



**From Nine-to-One: will a single catchment management agency ensure the sustainable and equitable use of South Africa's water resources?**

By

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## DECLARATION

I, **ADELAIDE R CHAGOPA**, declare that this Research Report is my own unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Laws (by Coursework and Research Report) at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other university.

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## **LIST OF ABBREVIATIONS**

CMA	Catchment Management Agency
DWS	Department of Water and Sanitation
IWRM	Integrated Water Resource Management
NWA	National Water Act 36 of 1998
NWRS-2	National Water Resource Strategy 2
S-CMA	Single Catchment Management Agency
WMA	Water Management Area
WUA	Water User Association

## **ABSTRACT**

Water is life. South Africa recognises the importance of water as a resource and further understands that the effective management of it is key to the fulfilment of socio-economic goals. To that end, South Africa water law seeks to decentralise water management through Catchment Management Agencies. However, the plans and policies around them have not been very successful thus an overhaul of the Catchment Management Agencies structures is necessary. The main aim of this paper is to examine and consider whether the proposed Single Catchment Management Agency, as discussed in the Business case published by the Department of Water and Sanitation, can fulfil the mandate of Catchment Management Agencies and facilitate sustainable and equitable use of water as envisioned by the National Water Act 36 of 1998 and the National Water Resource Strategy 2. The paper interrogates whether the Single Catchment Management Agency can withstand the challenges presented by the previous incarnation of the Catchment Management Agencies and successfully facilitate the realisation of sustainable and equitable use of water resources in South Africa. This was done through an evaluation of the National Water Act 36 of 1998-the framework legislation for water resource management, several academic papers as well as various Department policy documents. The analysis showed that the Single Catchment Management Agency is not strictly a decentralised institution as envisioned by the National Water Resource Strategy 2 and is not guaranteed to work. However, an analysis of the key factors indicated that with stronger institutional arrangements, particularly regarding stakeholder participation and the adaptive management of water resources, the Single Catchment Management Agency stands a good chance of succeeding and propelling water resource management in South Africa forward and thus meeting transformative goals as well as the legislative mandate of sustainable and equitable use of water.

## CHAPTER 1: BACKGROUND

### 1. Introduction

South Africa is a water-stressed<sup>1</sup> country besieged by a number of water challenges including the threats of global warming, the security of supply, inefficient water use management, resource pollution as well as other forms of environmental degradation.<sup>2</sup> Currently, South Africa has a well-established water resource management regime that places significant importance on effective water resource management to ensure that water, as a critical resource, is well protected and is subject to sustainable use to the benefit of all citizens and the country at large.

The Constitution of the Republic of South Africa, 1996 provides for the right to a healthy environment.<sup>3</sup> This right includes the right to have the environment protected for the benefit of 'current and future generations.'<sup>4</sup> Additionally, the right to the environment contains the right to 'secure ecologically sustainable development and use of natural resources.'<sup>5</sup> Consequently, the right to an environment invokes both the principles of intergenerational justice and sustainable development, which are echoed and given due recognition in the National Water Act 36 of 1998 , which states that water is a scarce resource in South Africa and must be subject to governance that is guided by the core principles of 'sustainability and equity [and must guide] the protection, use, development, conservation, management and control of water resources. These guiding principles recognise the basic human needs of present and future generations and the need to protect water resources.'<sup>6</sup> In addition to the environmental right, the Constitution makes provision for the right to access to sufficient water,<sup>7</sup> to that end, the effective

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<sup>1</sup> Department of Water and Sanitation *Draft 'Business Case for the Establishment of a Single Catchment Management Agency'* (November 2017) 2.

<sup>2</sup> The Department of Water Affairs '*National Water Resource Strategy 2'* (June 2013) iii. This is the legal instrument that enables the National Water Act.

<sup>3</sup> The Constitution of the Republic of South Africa, 1996, s24.

<sup>4</sup> *Ibid* s24(b).

<sup>5</sup> *Ibid* s24(b)(iii).

<sup>6</sup> The National Water Act 36 of 1998, Chapter 1.

<sup>7</sup> Note 3 above, s27(1).

governance of water resources within South Africa is critical to the realisation of these rights.

To meet the constitutionally guaranteed right to the environment, especially access to water, the National Water Act (NWA), which is the framework legislation for water resource management in South Africa, makes provision for the 'integrated management of all aspects of water resource management'<sup>8</sup> and the delegation of management functions to a regional or catchment level.<sup>9</sup> This provision speaks to Catchment Management Agencies, the subject of this paper.

As of June 2017, the management of water resources in South Africa is once again geared up for a significant transformation with the goal of finally establishing a fully functional Catchment Management Agency (CMA)<sup>10</sup> and effecting integrated water resource management as envisioned in the NWA as well as the National Water Policy of South Africa 1997.<sup>11</sup> The Department of Water and Sanitation (DWS) has proposed that a Single Catchment Management Agency (S-CMA) be established to manage all water resources in South Africa and that the existing ones be dismantled in its favour.

This proposal comes at a time when the pressure on South Africa's water resources is mounting amidst growing industrialisation and socio-economic transformative goals<sup>12</sup> thus, effective water resource management is a central concern for the DWS.

This paper seeks to interrogate whether the proposed S-CMA can effectively facilitate water resource management which in turn will pave the way for sustainable

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<sup>8</sup> This is an idea imported from international summits like the Rio 20+ conference and includes stakeholders' participation, decentralization and river basin management and sustainable development.

<sup>9</sup> The National Water Act, Preamble. This is also the IWRM provision which will be discussed further below.

<sup>10</sup> A CMA is a water management institute that is considered as both a statutory body as established by the National Water Act as well as a public institution as defined by Schedule 3A of the Public Finance Management Act 29 of 1999.

<sup>11</sup> The Department of Water Affairs and Forestry '*White Paper on a National Water Policy for South Africa*' (1997).

<sup>12</sup> The Department of Water and Sanitation states in its National Water Resource Strategy 2 (2013) that the demand of water will increase by 1.2% over the next 10 years.

and equitable use of water resources. This will be done through a review of the NWA, policy documents released by the DWS as well as several academic papers.

This research report is divided into five chapters. Chapter one provides the background information and explains the concepts of integrated water resource management, sustainability and equity which are integral to water resource management. Chapter two delves into the background of CMAs. Critical to this paper is the consideration of the decades-long failure of the previous and current incarnations of the CMAs through an analysis of the following factors: (i) institutional arrangements/governance (ii) prioritisation (iii) technical skills and institutional capacity and (iv) financial arrangements. Chapter three of the paper will consider the proposed S-CMA 's effectiveness through an analysis of the abovementioned factors in addition to those of public and stakeholder participation and political interference. Chapter four contains commentary on the conclusions reached in the analysis conducted in chapter three. The final chapter contains the conclusion and some recommendations.

### **1.1. Integrated Water Resource Management**

Water resource management in South Africa is informed by the concept of Integrated Water Resource Management (IWRM). This concept reflects the increasingly interconnected nature of water resource management and other developmental goals. It is a component of water management in South Africa and informs the principles of sustainability and equity. IWRM is a process which 'promotes the coordinated development of the management of natural resources in order to maximize the resultant social and economic welfare in an equitable manner without compromising the sustainability of vital ecosystems.'<sup>13</sup> It stems from the Dublin Principles, which were established at the International Conference on Water and the Environment held in Dublin in 1992, which principles underpin IWRM internationally and are as follows: (i) Fresh water is a finite and vulnerable resource, essential to sustain life, development and the environment (ii) Water development

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<sup>13</sup> Global Water Partnership 'Integrated Water Resource Management' TAC Background Papers no 4 (2013) 22.

and management should be based on a participatory approach, involving users, planners and policymakers at all levels (iii) Women play a central part in the provision, management and safeguarding of water and (iv) Water has an economic value in all its competing uses and should be recognized as an economic good.<sup>14</sup>

In South Africa, the use of IWRM is required by the NWA in its Preamble which states:

Recognizing the need for the integrated management of all aspects of water resources and, where appropriate, the delegation of management functions to a regional or catchment level to enable everyone to participate.

Essentially, the CMAs are meant to be the drivers of IWRM<sup>15</sup>, thus the failure to establish proper, fully functional CMAs in each Water Management Area (WMA), has been a direct failure to implement IWRM which aims to achieve sustainable and equitable use of water resources by stakeholders, at all levels,<sup>16</sup> as envisioned by water legislation.

## **1.2. Sustainability and Equity in Water Resource Management**

Water is a basic human need and it plays a critical role in ensuring equitable socio-economic development.<sup>17</sup> The role and purpose of water is to enable and facilitate prosperity through its provision to various social and economic sectors for growth and development.<sup>18</sup> Such growth and development require that the Nation's water resources be managed in a way that will ensure their sustainability for all water users.<sup>19</sup> In this context, sustainability not only refers to ecological sustainability and availability but also to the financial sustainability of the institutions and instruments set up to manage these water resources.<sup>20</sup>

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<sup>14</sup> Ibid, 14.

<sup>15</sup> S Movik, L Mehta, B van Koppen and K Denby 'Emergence, interpretations and translations of IWRM in South Africa' (2016) 9 *Water Alternatives* 456, 463.

<sup>16</sup> P Naicker and S Sikhosana 'Integrated water resource management: Midmar Dam' (2012) 7 *WISA YWP Water and Sanitation Africa* 8, 9. Catchment, regional, national and international.

<sup>17</sup> Note 2 above, v.

<sup>18</sup> Note 2 above, 12. This speaks to the principle of Integrated Water Resource Management (IWRM) an important concept in South African water resource management. See section 2.3 below.

<sup>19</sup> The National Water Act, Preamble.

<sup>20</sup> These instruments include licensing, water allocation, water resource health management and water resource protection measures to name a few. These instruments should be utilised in a manner that is mindful of environmental, social and economic consequences of water.

The NWA calls for the management of water resources at the catchment level. It further stipulates that 'equity, sustainability and efficiency' are the key guiding principles for water resource management.<sup>21</sup> The National Water Resource Strategy 2<sup>22</sup>(NWRS-2) reinforces the NWA by calling for 'sustainable, equitable and secure water for a better life and environment for all'.<sup>23</sup> Key, to the attainment of this vision, is the institutional arrangements which include CMAs. Sustainability in the context of water resource management refers to more than just the determination of the Reserve or just protection of the water resources. It requires that water governance question the structures involved and utilise a holistic approach when instituting plans and strategies.<sup>24</sup>

Equity is also an important principle in water resource management.<sup>25</sup> The NWA seeks to redress the past inequalities in the water laws. It does this through the NWRS-2 which sets out that equitable use of water resources encompasses (i) equitable access to water resources<sup>26</sup> (ii) equitable access to water services<sup>27</sup> and (iii) equitable access to the benefits from water resources.<sup>28</sup> These are the three factors of equitable use that require redress in order to ensure sustainable and equitable use for all people, including the historically disadvantaged people to whom equity in water governance is a central concern. Equity in water is also concerned with fairness. Fairness ties in well with sustainability<sup>29</sup> thus ensuring the long-term sustainability and equity of water resources and the resultant socio-economic and environmental benefits for society.

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<sup>21</sup> National Water Act, Chapter 1. Key to realising these is the principle of efficiency (Principle 3) as envisioned in the White Paper on a National Water Policy for South Africa.

<sup>22</sup> Note 2 above.

<sup>23</sup> Note 2 above, v.

<sup>24</sup> S Pollard & D Du Toit 'Integrated water resource management in complex systems: how the catchment management strategies seek to achieve sustainability and equity in water resources in South Africa' (2008) 34 *Water SA* 671, 676.

<sup>25</sup> This means that all people have a right to access to water resource of adequate quality and quantity. See Global Water Partnership 'Integrated Water Resource Management' TAC Background Papers no 4 (2013) 30; The Constitution of the Republic of South Africa, 1996, s27.

<sup>26</sup> Note 2 above, 45. This refers to direct access to water resources for productive purposes.

<sup>27</sup> Ibid. This is dealt with in the Water Services Act and refers to the provision of access to safe water supply for domestic and productive services.

<sup>28</sup> Ibid. Water should be allocated in a manner that brings maximum benefits to all directly and indirectly.

<sup>29</sup> Ibid, 12.

## CHAPTER 2: CATCHMENT MANAGEMENT AGENCIES

### 2. Overview of CMAs in South Africa

As mentioned earlier, the Constitution guarantees the right to an environment not harmful to health or well-being and the right to access to water. These rights are to be realised through the policies and strategies of the dedicated national departments. To that end, South Africa's water management institutions<sup>1</sup> are divided into three levels;<sup>2</sup> the first being the Department of Water and Sanitation (DWS) which is the custodian of all water resources. <sup>3</sup>The second is the Catchment Management Agencies (CMAs), which are responsible for the implementation of a catchment management strategy, as well as the management of water resources, at a regional or catchment level. The third and final tier is the Water User Associations (WUAs)<sup>4</sup> which manage water resources at the local level.

Water resource management sits with the National Government<sup>5</sup> in the form of the DWS and the Minister is the overall custodian of the water resources.<sup>6</sup> However, as mentioned above, the NWA envisages the decentralisation of water resource management in South Africa to a regional or catchment level.<sup>7</sup> This means that water resource management functions must be, as far as possible, delegated to the lowest level possible, in this case, to a catchment level, in other words, as close to

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<sup>1</sup> A water management institution is defined as a catchment management agency, a water user association, a body responsible for international water management or any person who fulfils the functions of a water management institution in terms of the National Water Act.

<sup>2</sup> AC Mofokeng 'Challenges in developing water management institutions: the case of catchment Management agencies (CMAs) in South Africa' (unpublished mini-dissertation for the MA-Development and Management, North-West University, 2017), 1

<sup>3</sup> The Department of Water Affairs '*National Water Resource Strategy 2*' (June 2013) iii. This is the legal instrument that enables the National Water Act, 61.

<sup>4</sup> Ibid, 66. Water User Associations are formerly known as irrigation boards and manage water resources for the common interest of their members.

<sup>5</sup> L Berjak 'Water Resource Management in South Africa' (unpublished thesis for the Masters of Law-Environmental, University of Natal Pietermaritzburg 2003), 9.

Water resource management is recognised as an area of national competency as it is not listed in either Schedule 4( Concurrent National and Provincial legislative competence) or Schedule 5 (Exclusive Provincial legislative competence) of the Constitution.

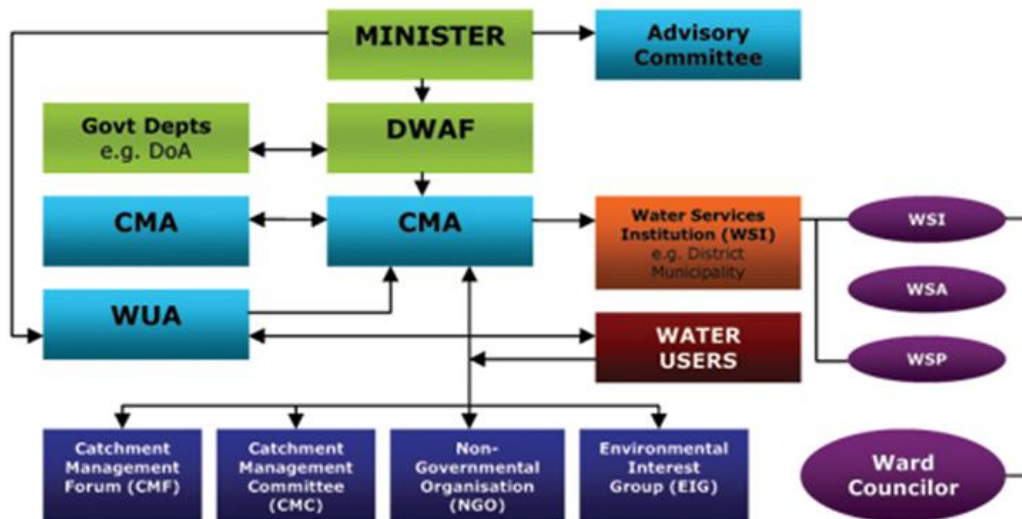
<sup>6</sup> The Department of Water Affairs and Forestry '*White Paper on a National Water Policy for South Africa*' (1997), Policy Principle 13.

<sup>7</sup> The National Water Act, Chapter 7.

the actual consumers and water resources as possible.<sup>8</sup> This is in line with the principle of subsidiarity which states that the establishment and implementation of water resource management should be from the state to local institutions, which are supposed to have a better knowledge of the catchment functioning.<sup>9</sup>

This is because the primary purpose of CMAs, in taking responsibility for the management of water resources at catchment level<sup>10</sup> is to bolster the involvement of local communities and other relevant stakeholders, in the management of the water resources, in each water management area (WMA) thus ensuring the long-term equitable, effective and sustainable management of water resources.<sup>11</sup>

**Figure 1: Overview of Water Management Institutes in South Africa**



Source: Adapted from F Kapfudzaruwa & M Sowman' Is there a role for traditional governance systems in South Africa's new water management regime?' (2009) 35 *Water SA* 683,685.

<sup>8</sup> Note 6 above, Principle 23; NWA s1- A catchment is an area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, though surface flow to a common point(s). Thus, catchment level management refers to the focused management of the water resources in a specific, localised area ie the catchment area.

<sup>9</sup> J Mutando S Farolfi & A Dinar Water Decentralisation Experiences: A Literature Review' J Mutando et al Water Governance Decentralisation in Sub-Saharan Africa: Between Myth and Legend (2016) 7,9.

<sup>10</sup> Note 3 above, 64.

<sup>11</sup> Note 2 above, 2.

A CMA can delegate some of the functions, assigned to it, to third parties<sup>12</sup> , however, it 'may not delegate the power of delegation or the power to make water use charges.'<sup>13</sup>

Initially, there were 19 WMAs and each one was envisaged to host its own CMA and so there were 19 proposed CMAs.<sup>14</sup> However, the CMA establishment process faced slow implementation and so by 2012, only two CMAs had been implemented namely, the Breede-Gouritz and the Inkomati-Usutu.<sup>15</sup> The DWS, in July 2012 moved to reduce the number of WMA and CMAs from nineteen to just nine.<sup>16</sup> This was done, in an attempt to improve integrated resource management, as well as account for the reconsideration of the 'the management model and viability assessments related to water resource management, funding, capacity, skills and expertise in regulation and oversight.'<sup>17</sup> Additionally, the NWRS-2 also states that the consolidation of the nineteen WMAs into nine would expedite the establishment of the relevant CMAs thus, further empowering the CMAs, by distributing scarce technical skills more evenly and allowing for better cooperation between the CMAs.<sup>18</sup>

There are nine water management areas in South Africa and the NWA provides for the progressive establishment of a CMA in each one. The nine WMAs are Limpopo; Olifants; Inkomati-Usuthu; Pongola-Mzimkulu; Vaal; Orange; Mzimvubu-Tsitsikamma; Breede-Gouritz and Berg-Olifants. <sup>19</sup>

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<sup>12</sup> The Department of Water Affairs and Forestry *'The Catchment Management Agency as an Organisation: Guide 2'* (2002) 4.

<sup>13</sup> The National Water Act, s82(2).

<sup>14</sup> Note 3 above, 64.

<sup>15</sup>R Meissner, S Stuart-Hill S & Z Nakhooda Z 'The Establishment of Catchment Management Agencies in South Africa with Reference to the Flussgebietsgemeinschaft Elbe: Some Practical Considerations' E Karar (eds) *Freshwater Governance for the 21st Century* (2017) 15,19.

<sup>16</sup> Ibid.

<sup>17</sup> R Meissner, N Funke & K Nortje 'The Politics of Establishing Catchment Management Agencies in South Africa: The Case of the Breede-Overberg Catchment Management Agency.' (2016) 21 (3) *Ecology and Society* 26,27.

<sup>18</sup> Note 3 above, 64.

<sup>19</sup> These WMAs were delineated in the National Water Resource Strategy 2 and their boundaries are based on catchment and aquifer boundaries rather than geopolitical ones.

## **2.1. The role and functions of CMAs**

As mentioned above, the fundamental purpose of establishing CMAs is to delegate or assign water resource management to the regional or catchment level to facilitate the involvement of all water users and stakeholders in the management of water resources.<sup>20</sup> The NWA bestows CMAs with initial powers.<sup>21</sup> These are powers inherent to CMAs and are not reliant on delegation or assignment from the Minister. These powers are to:

- a) Investigate and advise interested persons on the protection, use, development, conservation, management and control of the water resources in its water management area;
- b) To develop a catchment management strategy;
- c) To coordinate the related activities of water users and of the water management institutions within its water management area;
- d) To promote the coordination of its implementation with the implementation of any applicable development plan established in terms of the Water Services Act 108 of 1997; and
- e) To promote community participation in the protection, use, development, conservation, management and control of the water resources in its water management area.

Of the initial functions, the function to develop a catchment management strategy can be deemed the most important one, as the catchment management strategy includes the plans for the protection, use, development, conservation, management and control of the water resources. It is the roadmap for the management of the water resources and gives effect to the role and function of the CMA. Well-constructed catchment management strategies will provide the CMAs with the means to meet the objectives of the NWA, in line with the NWRS-2, which operationalizes the NWA. Recently, the increased drive towards economic development, as reflected in the National Development Goals,<sup>22</sup> has resulted in the

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<sup>20</sup> Ramin Penjan, 'The application of assignment and delegation within the context of the National Water Act: the implication for catchment management agencies' (2013) 130 *SALJ* 125,133.

<sup>21</sup> The National Water Act, s80.

<sup>22</sup> South Africa's 2030 vision is to eradicate poverty and to drastically reduce inequality. This is to be achieved by aggressively pushing development and growth in all industries.

upsurge of activities in the various sectors, most of which are water intensive<sup>23</sup> and so the role of CMAs, as bodies close-to-the-ground so to speak, cannot be overstated. CMAs are uniquely placed to facilitate the effective use of water resources. Additionally, the powers delegated to it, to monitor water use and grant permissions for such use, perfectly position CMAs to create and implement progressive and sustainable water demand management strategies. Because of the CMAs position at catchment level, these strategies would be well informed by all relevant stakeholders, thus enabling CMAs to effect holistic management<sup>24</sup> of water resources within their jurisdictions.

Ideally, if all the CMAs were functioning optimally, as envisioned by the NWA and NWRS-2, the powers granted to them would enable the DWS to assume the role of institutional oversight.<sup>25</sup> However, to date, of the nine proposed CMAs, only two are well-established, the Inkomati-Usuthu and the Breede-Gouritz, and of the remaining seven, four have been gazetted as proto-CMAs.<sup>26</sup> This decade-long failure to establish fully functional CMAs in every WMA is axiomatic of fundamental issues with the institutional arrangements surrounding CMAs. Moreover, this failure has hampered the effective management of water resources in South Africa, as evidenced by the recent water availability issues experienced in the City of Cape Town<sup>27</sup>. Consequently, the Department of Water and Sanitation has proposed an overhaul of the current CMA structures and called for the S-CMA.

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<sup>23</sup> There has been an increase in coal-based energy production in South Africa and well as bolstered agricultural activities. In fact, water plays a central role in all sectors thus the effective management of water resources is essential for inclusive economic growth, poverty eradication and the significant fulfilment of other NDP goals.

<sup>24</sup> This would-be water resource management that strikes a balance between use and conservation whilst keeping in mind the fundamental principles of the NWA as set up in its Preamble – particularly sustainability and equity.

<sup>25</sup> Note 2 above, 31. It would be responsible for regulation, planning and policy development rather than as an actual implementer of water resource management.

<sup>26</sup> The Department of Water Affairs and Forestry *'Governing Board Induction Manual' Chapter 3: Overview of CMAs* (February 2012) 13. A proto -CMA is a body that has some water use management and coordination functions from the DWS except those pertaining to Authorisation and Resource Direct Measures.

<sup>27</sup> < <https://www.dailymaverick.co.za/article/2018-02-06-iss-today-south-africas-water-crisis-is-bigger-than-the-cape/>>

## **2.2. Failures and challenges of the current CMA-structures**

Current CMA structures have failed for various reasons, a few of which are discussed below. These hindrances are chief in understanding what the fundamental issues facing CMAs are and how the DWS can address them going forward to secure the success of the S-CMA. Failure to do so would make the S-CMA a redundant system and further delay the effective implementation of IWRM.

### **2.2.1. Institutional Arrangements/Governance**

The legislative framework around water resource management in South Africa is a solid one. It places trusteeship of water resources in the National Government, acting through the Minister responsible for water resources in South Africa.<sup>28</sup> The Minister is thus responsible for the management of all water in the country. However, the NWA calls for the Minister, to progressively delegate his powers so as to decentralise the powers and functions of DWS.<sup>29</sup> Unfortunately, since the inception of the NWA, there has been a failure to successfully delegate and assign further powers and functions to CMAs. For example, the Inkomati-Usuthu CMA was the first CMA established in the country in 2004 but was only awarded further functions by the Minister in 2010, a full six years from its inception.<sup>30</sup>

The delay in the delegation of functions to the functional CMAs especially the functions of licencing and billing and revenue collection created a backlog which put further financial strain. Additionally, the delay has put significant strain on the proto-CMAs which were never meant to remain in the proto stage for as long as they have. They are ill-equipped to bear the burden of the basic functions for a sustained period much less the functions of licencing, billing and revenue collection.<sup>31</sup> Key to this delay in the delegation of functions, is a lack of clarity from the NWA, as the Act does not specify what progressive delegation of powers entails, thus the delegation and the assignment of powers and functions have been dragged out.<sup>32</sup> Ultimately, the existing institutions have failed to understand the importance

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<sup>28</sup> Note 3 above.

<sup>29</sup> The National Water Act, s73.

<sup>30</sup> Department of Water and Sanitation *Draft 'Business Case for the Establishment of a Single Catchment Management Agency'* (November 2017) 12.

<sup>31</sup> *Ibid.*

<sup>32</sup> Note 19 above, 146. The Minister has the discretionary powers for when he can make the decision to delegate and assign powers. There are no clear timelines for when he may delegate or assign only that he 'may assign such powers when it is desirable to do so' see NWA s73. Thus, should the Minister not be

of decentralising power<sup>33</sup> to effectively facilitate water resource management.<sup>34</sup> Additionally, there is a lack of communication between the DWS and local government, regarding water resource management and CMAs thus, many local governments have incorrectly taken over water resource management,<sup>35</sup> exacerbating the confusion within the water governance chain.<sup>36</sup>

As mentioned above in section 2, CMAs form the second tier of water resource management after the National Government. If a CMA so wishes and it is desirable, particularly if it would result in the effective management of a water resource, a CMA can delegate some of its functions to a third party.<sup>37</sup> To avoid the aforementioned confusion, CMAs can advance cooperation between themselves and local municipalities especially in functional areas that interface<sup>38</sup> like, water services development plans<sup>39</sup> thus acknowledging the shared space they occupy in relation to some water resource management functions.

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satisfied that a CMA can carry out its functions or if a CMA has not been assessed on its capacity to carry out further functions, he can withhold the assignment of further functions- perhaps indefinitely.

<sup>33</sup> Decentralisation is important in the discourse of water resource management because it allows for the greater involvement of those who utilise water resources. It also fosters greater accountability of water management institutes to water users and accountability of water users to the water management institutes. This shared stream of accountability strengthens transparency within the discourse of water management. See C Brannstrom *'Decentralising Water Resource Management in Brazil'* (2004) 16 *European Journal of Development Research* 204,205. Additionally, decentralization promotes agility in the decision-making process thus allowing for speedy responses to any needs and challenges within WMAs. Through the participation of local communities and stakeholders, there is greater opportunity for the utilization of local knowledge of the resources which can better policy and strategy development for each WMA. See J Mutando S Farolfi & A Dinar *Water Decentralisation Experiences: A Literature Review'* J Mutando et al *Water Governance Decentralisation in Sub-Saharan Africa: Between Myth and Legend* (2016) 7,9.

<sup>34</sup> The Department of Water and Sanitation *'Water resource management in South Africa: Establishment of the Catchment Management Agencies'* Discussion Paper (May 2017)5.

<sup>35</sup> Section 156 of the Constitution sets out that Schedule 4 Part B and Schedule 5 Part B list areas of exclusive local government authority. Schedule 4 Part B sets out that local government is responsible for *'water and sanitation services limited to potable water supply systems and domestic waste water and sewage disposal systems.'* This clearly does not involve policy planning relating to the use, allocation and protection of and access to water resources.

<sup>36</sup> K Mokoena *'Decentralization of water resource management: a comparative review of catchment management authorities in South Africa and Victoria, Australia'* (minor dissertation for LLM, University of Cape Town, 2015) 64.

<sup>37</sup> Note 11 above, 4-5. This includes local government (where the requisite technical skills are available), Water Boards, Water Services Committees and even Catchment Management Fora (with the consent of the Minister, NWA S86(1)). These form part of the third tier of water governance.

<sup>38</sup> G Mazibuko & G Pegram *'Guide for Local Government Cooperation with Catchment Management Agencies'* 2006 Water Research Commission, 10.

<sup>39</sup> Which must be considered in the Catchment Management Strategy.

### 2.2.2. Lack of prioritisation

Water resource management has not been at the forefront of government initiatives or plans. Inevitably, the state of water affairs in South Africa has deteriorated since 1998, despite the presence of a strong legislative framework which delineates the importance of water as a resource and the management thereof.<sup>40</sup> In fact, the integrity of water sources has progressively worsened both in 'quality and quantity'.<sup>41</sup> The NWRS-2<sup>42</sup> identified a significant lack of implementation of clearly defined priorities, like the establishment of CMAs, and that such failure has left water governance in disarray. Additionally, there has been no monitoring or oversight implemented for the establishment of CMAs<sup>43</sup> consequently, there is no accountability for the delays in implementation. Although the Minister does report to Parliament, on the progress of the DWS regarding CMA establishment, there is no follow-up on these meetings; further evidence that the CMAs are not given the requisite priority treatment.<sup>44</sup>

### 2.2.3. Lack of technical skills and Institutional capacity

Institutional capacity refers to human resources, management and monitoring systems.<sup>45</sup> This capacity is necessary for the DWS to effectively provide institutional and technical support to the water management institutions. CMAs require highly skilled personnel, as their functions include water quality management, water resource planning, water resource protection and the coordination of water conservation and demand management plans, to name a few.<sup>46</sup> These are all

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<sup>40</sup> Note 29 above, 3. Five of the Nine WMA are water stressed catchments, particularly the Vaal, Mzimvubu-Tsitsikamma and Pongola-Umzimkhulu.

<sup>41</sup> Note 35 above, 62. See also S Pollard & D Du Toit 'Towards Adaptive Integrated Water Resources Management in Southern Africa: The Role of Self-organisation and Multi-Scale Feedbacks for Learning and Responsiveness in the Letaba and Crocodile Catchments' 2011 *Springer Science and Business Media*.

<sup>42</sup> Note 3 above, v.

<sup>43</sup> Note 3 above. The lack of emphasis on regulating the performance of the CMAs could be due to institutional uncertainty. At this stage, the DWS performs most of the water resource management functions itself thus it is unclear who should be responsible and held accountable for what. This also contributes to the lack of urgency in fully establishing the remaining 7 CMAs.

<sup>44</sup> NCOP Land and Mineral Resources 'Water Management Catchment Agencies in South Africa: implementation and progress' Meeting Report (5 March 2012) < <https://pmg.org.za/committee-meeting/14074/>>

<sup>45</sup> Note 3 above, 63. Monitoring systems are those systems that are used to monitor the quality and quantity of water in the country. This monitoring requires highly technical skills as such information is fed through to the national systems.

<sup>46</sup> Water is a resource that intersects with many other sectors and industries. It is necessary that the persons at the helm of water management be well informed, highly skilled individuals who can consider the scientific, social and economic factors as relating to water management.

functions that require a high level of technical skill.<sup>47</sup> The deficit of technical and highly specialised personnel, within the water management sphere, cannot be overemphasised. Unfortunately, most of the people with the requisite skills are in the private sector<sup>48</sup> and the DWS faces financial constraints thus, has been unable to offer competitive packages, to the highly skilled persons, in the private sector.<sup>49</sup>

#### 2.2.4. Financial arrangements

The NWA contains a framework within which CMAs can operate financially.<sup>50</sup> The two main sources of funding for CMAs are user charges, collected through billing and revenue collection,<sup>51</sup> and parliamentary appropriation through the National Treasury and DWS.<sup>52</sup>

The CMAs are meant to garner most of their funding through charges for water resource management.<sup>53</sup> Additionally, CMAs are mandated by s84 of NWA to raise funds for the 'purpose of exercising its powers and duties.'<sup>54</sup>

CMAs have faced issues with the financial arrangement. As it stands, CMAs are unable to fully determine the cost of services and goods they render.<sup>55</sup> This is because they must defer to the DWS' broader pricing strategy.<sup>56</sup> Moreover, proto-CMAs cannot collect any revenues, as they have not been delegated such powers thus, they are entirely reliant on the DWS. Unfortunately, CMAs have been unable to reach financial independence and so the pressure to provide funds for water management rests with the DWS, which has been forced to prioritise funding to existing CMAs and proto-CMAs, (to ensure that water management does not grind to a halt) over establishing CMAs in every WMA.<sup>57</sup>

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<sup>47</sup> Note 3 above, 65.

<sup>48</sup> Note 2 above, 64.

<sup>49</sup> Ibid.

<sup>50</sup> The National Water Act, Chapter 5.

<sup>51</sup> This is only if the billing and revenue collection functions have been delegated to the CMA.

<sup>52</sup> Note 25 above, 35.

<sup>53</sup> The CMAs can only legitimately collect charges for core water resource functions that have been delegated to them by the Minister. This may not cover all the possible expenditure by the CMA.

<sup>54</sup> Note 30 above, 27.

<sup>55</sup> Note 2 above, 52. This is because the pricing of water services falls under the discretion of the DWS by way of the National Water Resource Pricing Strategy.

<sup>56</sup> R Eberhard 'Administered Prices- Water: A National Treasury Report' 15.

<sup>57</sup> Note 34 above, 4.

Thus, the financial constraints, placed upon DWS, have hampered the establishment of CMAs which has ultimately contributed to the delay in the implementation of IWRM. Additionally, there has been a misdirection of funds and mismanagement thereof, for example, multiple stakeholder participation meetings have been organised, to discuss the same issues, or to meet performance targets when reporting back to the DWS. This has further delayed the establishment process of CMAs.<sup>58</sup>

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<sup>58</sup> Note 2 above, 63.

## **CHAPTER 3: THE PROPOSED SINGLE CATCHMENT MANAGEMENT AGENCY (S-CMA)**

### **3. Overview of S-CMA**

In June 2017, the DWS took the decision to establish the S-CMA to manage all water resources in South Africa. In December 2017, the Minister signed off on the plan and published a notice inviting the public to comment.<sup>1</sup> This decision came amidst the growing concerns regarding the delays in establishing the CMAs, the associated costs of the establishment of all the CMAs, as well as the need for alignment of the water management institutions to unburden the State of burgeoning service costs. Thus, the establishment of an S-CMA is aimed at bridging the gap, created by the failure of the previous attempts to establish CMAs in all the WMAs, as well as lessen the DWS' costs associated with water resource management.

The DWS further argues<sup>2</sup> that, an S-CMA will:- expedite the delivery of national development and transformation goals, particularly, accountability for the transformation of the nation's water resources; expedite the decision-making and facilitate speedier resolution to any challenges faced by the WMAs; and facilitate the leveraging of scarce skills across the WMAs, as the skilled personnel will be housed by a single body, as opposed to being stretched across nine. This will ensure that no one WMA will be compromised by a lack of skilled staff.

A critical analysis of the S-CMA plan is required to determine whether the S-CMA can successfully participate in water resource management and facilitate sustainable and equitable use of such water resources where the previous incarnations of CMAs have failed. The DWS argues that the S-CMA will succeed, as the root of all the previous failures was the institutional arrangements and so, a

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<sup>1</sup> Proposal for the Establishment of the Single Catchment Management Agency (GN 1415 in GG 41321 of 15 December 2017.)

<sup>2</sup> The Department of Water and Sanitation 'Catchment Management Agencies: Employee Questions and answers' (February 2018).

change in institutional arrangements must surely effect positive change in the water resource management discourse.<sup>3</sup>

The sections below will focus on the key points of the S-CMA and will explore how the S-CMA can navigate each area, in comparison to the existing methods, if there is indeed room for comparison.

### **3.1. Structure and Institutional Arrangements**

The S-CMA is to take the place of all the CMAs and will be one only CMA in South Africa responsible for the management of water resources. This can be viewed as the centralisation of a decentralised system. The S-CMA will have its functions delegated to it, upon its establishment, unlike with the current CMAs. As already discussed, the phased approach of delegating the powers of a CMA, delayed the proper establishment of the bodies, as there was no prioritisation of the matter by the DWS. In contrast, the S-CMA will receive its initial functions as per s80 of the NWA and will also receive all the delegated functions from the Minister.<sup>4</sup> However, the implementation of these delegated functions will be phased, to afford the S-CMA the flexibility to prioritise issues and the discretion to determine which issues to tackle and how to implement functions, with an eye to preserving the functioning and sustainability of the entity. Some of the main functions of the CMA, upon establishment, include<sup>5</sup> monitoring sector performance in terms of policy compliance; providing water resource management plans within the broader national framework; leading the provincial sector coordination and stakeholder engagement; supporting municipalities in developing and implementing water development plans and implementing the DWS transformation programmes within each WMA. In order to avoid the delayed implementation of the functions, it is important that an implementation plan with clear milestones for the phased implementation be put in place and agreed upon by both the DWS and the S-CMA.<sup>6</sup>

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<sup>3</sup> Department of Water and Sanitation *Draft 'Business Case for the Establishment of a Single Catchment Management Agency'* (November 2017) 6.

<sup>4</sup> These include the functions and powers of a responsible authority as set out in Chapter 4 NWA and any of the functions in Schedule 3 of the NWA.

<sup>5</sup> Note 2 above, 7.

<sup>6</sup> Note 3 above 12. This plan should be agreed upon by both parties to avoid unnecessary confusion and to enable each party to hold the other accountable for any failures to meet the agreed upon milestones.

The DWS, in the Business Case for the S-CMA, has stated that the S-CMA will be the executive power, supported by nine operational units, situated in each of the WMAs<sup>7</sup> i.e. instead of having a CMA in each WMA, there will be an S-CMA operational support unit.<sup>8</sup> Instead of nine governing boards for each WMA, there will be a single governing board, based at the main headquarters of S-CMA<sup>9</sup> with a manager appointed for each operational unit.<sup>10</sup> Additionally, the governing board must represent a balance between the interests of existing and future water users, the local and provincial government and environmental interest groups.<sup>11</sup> This will strengthen the participatory nature of the S-CMA, as most, if not all perspectives on how water resource management should be effected will be represented.<sup>12</sup>

The S-CMA operational units will function autonomously, within their jurisdictions, guided by the policies of the S-CMA and the national policies, guidelines and standards.<sup>13</sup> This begs the question, is there a fundamental difference between the current system and the S-CMA's proposed structure?

The current structure states that guidance flows from the National Government thereafter, the CMA will perform its duties, in line with its catchment management strategy,<sup>14</sup> as approved by the DWS. In the S-CMA, the DWS remains the trustee of the nation's water resources and will draft and implement policies to that effect. The operational units must also have plans and policies, which are in line with those

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Additionally, the overall duration of the phased implementation must be reasonable and should happen in 5 years or less (5 years seems a reasonable time to create a catchment management strategy and build capacity) so as to avoid further delay in setting up a fully functional S-CMA.

<sup>7</sup> The Department of Water and Sanitation 'Water resource management in South Africa: Establishment of the Catchment Management Agencies' Discussion Paper (May 2017) 10. The structure of the S-CMA will be as follows; one CEO, one chief financial officer, one chief information officer, one chief of corporate services plus the nine operational unit managers.

<sup>8</sup> Note 3 above, 18. The location of the S-CMA has not yet been determined. Its geographical location might pose a challenge or be an asset to the system. Proximity to the DWS might be beneficial in terms of reducing red tape related to delayed information or something of that nature. Additionally, it would facilitate ease of contact between the executive in the DWS and the Board of the S-CMA further streamlining communication and dissemination of information- clarity fosters productivity.

<sup>9</sup> Note 2 above, 4.

<sup>10</sup> Note 7 above, 10. Figure 6.

<sup>11</sup> The National Water Act, s81(1).

<sup>12</sup> Ramin Penjan, 'The application of assignment and delegation within the context of the National Water Act: the implication for catchment management agencies' (2013) 130 *SALJ* 125.

<sup>13</sup> The Department of Water Affairs 'National Water Resource Strategy 2' (June 2013) iii. This is the legal instrument that enables the National Water Act.

<sup>14</sup> Note 3 above, 13. There will be strategies for each WMA which will form part of the larger S-CMA strategy.

of the S-CMA and the DWS. There is potential for duplication and red tape which would essentially contribute to the delay in the implementation of strategies and policies that will promote sustainable and equitable use of water.<sup>15</sup>

Conversely, it is imperative that each WMA have a catchment management strategy unique to it. The WMAs are different and there is no one plan that will address each area's needs and challenges. Even in the current structure, the failures of CMAs are not uniform, across the board, as each geographical area is unique.<sup>16</sup> To that end, an operational unit that can operate autonomously, within its jurisdiction, is well poised to address the issues, within that area, and can adapt to challenges faster than the main S-CMA would. Another benefit of the structure would be consistency in the water management structure, which would make monitoring and evaluation a far less complicated endeavour. However, there is a risk that, evaluation points might end up as tick-box exercises if the various distinctions between the WMAs are not considered and a one-size fits all evaluation is used. Additionally, the similarity in the structure of the operational units means that evaluation can be cost-effective, as the units are homogenous structures.<sup>17</sup> The purported structure of the S-CMA places emphasis on the CMA as a 'regulatory, support and oversight vehicle'<sup>18</sup> thus, the S-CMA and the DWS will both perform oversight roles.<sup>19</sup> Although the structure of the S-CMA bears some similarities to the existing structure, it provides the operational units with the flexibility to react to challenges on the ground and facilitate localised decision making that independent CMAs do not currently have. Additionally, the structure will create uniformity thus creating a landscape of water management that is easier to monitor and report upon. This operational structure will, therefore, enhance the effective running of the S-CMA and its water management functions, enabling it to meet the main goal of

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<sup>15</sup>Ibid. According to the Business Case, the Catchment Management Strategies must be drafted within the first 2 years of the S-CMA's existence.

<sup>16</sup> Note 3 above. The Business case for the S-CMA as published in December 2017.

<sup>17</sup> Note 3 above, 19.

<sup>18</sup> Ibid. This includes co-ordinating with other water use institutions, providing support to the operational units and other water management and water services institutes.

<sup>19</sup> The DWS will be responsible for policy and regulation development for the entire water resource management (WRM) domain. It will ensure that all players within the system adhere to the set policies in order to ensure the prompt realisation of set goals. The S-CMA is the body responsible for the actualisation of the DWS' policies through its Catchment Management Strategy (CMS) and will perform an oversight role for the operational units in each WMA because the operational units are the bodies that will implement the CMS in a manner that is compatible with the needs of each individual area.

sustainable and equitable use of water resources. Moreover, the S-CMA can take responsibility for the financial sustainability of the agency, instead of it being spread out over nine CMAs, this affords the operational units the freedom to focus on addressing the water resource issues, within their jurisdictions.

### **3.2. Financial arrangements**

As mentioned above at 2.2.4, the NWA contains a framework within which CMAs can operate financially and the two main sources of funding for CMAs are user charges; collected through billing and revenue collection and parliamentary appropriation via National Treasury and DWS.

According to the Business Case for the S-CMA, this financial arrangement will not change. A subtle but significant change, for the existing structures, is that the DWS only intends to fund the establishment of the S-CMA, whereafter, it will place the responsibility of financing, on the S-CMA.<sup>20</sup> This is possible as the functions to bill and collect revenue will be delegated to the S-CMA, at the time of establishment.

However, the S-CMA's viability and existence is dependent on whether it can generate sufficient cash flow to fulfil its mandates - simply put, finances are a crucial part of running the S-CMA, they are vital for both its survival and its growth.<sup>21</sup>

Worryingly, should the S-CMA fail to collect sufficient revenue from water use charges, there could be a shortfall in the funds available for it to carry out its responsibilities, which are numerous and will continue to grow, as the DWS places more responsibilities on it. The DWS does provide the S-CMA with shortfall cover<sup>22</sup> for when the water use charges are insufficient, however, this is not an ideal situation, as the S-CMA needs to be as financially independent as possible., so as not to suffer along with the DWS when it faces financial constraints from National Treasury.

In order to avoid shortfalls, the S-CMA should utilise the funding sources permitted to it by s84 of the NWA to realise its financial independence and in turn, its ability

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<sup>20</sup> Note 3 above, 27.

<sup>21</sup> Ibid.

<sup>22</sup> Note 3 above, 30.

to fulfil its mandate. Additionally, the S-CMA should ensure that the tariffs it sets for water resource use must be cost reflective<sup>23</sup> and provide for the full range of activities it will undertake to manage water resources.<sup>24</sup>

### **3.3. Public and Stakeholder participation**

South Africa still feels the effects of its past as racial divides still exist within the management of water resources in the country. Stakeholder participation has yet to achieve the desired level required for the meaningful integration of water resource management as mandated by the NWA. Chief to this failure is that in the past, black South Africans were excluded from the management of water resources.<sup>25</sup> Today, the constitutional and legislative framework around water seeks to redress the discrimination from the past. Unfortunately, because of the previous exclusion of the black population, who make up the majority in the country, there is a definite lack of skilled public participants in the discourse around water resource management. Moreover, local communities are often unaware or uneducated about water resource management, including issues pertaining to 'sustainability, equality and conservation.'<sup>26</sup>

Stakeholder participation is a cornerstone to effective water resource management.<sup>27</sup> The legal framework around CMAs mandates them to cultivate a relationship between the CMAs and the stakeholders to 'promote water management that is democratic, empowering and transparent.'<sup>28</sup> Effective stakeholder participation will

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<sup>23</sup> Note 7 above, 4.

<sup>24</sup> This is an opportunity for the S-CMA to prove its usefulness to the various stakeholders and water users. It must be able to justify the increase in tariffs through its effective and efficient management of water resource. There must be significantly improved water management with a direct benefit to them. (see Department of Water Affairs 'Financial Viability of Catchment Management Agencies: Financial Analysis and Policy Considerations' (June 2012) 14.

Failure to show significantly improved water resource management in the face of higher tariffs will result in non-compliance and difficulty in revenue collection, rendering the S-CMA low on income for its operations.

<sup>25</sup> K Mokoena 'Decentralization of water resource management: a comparative review of catchment management authorities in South Africa and Victoria, Australia' (minor dissertation for LLM, University of Cape Town, 2015) 67.

<sup>26</sup> Ibid, 68.

<sup>27</sup> Note 13 above, 15. Water resource management operates within a social, economic and ecological environment. (see section 2.3 on IWRM.) Active citizenry within it allows for the inclusion of communities and the creation of operations for their advancement.

<sup>28</sup> AC Mofokeng 'Challenges in developing water management institutions: the case of catchment Management agencies (CMAs) in South Africa' (unpublished mini-dissertation for the MA-Development and Management, North-West University 2017, 3.

provide a platform for promoting understanding between different groups of water users and ensure that the implementation of and management of water resources is rooted in increased cooperation and understanding. This is in line with the vision set out in the NWRS-2.

As mentioned above, the S-CMA will be a central body with operational units in each of the WMAs. It can be surmised that stakeholder participation will occur within WMAs rather than at the main S-CMA, as that would defeat the purpose of grassroots consultations with the local communities and other stakeholders. Potentially, a challenge S-CMA could face is that it might be viewed in the same light as the DWS, with the operational units perceived as intermediaries. This would erode the trust of the stakeholders, as the DWS, in its role as the central oversight authority had not inspired trust with the local communities.<sup>29</sup> However, having the operational units handle stakeholder participation, in their respective jurisdictions, affords them the flexibility to engage meaningfully and react swiftly to alleviate stakeholder concerns as well as foster greater trust between it and the stakeholders.

Each WMA is unique and the stakeholders in each one face challenges specific to them thus practical and meaningful engagement between each operational unit and the stakeholders in its jurisdiction cannot be overemphasised. The public participation guidelines to be prescribed by the S-CMA<sup>30</sup> must fully encompass the sixteen-public participation strengthening factors as set out by the DWS<sup>31</sup> which include, inclusivity, integration, flexibility, transparency, accessibility of information, awareness and empowerment.<sup>32</sup>

The aim of stakeholder participation is to involve all water users and to give voice to all stakeholders, particularly those who were previously excluded from the

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<sup>29</sup> Ibid, 65.

<sup>30</sup> The operational units must not follow the guidelines rigidly to the detriment of the consultation and participation process. Flexibility should be encouraged as a rigid application will fail to encapsulate the specificities of each WMA and relegate stakeholder participation to a tick-box exercise which would be of no value in the push for integrated resource management which promotes sustainable and equitable use of water resources. Additionally, participation should not simply be a means to legitimise already made decisions.

<sup>31</sup> Note 27 above, 48. See also, Department of Water Affairs and Forestry (DWAF) *'Implementation of catchment management in South Africa'* (2001).

<sup>32</sup> Ibid.

discourse on water resource management.<sup>33</sup> The goal is to utilise stakeholder participation to improve decision-making and sustainable development thus managing the water resources in a more holistic manner.<sup>34</sup> Moreover, meaningful stakeholder participation <sup>35</sup>will significantly improve the lives of communities by nurturing collaboration amongst them and other interested parties and stakeholders as well as the S-CMA and the DWS. It is important to note that meaningful stakeholder participation is more than just consultation. It is participation that will have an impact on decisions within water resource management thus, effective participation and collaboration are empowering factors in water resource management.<sup>36</sup> However, different stakeholders have different needs thus the S-CMA's public participation processes should ensure that it engages with each of their various concerns.<sup>37</sup> High volume water users and communities will not have the same needs. Additionally, there exist inequalities between them. The S-CMA must ensure that within its public participation process, it pays equal attention to the concerns and need of the communities as it does the high-volume users (who are often better organized and better informed of the processed). The S-CMA's role in facilitating sustainable and equitable use of water resources is to even the playing field by stimulating information provision and social facilitation.<sup>38</sup> Poor and previously excluded communities should not be invited on an ad-hoc basis after all, meaningful community participation is the cornerstone of catchment level water resource management. Additionally, the S-CMA should be aware of the risk which the larger, better-funded stakeholders pose within the participation process. They could use their position to essentially direct the consultation meetings to their benefit and arbitrarily exclude smaller communities and water users.

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<sup>33</sup> Catchment Management Forums should be established in every WMAs with the support of the operational units. They will assist with facilitating the meaningful participation of stakeholders in the management of water resources.

<sup>34</sup> Note 27 above, 47.

<sup>35</sup> Global Water Partnership 'Integrated Water Resource Management' TAC Background Papers no 4 (2013), 16.

<sup>36</sup> Ibid.

<sup>37</sup>B van Koppen, N Jha and D Merrey 'Redressing racial inequities through Water Law in South Africa: Interaction and Contest among Legal Frameworks' (2006) *Water governance for sustainable development* 16.

<sup>38</sup> Ibid.

Additionally, the S-CMA must contribute towards redress in relation to the participation of 'uneducated' and historically disadvantaged communities.<sup>39</sup> Thus, the S-CMA faces the gargantuan task of encouraging local communities, to take an interest in water management, by increasing their water management education and participation in the water management discourse. The meaningful participation, of the poor and historically disadvantaged communities, is critical to poverty eradication and it will also ensure the legitimacy of policies and strategies the S-CMA puts in place.<sup>40</sup> Unfortunately, this must be done with very little financial support from the DWS, as it faces financial constraints, and so the process might be a long and difficult one.

Can the S-CMA successfully facilitate effective consultations with all the relevant stakeholders? I would argue that it can indeed facilitate effective consultations and push forward the catchment-based water resource management for which it was created.

### **3.4. Political interference**

South Africa has developed a reputation for sudden and inexplicable cabinet member changes. The Minister responsible for water and sanitation is appointed by the President from the members of the ruling party. Additionally, the country's developmental goals and the achievement thereof can lead to the lack of prioritisation of the S-CMA as other, more visible issues take precedence, such as poverty alleviation or unemployment. Moreover, in the past when the Minister was replaced, it would effectively halt the process of establishing the initial nine CMAs, as the new head would enter with certain directives<sup>41</sup> in mind or would wish to restart the process.<sup>42</sup>

The S-CMA should be prioritised and once it has been established, it must be protected from political interference, by the presence of a governing board, which cannot be dissolved unless proper channels are followed. Such firm structures will

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<sup>39</sup> Note 24 above, 70.

<sup>40</sup> Note 13 above, 15.

<sup>41</sup> Note 27 above, 61.

<sup>42</sup> Note 7 above, 1. Indecision and continued leadership changes have cost the DWS in excess of R 100 million which has been spent on studies to determine the institutional models for the CMAs.

consequently curb the change of political head from affecting the functions of the S-CMA.

## **CHAPTER 4: SUMMARY AND COMMENTS**

### **4. Comments**

Water resource management, as defined by the NWA and in the context of this paper, involves the equitable allocation of water resources, the beneficial use of those resources in the public interest and the protection of the quality of water resources with an eye towards sustainability. In that vein, the main aim of this paper is to determine if the proposed S-CMA, as discussed in the Business Case published by the DWS, can fulfil the mandate of CMAs and facilitate sustainable and equitable use of water as envisioned by the NWA and the NWRS-2.

Water resource management in South Africa is simultaneously the most well-legislated area of environmental law as well as the least successfully implemented, particularly regarding the CMAs. The previous incarnations of the CMAs faced various challenges, a few of which are discussed above, which stemmed from a lack of institutional clarity, a lack of technical skills and institutional capacity, financial mismanagement and a lack of prioritisation of CMA establishment. These issues hindered the CMA establishment so completely that an overhaul of the structure was deemed necessary hence the S-CMA.

The S-CMA, simply put, is a single body that will replace nine. Its singularity does not spare it from the pitfalls of the previous CMAs, after all, all the fundamental ideology behind the CMA has not changed, only its implementation, and so a critical analysis of the key factors in a CMA is necessary. This paper dealt with the following factors; the institutional structures, financial arrangements, stakeholder participation and potential political interference.

From the analysis in the paper, the S-CMA faces the same issues as the current CMAs, however, unlike the previous incarnations, the framework around its establishment has been sufficiently altered, based on previous experience, to offer it a strong foundation upon which to execute its duties. The position of the S-CMA cannot be overstated. It will essentially be responsible for the management of all the water resources in South Africa. It will require strong structures and the

existence of the operational units will provide it with easier and closer access, to the local communities and stakeholders, without the red tape involved with hauling the main body into the interactions. An understanding and appreciation of its role as both a body to discharge the duties placed upon it by the DWS and as a monitoring and oversight body over the operational units and other water-use institutions is paramount.

The sustainability, of the S-CMA, is also of great importance thus the financial arrangements around it must be well thought out and offer security.<sup>1</sup> If the S-CMA collapses, the entire water resource management regime will be in disarray, which would set back water resource management and the transformation thereof by years, if not decades. This is a disturbing possibility as the system is already several years behind schedule, hence the urgency in setting up the S-CMA and ensuring that it is sustainable.

Stakeholder participation in the water sector is at the core of all processes. Water intersects with all activities and sectors, thus the management of it, including its protection, should involve all those concerned. However, stakeholder participation should not be a hindrance to the progression of water resource management. The systems and policies created to facilitate such participation should ensure that every occasion in which the stakeholders are involved in the decision-making process, is meaningful and adds value. If the participation process is not handled correctly, it can become a very expensive challenge. The S-CMA should invest in a participation forum, which will function as an open arena for the different water users and even the DWS, to seek dialogue on water-related issues and their solutions. This forum should also act as a direct channel for communication between the stakeholders and the S-CMA.<sup>2</sup>

Additionally, effective water resource management should not be viewed as a means to an end in relation to the National Development Goals. It should be

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<sup>1</sup> Stakeholder participation in the setting of tariffs for water resource will increase transparency and accountability, both of which will improve water user trust in the S-CMA which will improve the sustainability of the S-CMA.

<sup>2</sup> P Naicker and S Sikhosana 'Integrated water resource management: Midmar Dam' (2012) 7 WISA YWP *Water and Sanitation Africa* 8, 17. A good example of this is in the province of Guanajuato, Mexico. A Groundwater Technical Committee was created as a participation mechanism. This could work in conjunction with Catchment User Forums.

embedded in the very fabric of the national agenda and form part of the education of all citizens, to foster an awareness of the importance of effective water resource management, in fulfilling sustainable development goals and the ideologies behind intergenerational justice.

Finally, adaptive management<sup>3</sup> should be employed within the S-CMA and its operational units. This will ensure that changes can be made if outcomes are not achieved within specified time periods. This will reduce time and resource wastage if the set plans no longer fit into the increasingly dynamic world of water resource management.

The S-CMA will be second only to the DWS and will, therefore, be a major player in the discourse around water management. I would urge the DWS to involve other institutions vested in water management, to offer insights and commentary on its functions, just as the DWS will, as it performs its oversight role.<sup>4</sup> Crucially, although the DWS will delegate most of its functions to the S-CMA some functions will remain vested in it<sup>5</sup> and the Minister remains the custodian of all water resources in South Africa.<sup>6</sup>

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<sup>3</sup> The Department of Water Affairs '*National Water Resource Strategy 2*' (June 2013) iii. This is the legal instrument that enables the National Water Act.

<sup>4</sup> The S-CMA's participatory nature should allow for the involvement of other institutions such as civil societies during review procedures for key strategies and policies. This will provide the DWS and S-CMA with invaluable insight which might cover facets of the plans and strategies which had previously not been considered.

<sup>5</sup> Department of Water and Sanitation *Draft 'Business Case for the Establishment of a Single Catchment Management Agency'* (November 2017) 2., 16. To name a few, (i) development, operation and maintenance of national monitoring and information systems (ii) developing and ensuring the implementation of the raw water pricing strategy, (iii) flood monitoring and management in national systems and (iv) determination of classification, reserves and resource quality objectives for water resources of national significance or with significant inter-water management area implications.

<sup>6</sup> *Ibid.*

## CHAPTER 5: CONCLUSION

### 5. Conclusion

There is no guarantee that the S-CMA will succeed where others have failed. The international community and South Africa have recognised that water is a finite resource that is fast depleting in the face of increased development, population growth, so, sustainable management of this resource has never been more crucial.

South Africa faces an even larger challenge, as the entire water sector requires institutional transformation and policy implementation, which will further the objectives of sustainable and equitable use. Decentralisation of water resource management in the form of the S-CMA will assist in reaching these goals through shared-knowledge, knowledge creation and community participation. In a water-scarce country like South Africa, decentralisation, and thus the S-CMA, is vital. It can be argued that the S-CMA does not represent decentralisation. I would argue that decentralisation is a heterogeneous process. The S-CMA represents an evolved version of decentralisation. It recognises the strengths of having a measure of centralisation which allows for the coordination of technical and institutional development as well as infrastructure. It further allows for the setting of general priorities, in water resource management whilst embracing the efficiency of a decentralised system, which produces more effective service delivery, embraces the use of local community resource and focuses on the end-users participation in actual water resource management.

The S-CMA, once established, must adapt to the current landscape and propel the constitutionally mandated sustainable and equitable use of water resources.

The S-CMA does have a solid opportunity to step up and fulfil the mandate of the NWA and NWRS-2, however, the DWS must invest wholeheartedly in the process, as a similar failure to the current CMAs will affect public confidence in it, as well as set the entire water sector back and behind international standards. Institutional capacity of the DWS and S-CMA should be continuously strengthened, and the structures put in place should be reviewed regularly with a view to adapting to any changes and improving the status quo. Moreover, sufficient technical and financial resources should be allocated to the S-CMA and its operational units, to keep the management of water

resources running smoothly. Finally, the S-CMA is sufficiently varied from the current CMAs and such variance might just afford it the opportunity to succeed. It can be the vehicle that drives IWRM forward and effectively facilitate the realisation of sustainable and equitable use of water resources; but only in the face of strong institutional arrangements, focused on adapting and managing the South African water resource management system, to the highest standard possible.

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