4.1.5.	Is the interim MANCO representative of the demographics of affected authorized users in the proposed area of operation?	YES	NO	
4.2.	Targeted composition of elected MANCO after first elections	NUMBER		COMMENT
4.2.1.	• Proposed number of elected MANCO members			
4.2.2.	• Targeted number of elected black MANCO members			
4.2.3.	• Targeted number of elected female MANCO members			
4.2.4.	• Target number of elected disabled MANCO members			
4.2.5.	• Targeted number of additional MANCO members			
4.2.6.	• Targeted number of additional black MANCO members			
4.2.7.	• Targeted number of additional female MANCO members			
4.2.8.	Is the targeted MANCO representative of the demographics of authorized users in the proposed area of operation?	YES	NO	
5.	EXISTING RIGHTS, ASSETS AND LIABILITIES		YES	NO
5.1.	Does the proposal describe in detail all irrigation water works and associated moveable and moveable assets owned by the affected irrigation board(s)?			
5.2.	Do(es) the affected irrigation board(s) operate and maintain any government water scheme(s)?			
5.3.	Does the constitution propose the establishment of sub-areas within the proposed WUA?			
5.4.	Does the proposal detail any water use authorisations held by the affected irrigation board(s)?			
5.5.	Does the proposal provide information on any significant financial assets and debts currently in the books of the affected irrigation board(s)?			
5.6.	Does the proposal provide measures to be undertaken to address any outstanding debts before or after gazetting of the WUA?			
5.7.	Are these proposed measures agreed by current members of the affected irrigation board(s)?			
5.8.	Is/Are there meeting resolution(s) confirming that the measures have been agreed by a majority of members of the affected board(s)?			

Strengthening the knowledge base and capacity to support the transformation of Irrigation Boards to Water User Associations

5.9.	Are audited annual financial statements of all affected institutions attached to the proposal indicating current financial status of each affected irrigation board as at the date of submission of the proposal including audited asset register(s)?			
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6.	PUBLIC PARTICIPATION	YES	NO	COMMENT
6.1.	Is a detailed public participation report attached as annexure to the proposal?			
6.2.	Does the public participation report contain the following portfolio of evidence?			
6.2.1.	• List of stakeholders consulted during public participation?			
6.2.2.	• Excerpts of notices inviting stakeholders to meetings or to submit comments?			
6.2.3.	• Minutes and attendance registers of all public meetings?			
6.3.	Does the public participation report detail the following?			
6.3.1.	• Methods used to invite users/stakeholders to meetings			
6.3.2.	• Methods used to undertake consultation			
6.3.3.	• List of stakeholders consulted using methods suitable for each			
6.3.4.	• Reasons forwarded by stakeholders/users who did not respond to invitations or did not agree to form part of the WUA			
6.3.5.	• Additional efforts to build participatory capacity of users without history of local water resource management to understand the concept of WUA and the need to participate in it			
6.3.6.	• Comments received from the public participation process and how concerns and inputs were incorporated in the proposal			
6.3.7.	• Additional efforts to reach marginalized users/stakeholders such as farm communities, small-holder irrigation farmers and communal property associations			
6.3.8.	• Plan to continue engaging ALL authorized users to ensure that they register as members of the proposed WUA.			
6.4.	Evaluation of adequacy of public participation based on description of proposed area of operation			
6.4.1.	• Was/were the dominant language(s) used to invite and consult users/stakeholders during public participation?			
6.4.2.	• Were all affected users identified (with the assistance of DWS/CMA) to include in invitation lists?			
6.4.3.	• Was a reasonable notice period (at least 14 days) given for all public participation meetings?			
6.5.	Methods used to inform affected and interested parties			
6.5.1.	• Phone calls			
6.5.2.	• Email/letter invitations			
6.5.3.	• Regional/Community radio notices			
6.5.4.	• Newspaper notices			
6.5.5.	• Notices at public facilities			
6.5.6.	• Distribution of pamphlets and brochures			

Strengthening the knowledge base and capacity to support the transformation of Irrigation Boards to Water User Associations

6.5.7.	• Announcements at other community meetings			
6.5.8.	• Other (describe)			
6.6.	Public participation methods used			
6.6.1.	• Public meetings			
6.6.2.	• Bilateral meetings			
6.6.3.	• Focus group meetings			
6.7.	Stakeholders engaged within proposed area of operation			
6.7.1.	• Members of existing irrigation board(s)			
6.7.2.	• Individual water users sharing same water resource			
6.7.3.	• Government departments			
6.7.4.	• Municipalities abstracting from same resource			
6.7.5.	• Industries (mining, power generation, manufacturing, etc.)			
6.7.6.	• Community-based and commercial forestry			
6.7.7.	• Recreational users sharing same resource			
6.7.8.	• Environmental organisations			
6.7.9.	• Hospitality and tourism facilities			
6.7.10.	• Communal Property Associations (with authorisations)			
6.7.11.	• Emerging commercial farmers (with authorisations)			
6.7.12.	• Small-holder irrigation farmers within area			
6.7.13.	• Civil society organisations			
6.7.14.	• Farmers' Unions			
6.7.15.	• Communities using water from the irrigation system			

ANNEXURE 2.3: TOOL 3 – PROPOSED REVISED SAMPLE CONSTITUTION FOR A WUA

**STRENGTHENING THE KNOWLEDGE BASE AND CAPACITY TO
SUPPORT THE TRANSFORMATION OF IRRIGATION BOARDS TO
WATER USER ASSOCIATIONS**

**ANNEXURE 2.3
TOOL 3 – PROPOSED REVISED SAMPLE CONSTITUTION FOR A WUA**

**FOR
THE DIRECTORATE
WATER RESOURCE MANAGEMENT INSTITUTIONS
DEPARTMENT OF WATER AND SANITATION**

VERSION: REVISION 3.8

**Boloka Development
1560 Whitby Crescent
Fourways, 2055**

Project No. C2020/2021-00636

24TH FEBRUARY 2022

CONSTITUTION OF THE



WATER USER ASSOCIATION

1. NAME OF ASSOCIATION

1.1. The name of the Association is the _____ Water User Association (hereinafter referred to as "the Association").

2. APPLICATION OF THE NATIONAL WATER ACT OF 1998 TO THE CONSTITUTION

2.1. This constitution is subject to the provisions of the National Water Act, 1998 (Act 36 of 1998), hereafter referred to as the Act, and in particular Chapter 8 and Schedule 4 thereof, which appear as Annexure 1 to this Constitution.

3. OBJECTIVES AND AREA OF OPERATION OF THE ASSOCIATION

3.1. The objectives of the Association are _____ (briefly describe the reasons for the existence of the association).

3.2. The area of operation of the Association is _____

Use hydrological references – river, dam, quaternary number and Water Management Area) as determined by the Department of Water and Sanitation or the relevant CMA under whose jurisdiction the WUA operates in terms of the newly defined Water Management Areas)

manage shared water resources for the benefit of diverse uses in an effective and efficient manner

- b) By means of waterworks under control of the association, make water available to persons lawfully entitled to the use thereof in terms of section 22(1) of the Act;*
- c) To monitor and control the use of water from the "x" river, including by way of communally owned waterworks*
- d) To ensure that persons use water in accordance with water use authorisations as provided for in sections 21 and 22 of the Act."*
- e) To fund, plan, design, develop, operate and maintain water works under WUA control to meet the water use requirements of all users in our area of operation and*
- f) To actively support government's efforts in ensuring equitable access to water for diverse needs and specifically identifying and promoting opportunities for reform in water allocation*

4. PRINCIPAL FUNCTIONS OF THE ASSOCIATION

- 4.1. The principal functions to be performed by the Association in its area of operation are:
- 4.1.1. To prevent water from any water resource being wasted.
 - 4.1.2. To protect water resources and waterworks.
 - 4.1.3. To prevent any unlawful water use.
 - 4.1.4. To remove or arrange to remove any obstruction unlawfully placed in a watercourse or waterwork.
 - 4.1.5. To prevent any unlawful act likely to reduce the quality of water in any water resource.
 - 4.1.6. To exercise general supervision over water resources and waterworks.
 - 4.1.7. To regulate the flow of any watercourse or waterwork by
 - clearing its channel;
 - reducing the risk of damage to the land in the event of floods;
 - changing a watercourse back to its previous course where it has been altered through natural causes.
 - 4.1.8. To investigate and record

- the quantity of water at different levels of flow in a watercourse or waterwork;
- the times when; and
- the places where water may be used by any person entitled to use water from a water resource or waterwork.

4.1.9. To construct, purchase or otherwise acquire, control, operate and maintain waterworks considered to be necessary for –

- draining land; and
- supplying water to land for irrigation or other purposes.

4.1.10. To supervise and regulate the distribution and use of water from a water resource according to the relevant water use entitlements, by erecting and maintaining devices, or requiring members to erect and maintain such devices at their own expense, for –

- measuring and dividing; or
- controlling the diversion of the flow of water.

4.1.11. To suspend or reduce the distribution of water from a waterwork and/or water resource under its control in so far as it is needed for the execution of any of the functions or for reasons required for the proper operation and protection of the waterwork or resource.

5. ANCILLARY FUNCTIONS OF THE ASSOCIATION

5.1. The Association may perform functions other than its principal functions only if it is not likely:

- 5.1.1. to limit the Association's capacity to perform its principal functions; and
- 5.1.2. to be to the financial prejudice of itself or its members.

5.2. Other functions of the Association may include:

- 5.2.1. providing management services, training and other support services to –
 - water services institutions: and
 - rural communities

5.2.2. providing catchment management services to or on behalf of responsible authorities.

6. FOUNDING MEMBERS

6.1. (The founding members of the Association are the present elected members of the _____ Board(s), as set out in Annexure 2 of the constitution, which Board(s) is(are) to be transformed into a Water User Association in terms of section 98(4) of the Act and whose members have authorised the elected Board members to act on their behalf for purposes of effecting the transformation.)

6.2. The founding members will, for purposes of arranging the first election of members of the Management Committee, be considered to be the Management Committee of the Association with powers and duties limited to arranging the election in accordance with this constitution and overseeing the transitional arrangements before a new Management Committee is elected.

NB: Only use if the constitution is for a transformed irrigation board

7. MEMBERSHIP OF THE ASSOCIATION

7.1. The first members of the Association, whose names appear in Annexure 3 of this constitution, are:

- 7.1.1. the present members of the _____ Board(s) who are automatically members of the Association; and

(Where irrigation board is transformed)

7.2. Membership of the Association shall be compulsory for every person who lawfully uses water from water sources within Association's area of operation in terms of sections 21 and 22 of the Act, other than a user who only uses water in terms of a permissible use under Schedule 1 of the Act.

7.3. The Minister or the Membership Committee may direct that person other than those provided for elsewhere in this item of the Constitution may become a member of the Association.

7.4. A purchaser or successor in title of a property or entity with a water use entitlement that qualifies the title holder to be a member of the Association is by law automatically a member of the Association, and is responsible to discharge the liabilities of the previous title holder.

7.5. Membership of the Association is terminated when a member's entitlement to water use lapses.

8. REGISTER OF MEMBERS

8.1. All members must communicate their addresses from time to time to the person acting as secretary of the Association, who must keep a register of the names of members and of their addresses.

9. RIGHTS OF MEMBERS

9.1. Membership of the Association does not give any member a right to any of the moneys, property or assets of the Association, but only gives members the privileges of membership, subject to such charges and reasonable restrictions as are imposed by the Management Committee from time to time.

9.2. A member of the Association is bound by the constitution and rules of the Association as amended from time to time.

10. LIABILITY OF MEMBERS AND SERVIDINAL RIGHTS

10.1. The financial liability of members is limited to the amount of unpaid charges and interest thereon owing by them to the Association, but with due regard to the provisions of section 60 of the Act in connection with outstanding charges in respect of land.

10.2. Where any water work of the Association encroaches upon or intersects the property of any member, the Association will enjoy all servitudinal rights necessary for the proper exercising of the Association's functions and the provisions of the Act, and specifically sections 126, 127 and 128 thereof, will apply.

11. QUALIFICATION OF CANDIDATES FOR MEMBERSHIP OF MANAGEMENT COMMITTEE

11.1. Any member of the Association, subject to the disqualifications contemplated in Schedule 4 to the Act, and provided that the member is not more than 180 days in arrears with charges, including interest, due to the Association, eligible for election as a member of the Management Committee.

11.2. *A member will only be eligible for election as a member of the Management Committee for the sub-area in which the member resides, or within which the water use entitlement is exercised by him or her.*

12. NOMINATION OF AND VOTING FOR MEMBERS OF MANAGEMENT COMMITTEE

12.1. Any person whose name is on the voters' list of the Association and who is not more than 180 days in arrears with charges including interest due to the Association, may nominate candidates for election as members of the Management Committee and may vote at an election of members of a Committee. *A person whose name appears on a voters' list prepared for a sub-area of the Association's area of operation, will be entitled to nominate candidates and to vote only in elections for that sub-area.*

13. MEMBERSHIP OF MANAGEMENT COMMITTEE

13.1. The Management Committee of the Association will consist of _____ members.

OR

13.1 The Management Committee for the area of operation of the Association as a whole consists of -

(a) _____ person(s) elected as member(s) of the Management Committee by voters on the voters' list for sub-area 1 as set out in Annexure to this constitution;

(b) _____ person(s) elected by voters on the voters' list for sub-areas as set out in Annexure of this constitution;

(c) _____ persons to be nominated by individual users of water but who are not by virtue of item 7 of the Constitution members of the Association;

- (d) ___ persons to be nominated by institutional users of water but who are by virtue of item 7 of the Constitution qualifying as members of the Association (industry, municipal, government departments, etc.)
 - (e) ___ persons to be nominated by emerging small farmers who are by virtue of item 7 of the Constitution qualifying as members of the Association;
 - (f) ___ person(s) to be nominated by Water Service Authorities with current water use in the area of operation of the Association,
 - (g) ___ person(s) to be nominated by non-consumptive users such as tourism and recreation who are by virtue of item 7 of the Constitution qualifying as members of the Association
 - (h) ___ person(s) to be nominated by the Catchment Management Agency or Minister **only as an observer**
- 13.2 *Elected members of the sub-areas may be charged by the Management Committee with specific powers, functions and responsibilities related to the use of water within the area of responsibility of the sub-areas and may for that purpose function as a Sub-Area Committee with the right to co-opt any of the nominated members on the Management Committee of the Association, should their interests be at stake.*
- 13.3 *Particulars of the sub-areas and the delegation of powers, functions and responsibilities to the sub-area committees are listed in Annexure "X" of this constitution.*
- 13.4 A nomination referred to in item 13.1(c) to (h) above may, if the interest group so prefers, be preceded by an internal election.
- 13.5 The members referred to in item 13.1(a) and (b) are, subject to the disqualification in item 11 of the Constitution, appointed for a fixed term of three years, provided that at the first election of members of the Association's Management Committee the terms of the members are determined by lot on the basis of:
- (a) one-third of the members for a term of three years;
 - (b) one-third of the members for a term of two years; and
 - (c) the balance of the members for a term of one year.
- 13.6 The terms of the nominated member(s) referred to in -
- (a) item 13.1(c) of the Constitution is for a period of one year, subject to nomination for further terms of one year each limited to a maximum of three consecutive terms; and
 - (b) item 13.1(d) of the Constitution is for a period of one year, subject to nomination for further terms of one year each.
- 13.7 If a vacancy occurs on the Management Committee, the vacancy must be filled according to this item, provided that the member must be elected or, where applicable, nominated for a period equal to the remainder of the period for which the member who has vacated the office would otherwise have continued in office.
- 13.8 At least 30 days' notice of an election must be given to all members of the Association concerned.
- 13.9 All members of the Management Committee can participate in full in respect of decisions on water management matters and the financing thereof. However, only members that have an interest in particular waterworks can participate and vote in respect of decisions relevant to those waterworks. The Chairperson of the Management Committee shall decide if a member has the right to vote in respect of a particular matter.
- 13.10 The Association subscribes to the requirement set out in section 2 of the Act in respect of ensuring appropriate community, racial and gender representation and commits itself to promoting the implementation thereof to the extent that the Association is practicably able to do so.
- 13.11 Should, after an election or nomination process, the composition of the Management Committee referred to in item 13.1, result in no representation for a particular gender or race on the Committee, the Chairperson must request all members of the Association and the interest groups referred to in item 13.1(c) to, within 21 days after notice, nominate persons of that gender or race who have agreed thereto and who need not be members of the Association or water users, to serve on the Management Committee of the Association, provided they have an interest in water use in the area. The

Chairperson must after expiry of the nomination period select, by lot, one of the nominees for a term of one year.

14. APPOINTMENT OF CHAIRPERSON AND DEPUTY CHAIRPERSON

14.1. After the election of the Management Committee the members of that Committee must elect a chairperson and deputy chairperson of the Association from amongst their members. The Management Committee may appoint any person to chair the proceedings for that purpose.

OR

14.1 After the election of the Management Committee the members of the Association must elect a chairperson and a deputy chairperson of the Association from amongst the elected members of the Management Committee. The members of the Association may appoint any person to chair the proceedings for that purpose.

14.2. The chairperson and deputy chairperson hold office for a period of 12 months from the date of their election and may be re-elected.

14.3. A chairperson and deputy chairperson may not hold such office for more than two consecutive periods, but may remain a member of the Management Committee for the full term of their appointment as a member.

14.4. When the period of office of a chairperson or deputy chairperson expires, that person will, provided that he or she remains a member of the Association, remain in office until the next meeting of the Management Committee.

14.5. The Management Committee may remove and replace a chairperson or deputy chairperson through a submission of a motion of no confidence followed by an election.

14.6. A new chairperson and deputy chairperson of the Management Committee will be elected annually. Should any of these offices be vacated before the term expires, the office must be filled immediately according to the procedure set out in this item.

15. VOTER'S LIST

15.1. The founding members of the Association must select a person to prepare a voter's list for the first election of members of the Management Committee. The voters' list must show

- (a) the names of all members included in Annexure 2 to this constitution and, where appropriate, the name of a member's accredited representative;
- (b) particulars of each member's entitlement to water use; and
- (c) the number of votes a member is entitled to.

If the Association's area of operation is divided into sub-areas, the voters' list must also be divided into sub-areas and the particulars referred to in sub-item (1) must be shown under the respective sub-areas.

15.2. The WUA will ensure a **balanced representation** of different water use sectors on the Management Committee and strive to limit domination of one group of users over other groups.

15.3. The number of votes will be determined on the following basis

- **One vote per authorisation to water use** (Licence, Existing Lawful Use, General Authorisation & Schedule 1)

15.4. Any proposal to deviate from this method should be motivated with explanation of how the proposed method will achieve balanced representation.

15.5. If the entitlement to use water is not in the name of a natural person, the holder must nominate an accredited representative whose name must appear on the voters' list and who may exercise the vote.

15.6. If the entitlement is in the name of two or more persons they must designate one of their numbers to represent them and that person's name must appear on the voters' list and he or she may exercise the vote.

15.7. The Management Committee must annually revise the voters' list and also whenever there is an amendment to the Association's area of operation.

- 15.8. The Management Committee must ensure that the voting method chosen takes careful consideration to achieve balanced representation of different water use groups and population groups, and limits domination by one racial or water use group over others.

16. APPOINTMENT OF EMPLOYEES AND PROCUREMENT

- 16.1. The Management Committee may employ such persons, as it considers necessary to perform the Association's functions under this constitution.
- 16.2. The appointment of employees or any change in their conditions of service must be approved by resolution of the Management Committee.
- 16.3. All employees of the Association will remain in office despite any change in the composition and membership of the Management Committee.
- 16.4. The Management Committee must outline transformation performance indicators in the Associations' business plan. Specific key result areas should include representivity, and employment equity in the appointment of employees.
- 16.5. The Management Committee must ensure that the Association complies with all legislation and specifically with the following relevant employment and preferential procurement legislation
- a) **Employment Equity Act, 1998 (Act 55 of 1998)**
 - b) **Basic Conditions of Employment Act, 1997 (Act 75 of 1997)**
 - c) **Labour Relations Act, 1995 (Act 66 of 1995)**
 - d) **Skills Development Act, 1998 (Act 97 of 1998)**
 - e) **Preferential Procurement Policy Framework Act, Act 5 of 2000.**

17. CONTRIBUTION TO EQUITABLE WATER ALLOCATION

- 17.1. The Management Committee must contribute to redressing past imbalances by identifying opportunities for water allocation reform in alignment with section 27(1) of the National Water Act, 1998.

18. RAISING OF LOANS

- 18.1. The Management Committee may raise, by way of loans, including bank overdrafts, any funds required by it for the purpose of carrying out any of its functions under this constitution or the Act.
- 18.2. Whenever the Management Committee proposes to raise a loan, it must give notice in writing of its intention, setting out details of the proposal. The notice must be given to every member of the Association not less than 21 days before the date of the meeting of the Committee at which the proposal will be considered. A special general meeting, to which all members are invited, must in such instance be convened to test the opinions of the members.
- 18.3. No loan may be raised without a resolution of the Management Committee passed at a meeting at which not less than two-thirds of the members of the Committee are present. This Management Committee meeting may only take place directly after the abovementioned special general meeting.
- 18.4. Where a loan is only required for the benefit of a sub-area, the Management Committee may require all members in the sub-area who stand to benefit from the loan to provide individual surety for the loan.

19. CHARGES AND THE RECOVERY OF CHARGES

- 19.1. For the purpose of defraying any expenditure that the Management Committee has lawfully incurred or may lawfully incur in carrying out its functions and duties it may annually assess charges on members according to the pricing strategy for water use set by the Minister.
- 19.2. *The assessment must take into consideration the budget prepared by the Management Committee of any sub-area to cover the operational, maintenance and betterment requirements in respect of waterworks managed and controlled by that Committee.*
- 19.3. The Management Committee may recover the charges assessed from either:
- (a) the owners of the land concerned; or
 - (b) any person to whom water is supplied on the land.

- 19.4. Whenever the Management Committee has assessed a charge, the Committee must prepare an assessment roll setting forth:
- (a) the name of each member liable to pay charges;
 - (b) a description of the piece of land, which may be a specially delineated area, in respect of which the charge is assessed;
 - (c) the quantity of water or abstraction time period to which the member is entitled;
 - (d) the amount of the charge assessed;
 - (e) the date or dates on which payment is due and the amount due on each date; and
 - (f) the rate of interest payable on non-payment and the effective date of interest.
- 19.5. A copy of the assessment roll must lie open for inspection in the office of the Association at all reasonable times by any member of the Association.
- 19.6. If after proper notice, any charge, including interest due to the Association, is more than 90 days in arrears, the Association may in addition to the powers vested in it in terms of section 59(3) of the Act, without further notice to the member, collect the amount due by issuing summons in a Magistrate's court with jurisdiction in the area, regardless of the amount involved, in which event the member will be responsible for all collection and legal costs, inclusive of attorney and client costs.
- 19.7. An annual membership fee must be determined annually by the Management Committee and submitted to the Annual General Meeting for approval.
- 19.8. The Management Committee may determine different fees for different categories of water use and for different categories of users.
- 19.9. Any amounts charged to Members are payable in such manner and at such times as are determined by the Management Committee.

20. ANNUAL REPORT

- 20.1. The procedure as set out in Schedule 4 to the Act applies.

OR

- 20.1. The Management Committee must, within **three months** after the end of the Association's financial year, convene a general meeting of members and must at the meeting –
- (a) table an audited financial statement of the Association's accounts for the preceding financial year, including full particulars of any remuneration paid by the Association to members of the Management Committee and employees of the Association; and
 - (b) give an account to the members of its activities during the year.

21. GENERAL MEETINGS OF MEMBERS

- 21.1. The first Annual General Meeting of the Association shall be held within a period of twelve (12) months of the approval of this Constitution. Subsequent Annual General Meetings shall be held within three (3) months of the end of each financial year.
- 21.2. Annual General Meetings shall be convened by the Chairperson on not less than twenty-one (21) days prior written notice to all members entitled to attend the meeting. This notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting.
- 21.3. The business of an Annual General Meeting shall include:
- a) the presentation and adoption of the Annual Report;
 - b) the consideration of the Annual Financial Statements;
 - c) the election of members to serve on the Management Committee for the following year;
 - d) amendments to the rules and constitution of the WUA;
 - e) presentation and approval of the fees and the budget;
 - f) presentation and approval of operation and maintenance plan for waterworks;

- g) presentation and approval of a water management plan;
- h) presentation and approval of proposed fees, charges and penalties to be levied by the association;
- i) review and approval of the kind of sanctions to be imposed by the association upon members;
- j) review and approval of procedure for dismissal of members of the management committee;
- k) decisions on whether to remunerate the Management Committee and the chairperson are made, and if so, the level of remuneration;
- l) approval of the creation of other paid posts-
- m) other matters as may be considered appropriate.

21.4. Special General Meetings of the Association shall be convened at any time by the Chairperson or at the written request of:

- a) the Management Committee
- b) the lesser of one quarter (1/4) or _____ of the members of the Association.

21.5. A Special General Meeting shall be convened on not less than fourteen (14) days written notice to all members. The notice shall state the date, time and place of the meeting and in broad terms the business to be transacted at the meeting: provided that: should the Chairperson, having been requested to give such notice, fails to give it within seven (7) days of the request, the persons requesting the meeting shall be entitled themselves to give notice of and to convene the meeting.

21.6. Quorum

21.6.1. A quorum constituting a General Meeting of the Association shall be the lesser of:

- a) _____ members; or
- b) one quarter (1/4) of the members.

21.6.2. Should any General Meeting have been properly convened but no quorum be present, the meeting shall stand adjourned to another date, which shall be within seven (7) days thereafter. The notice reflecting such adjournment shall be given to the persons and in the manner provided for in this Constitution. At such reconvened General Meeting, the members then present or represented shall be deemed to constitute a quorum.

21.7. Resolutions and Voting

21.7.1. At all General Meetings, a resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot shall be held only if demanded by the Chairperson or not less than one third (1/3) of the persons voting in person or by proxy. The result of the vote shall be the resolution of the meeting.

21.7.2. Each member present or represented at such meeting shall be entitled to one (1) vote.

21.7.3. Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

22. DISPUTE RESOLUTION

22.1. Any dispute arising out of any of the provisions of this Constitution, which cannot be resolved through negotiation by the parties involved, shall be referred to a Special General Meeting for discussion and resolution. Should the dispute remain unresolved, it may be referred to:

- a) The Chairperson of a Catchment Management Agency for mediation
- b) Some other suitable mediator as the parties may agree

23. WINDING UP

23.1. The Association may be dissolved by a resolution passed at a special general meeting held for that purpose, provided that –

- (a) the resolution is passed by a majority of two-thirds of the members present and entitled to vote at the meeting; and

- (b) the resolution is confirmed at a further special general meeting held not less than four weeks after the preceding special general meeting by a majority vote of members entitled to vote thereon.
- 23.2. A meeting passing a resolution referred to in sub-item (1)(i) of this constitution may also pass resolutions by a majority vote for
- (a) the appointment of a liquidator; and
 - (b) the disposal of surplus funds and assets of the Association after winding up and after the payment of all debts and obligations of the Association, provided that any surplus assets may only be transferred to an Association or institution with objectives similar to those of the Association, or to the Minister.

OR

23.1 The affairs of the Association will be wound up by a person appointed by the Minister in accordance with any directives given by the Minister, and subject to section 97 of the Act.

24. AMENDMENT OF CONSTITUTION

- 24.1. With the approval of the Minister, the constitution of the Association may be amended by members of the Association if
- (a) a special meeting of members convened for this purpose, votes in favour of such an amendment, provided that a majority of at least two-thirds of the members present at the meeting and which represent not less than 20% of the members of the Association in accordance with its latest voters' list, is obtained;
 - (b) the notice to members contains the verbatim proposed amendment and has been forwarded to members at least 21 days prior to the date of the meeting; and
 - (c) only amendments, to the proposed amendment, of which written notice has been given, are discussed and voted on at such a special meeting.

** Italics apply to sub-areas*

ANNEXURE 2.4: TOOL 4 – WUA PERFORMANCE AND COMPLIANCE MONITORING TOOL

**STRENGTHENING THE KNOWLEDGE BASE AND CAPACITY
TO SUPPORT THE TRANSFORMATION OF IRRIGATION
BOARDS TO WATER USER ASSOCIATIONS**

**ANNEXURE 2.4
TOOL 4 – WUA PERFORMANCE AND COMPLIANCE MONITORING
TOOL**

**FOR
THE DIRECTORATE
WATER RESOURCE MANAGEMENT INSTITUTIONS
DEPARTMENT OF WATER AND SANITATION**

VERSION: REVISION 1.9

**Boloka Development
1560 Whitby Crescent
Fourways, 2055**

Project No. C2020/2021-00636

24TH FEBRUARY 2022

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1 INTRODUCTION AND OVERVIEW

1.1 PURPOSE OF THE TOOL

Water User Associations are membership-based organisations that have a legal authority under the National Water Act to develop or manage local water abstraction and conveyance infrastructure and oversee water use activities in their designated geographic area. They are supported and monitored by the DWS and Catchment Management Agencies, with whom they collaborate closely. It is envisaged that WUAs will become official agents of DWS and CMAs, carrying out specific tasks such as levy collection, water monitoring, monitoring of abstractions and discharges, and running of Government Water Schemes on behalf of DWS or its public entities, such as implementing water management projects, conflict resolution and providing information and education services to water users.

The Department of Water and Sanitation has a responsibility to regulate Water User Associations in terms of how they undertake their functions as water management institutions, how they comply to legislative requirements and how they perform contracted or delegated functions. This tool is an important instrument for DWS and CMAs to apply in monitoring compliance and performance of WUAs generally and to specifically identify risks related to poor performance or lack of capacity with an intent to provide necessary strategic support.

1.2 LEGISLATIVE FRAMEWORK AND CONTEXT FOR MONITORING WUAS

1.2.1 National Water Act

Regulatory monitoring for WUAs is based on two primary legislative foundations that are provided for in the National Water Act – firstly, Schedule 4 of the NWA which provides for institutional management and planning of water management institutions, and secondly, a WUA's constitution which becomes a legal tool once approved by members and the Minister.

a) Schedule 4 of the National Water Act

Schedule 4 of the NWA requires, amongst others, the following:

- 3(7) WUA MANCO must, in consultation with the Minister of Public Service and Administration, determine the salary of its chief executive officer, subject to the approval of the Minister.
- 9(1) The board/MANCO must meet at least twice in each year.
- 15(1) The chief executive officer must ensure that complete and accurate minutes of each meeting are kept.
- 21(1) The board must prepare business plans.
- 21(2) The first business plan must be for a period of no less than three years and must begin when the first financial year starts, which must be not more than six months after the board is established.
- 21(3) Each subsequent business plan must be updated annually.

- 21(4) The board may review and revise a business plan at any time and must do so when so directed by the Minister.
- 32(2) The board must ensure that the chief executive officer of the institution keeps—
 - 1.0 (a) proper records and accounts of the activities, transactions and affairs of the institution and of the board; and
 - 2.0 (b) any other records or accounts that are necessary to explain sufficiently the financial operations and financial position of the institution.
- 33(1) An institution must in respect of each financial year, prepare an annual report containing-
 - (a) a report of its operations during the financial year;
 - (b) financial statements for the financial year;
 - (c) copy of each directive given to it during the year by the Minister.

1.2.2 WUA Constitution

A WUA's constitution is a legal document that outlines how it will adhere to its non-profit and democratic structure and remain accountable to its members primarily and to the Minister through the National Water Act which establishes it. In its Constitution, a WUA commits to certain undertakings to maintain self-governance and self-funding and its overall accountability to the Minister of Water and Sanitation. Key commitments in the constitution that require monitoring include the following:

- Commitment to accessibility, inclusivity and democratic practices
- Commitment to transformation in membership, governance, employment, procurement, skills development and allocation of available water

1.3 USERS OF THE TOOL

The tool is designed to be used by officials of the Catchment Management Agencies and Department of Water and Sanitation to monitor and report on the compliance and performance of WUAs.

1.4 OBJECTIVES, APPROACH AND STRUCTURE

1.4.1 Objectives

The objectives of the assessment are:

- a) To assess how a WUA complies to legislated requirements in the 1998 National Water Act and its own Constitution
- b) To assess the organisational performance of a WUA in terms of:
 - membership and governance – accountability, electoral democracy, user participation, user representation, and inclusive decision-making

- organisational structure – whether right committees are in place, separation of roles and responsibilities, and administration
 - application of the approved constitution and whether it has been reviewed
 - networking and collaboration – link and cooperation with local government, government agencies, other WUAs, host community
- c) To establish the support requirements for a WUA based on the performance assessment of a WUA
- d) To enable leadership of a WUA to gain better understanding of DWS' expectations in regard to the role of a WUA as a water management institution and how to better engage DWS and CMAs
- e) To establish a baseline and subsequent monitoring in order to assess whether compliance and performance is indeed improving over time, as a result of organisational change, training and other inputs provided.
- f) To create a shared awareness, understanding and agreement between a WUA and key water resource management stakeholders about the role of a WUA and about actions to be taken to enable it to undertake the role.
- g) To be a learning tool for increasing knowledge on good practices in governance and management of WUAs.

1.4.2 Approach

A performance assessment approach is used to monitor adherence, compliance and capacity of a WUA based on legislated and committed performance indicators. Each performance area is scored to determine the level of compliance and performance. A standard questionnaire is sent annually to all WUAs and a combination of self-assessment and verification is used to complete the assessment.

This performance and compliance assessment questionnaire must be completed and signed off by the Chief Executive Officer and Chairperson of the Water Users Association. The verifiable data source (i.e. what source was the information extracted from) column must be completed and all verifiable data sources referred to must be attached to the completed compliance and performance assessment questionnaire. The completed compliance and performance assessment questionnaire and supporting documentation must then be sent back to the regional office or CMA for final verification.

For each compliance KPI a score must be given based on the scoring key given below:

Scoring Key:

0	Non-Compliant – Information Not Available
1	Partially Compliant – Value Estimated or Gussed
2	Compliant – Verifiable Data Source Available
3	Fully Compliant – Verifiable Data Source Audited

Performance KPIs are measured against standard targets determined by the DWS which each WUA is expected to achieve.

The compliance and performance assessment must be completed every year as part of Annual Reporting to DWS and CMA.

1.4.3 Structure

The performance areas are structured according to the following key themes:

- 1) Governance
- 2) Business Planning
- 3) Financial Management and Administration
- 4) Water Management
- 5) Organisational Transformation
- 6) Infrastructure management
- 7) Stewardship
- 8) Social responsibility
- 9) Annual Reporting

1.5 APPLICATION OF THE TOOLKIT

The WUA regulation unit in the Department of Water and Sanitation has developed the tool to ensure uniformity and standard application by DWS regional offices and CMAs. DWS regional offices and CMAs should monitor the financial, institutional and technical functioning of the WUAs, ensuring that they manage their finances properly, are properly transparent and accountable to their members, and provide adequate levels of service to water users.

2 ASSESSMENT

KPA 1: GOVERNANCE – Membership, Representation and Accountability									
COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
Updated voter's roll				<i>Voters' roll</i>					
Updated register of members				<i>Register</i>					
Annual General Meeting held				<i>Minutes</i>					
Compulsory membership adopted									
Annual General Meeting achieved quorum				<i>Attendance register</i>					
AGM approved budget for the next year				<i>Minutes, approved budget</i>					
AGM approved annual report				<i>Minutes, approved annual report</i>					
One Vote per Member/Authorisation method used									
AGM elected Management Committee (MANCO)				<i>Minutes, list of elected members</i>					
All water use group represented on MANCO									
MANCO met at least twice a year				<i>Minutes</i>					
MANCO established sub-committees with ToR				<i>Minutes, list of sub-committees</i>					
Sub-committees met at least four times a year				<i>Minutes</i>					
PERFORMANCE									
Key Performance Indicator			Value	Verifiable Data Source	Comment	Sector Target			
Total number of active members as a percentage of total number of authorisations in the WUA area of operation						100%			
Total number of WUA members who attended AGM as a percentage of total number of members									
Total number of non-irrigators attending MANCO meetings as a percentage of total number of non-irrigation MANCO members									

KPA 2: BUSINESS PLANNING									
COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
MANCO has developed and approved BP				BP					
Business plan updated annually				Updated BP					
Business plan compliant with DWS requirements									
• Strategic Plan				BP					
• Functions of Association				BP					
• Institutional Arrangements				BP					
• Governance Arrangements				BP					
• Human Resources Plan				BP					
• Transformation Plan with targets				BP					
• Financial Plan				BP					
• Monitoring and Reporting				BP					
• Annual Performance Plan				BP					
Business plan submitted to DWS				Copy submitted and received					
PERFORMANCE									
<p>The WUA Business Plan Evaluation Tool must be used to assess the completeness and adequacy of the business plan</p>									

KPA 3: FINANCIAL MANAGEMENT									
COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
Approved financial management policy				Copy					
Annual financial statements (AFS) compiled				Copy					
AFS compliant with generally accepted accounting practice (GAAP)				Auditor/accountant comments					
Approved MANCO remuneration policy				Copy					
Approved uniform or differentiated tariffs				Copy					
Approved membership fees				Copy					
At least 80% levies collected				Copy					
Approved debt recovery policy				Copy					
Approved financial risk management plan				Copy					
Internal financial audit committee established				Copy					
Financial records (expenses and income) kept				Report					
Audited asset register				Copy of Register					
PERFORMANCE									
Key Performance Indicator			Value	Verifiable Data Source	Comment	Sector Target			
Debt-to-Equity ratio as per latest annual financial statement				Auditor's report		1			
Audit results (1: Unqualified; 2: Qualified; 3: Disclaimer)				Auditor's report		1: Unqualified			
Amount of water levies collected as a percentage of total billed						100%			
Amount spent on operation and maintenance as a percentage of total WUA budget						30%			
Amount spent on staff as a percentage of total WUA budget						35%			
Amount spent on MANCO activities as a percentage of total WUA budget						10%			

KPA 4: WATER MANAGEMENT									
COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
Approved scheme regulations									
Approved water management plan									
Approved water shortage (drought) allocation policy									
Water release timetable – advance notice to users regarding off-periods									
Water measurement devices installed									
Submission of monthly and annual disposal reports									
Water conservation and demand management plan approved and implemented									
PERFORMANCE									
Key Performance Indicator			Value	Verifiable Data Source	Comment	Sector Target			
Percentage of water saved from implementing WCWDM						10%			
Percentage of users with water measurement devices installed						100%			
Percentage of unlawful water use activities reported to DWS/CMA						100%			
Percentage of unlawful water use activities resolved by the WUA as total number of activities reported to WUA.						100%			

KPA 5: ORGANISATIONAL EFFECTIVENESS									
COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
Approved employment policy									
Approved organizational structure									
Approved employment equity plan									
Approved skills development plan									
Approved performance management plan									
Approved procurement policy									
PERFORMANCE									
Key Performance Indicator			Value	Verifiable Data Source	Comment	Sector Target			
Number of staff employed as a percentage of approved positions						100%			
Number of staff training programmes completed as percentage of planned training programmes						100%			
Number of performance contracts signed as percentage of total required						100%			

KPA 6: INFRASTRUCTURE MANAGEMENT									
COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
Operation and maintenance agreement									
Operation and maintenance manual/schedule for operation and maintenance									
Asset register compiled and updated									
Emergency preparedness plan									
Ability to deliver water allocation of users with current infrastructure design capacity									
Operation and maintenance budget approved									
Reserve fund approved and set									
Replacement value of infrastructure determined									
PERFORMANCE									
Key Performance Indicator			Value	Verifiable Data Source	Comment	Sector Target			
Amount of reserve fund tariff as a percentage of total tariff						3%			

KPA 7: ANNUAL REPORT COMPLIANCE									
Key Compliance Indicator	Yes	No	Value	Verifiable Data Source	Comments	Score (For Official Use Only)			
						0	1	2	3
Approved annual report									
Annual report compliant with DWS requirements									
Annual report presented to members at AGM within 6 months after end of financial year									
Copy of annual report submitted to Secretary of Parliament									
Annual report published									
Annual report available at office for inspection and purchase by public									
Annual report includes Audited/approved annual financial statements									
Annual report includes chairperson's report									
Annual report includes audit committee report									

KPA 8: CONTRIBUTION TO TRANSFORMATION OF THE WATER SECTOR AND SOUTH AFRICAN SOCIETY					
PERFORMANCE					
Element	Key Performance Indicator	Value	Verifiable Data Source	Comment	Sector Target
Governance	Exercisable voting rights in the hands of Black People as a percentage of total voting rights in WUA membership				25%
	Exercisable voting rights in the hands of Black women as a percentage of total voting rights in WUA membership				25%
	Members of MANCO who are black as a percentage of total MANCO				25%
	Members of MANCO who are female as a percentage of total MANCO				25%
Skills Development	Skills development expenditure on All MANCO Members as per the identified needs (as required by the department) as a percentage of leviab amount				20%
	Skills development expenditure on skills development expenditure on skills development Needs for Black MANCO Members as a percentage of leviab amount using the adjusted recognition for gender as a percentage of leviab amount				30%
	Skills development of staff targeting those from historically disadvantaged communities				30%
Equitable Access to Available Water	Water made available to HDI users as a result of water use efficiency measures implemented within the WUA's area of operation as a percentage of total water allocation in the WUA.				10%
	Water made available to domestic, new productive and HDI users as a result of proactive identification of under-utilised allocations within the WUA's area of operation as a percentage of total water allocation in the WUA.				5%

KPA 8: CONTRIBUTION TO TRANSFORMATION OF THE WATER SECTOR AND SOUTH AFRICAN SOCIETY					
PERFORMANCE					
Element	Key Performance Indicator	Value	Verifiable Data Source	Comment	Sector Target
	Water made available to HDI users as a result of voluntary contributions by irrigators within the WUA's area of operation as a percentage of total water allocation in the WUA.				5%
Employment Equity	Black employees as percentage of all employees				25%
	Black employees in senior management as a percentage of all such employees				25%
	Black employees in middle management as a percentage of all such employees				25%
	Black employees in junior management as a percentage of all such employees				25%
	Black employees as percentage of all employees				25%
	Black employees in senior management as a percentage of all such employees				25%
Preferential Procurement	Procurement spend from suppliers based on BBBEE procurement recognition levels as a percentage of total measured procurement spend				30%
	Procurement spend for qualifying small enterprises recognition levels as a percentage of total measured procurement spend				30%
	Procurement spend from any of the following suppliers. <ul style="list-style-type: none"> • That are more than 50% Black owned regardless of their BEE Procurement Recognition Level (3/5) • That are more than 30% Black women owned regardless of their BEE Procurement Recognition Level (2/5) 				30%
Socio-economic Development	Budget spent on social development projects in historically disadvantaged communities with the WUA's area of operation as a percentage of total WUA income for the financial year.				3%

3 DECLARATION

I _____ in my capacity as Chief Executive Officer of the _____ Water User Association confirms that the information provided is accurate.

Signature _____

Date _____

I _____ in my capacity as Chairperson of the _____ Water User Association Management Committee confirms that the information provided is accurate.

Signature _____

Date _____

FOR OFFICIAL DWS USE ONLY
Performance Assessment Questionnaire Administered by:
Name:
Signature:
Date:

FOR OFFICIAL DWS USE ONLY
Data Verification Conducted by:
Name:
Signature:
Date: