

Considerations on the composition of CMA Governing Boards to achieve representation

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South Africa is embarking on a process of progressively establishing 19 catchment management agencies with the purpose of decentralising water resources management and involving local communities. There is a legislatively required process leading to the appointment of the CMA Governing Board, involving a recommendation on the composition of the Board by an Advisory Committee followed by nomination by identified organs of state and bodies. It is argued that this provides an appropriate mechanism to ensure adequate representation of the interests of rural, poor and marginalised communities, particularly as these groups trend to be relatively unorganised and non-cohesive at a water management area level. This hypothesis is supported by the recommendation on the Inkomati CMA Governing Board.

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Introduction

With the promulgation of the National Water Act (NWA: Act 36 of 1998) following the White Paper on a National Water Policy for South Africa (DWAF, 1997), the way in which water resources are managed in South Africa has been fundamentally changed. The cornerstones of the NWA are sustainability of resource development and utilisation, equity in access and allocation, efficiency in water allocation and use, and the establishment of appropriate and representative institutions for water resources management at a catchment and local level.

A process of fundamental institutional change is underway in the South African water resources management sector, with the establishment of Catchment Management Agencies (CMA) and the intended decentralisation of powers and functions from the Department of Water Affairs and Forestry (DWAF). Each CMA will be managed by a Governing Board representing local interests and institutions. The NWA provides a framework for the establishment of CMAs, but provides significant latitude in the way this is done. Over the past 5 years, DWAF has developed policies, strategies and guidelines on the establishment and functioning of CMAs to assist and ensure coherence in the process.

19 CMAs will be established across the country over the next 5 years, one in each of the 19 water management areas (WMA) defined through the National Water Resources Strategy (NWRS). It is important to note that WMA cover a relatively large area (on average about 20 000 km²) and are extremely diverse in terms of population (ranging from about 400 000 people to over 5 million people), water use (from 300 million m³/year to 1200 million m³/year) and gross geographic product (from 1% to over 20% of national GGP). There are WMA with large numbers of poor rural people living on communal lands (such as the Mzimvubu to Keiskama in the former Transkei) and others with primarily urban dwellers and commercial agricultural (such as the Upper Vaal south of Johannesburg).

The Inkomati CMA has been established and the Minister is in the process of appointing the Governing Board, at least another three CMAs will be established during the 2005/06 financial year. Given the diverse nature of the various WMAs, the political and social imperatives to redress historical imbalances in access to water and government's objective to eradicate poverty, the role and composition of the Governing Board becomes critical in setting the strategic direction for the CMA. This is particularly important for the rural poor and marginalised communities that do not have access to water resources and are generally unorganised from a water resources perspective, but where access to even a limited quantity of water for productive purposes¹ can have a fundamental impact on household livelihoods and local enterprise development.

This paper explores these considerations around the composition of the CMA Governing Board and its implications for representation of poor communities and marginalised water users, as a means of including their interests in the strategic priorities and operational decision making by CMAs. The main focus of the paper is the legal requirement of the NWA and its interpretation in the process of appointing the Governing Board. However, the paper begins with some background to CMA establishment and the implications for integrated, participatory and developmental water resources management.

The establishment of Catchment Management Agencies

Chapter 7 of the NWA provides for the progressive establishment of CMAs, with the purpose of delegating water resources management to regional or catchment level and involving local communities. The process of establishing a CMA is based on the development of a Proposal to the Minister, which addresses the viability of the CMA and consultation process. Thus far, this process has been largely driven by DWAF regional office, but through the establishment of stakeholder structures to guide the development of the proposal. A key focus has been on the empowerment of historically disadvantaged groups (particularly their representatives) to participate and contribute to the process.

Each CMA will be established to become the key water resources management body within a highly contested water institutional environment with local government, provincial government, traditional leaders, water user associations, water services providers, international water bodies, sector representative bodies, non-governmental and community based organisations and other interest groups all wanting to influence, cooperate and/or dictate the way in which water resources are managed. Furthermore, the water resources in many parts of the country are already stressed, with the resulting disputes and conflicts between sectors and users.

For this reason, the early development of the CMA (in the first couple of years) should be focused on building its credibility and legitimacy as the main water management institution in the WMA. Upon establishment, a CMA has initial functions including:

- investigate and advise interest parties on the management² of water resources within the WMA
- develop a catchment management strategy that is consistent with the NWRS, as well as with local water services development plans of local government
- coordinate water-related activities of water users and water management institutions within the WMA
- promote community participation in the management of water resources

These functions should promote the stature of the CMA within the WMA, as long as they are implemented in a cooperative rather than authoritarian manner. It is therefore also envisaged that the responsibilities of controlling and enforcing water use authorisation (to support licensing or permitting of water use) will be transferred to the CMA early in its development (within the first 2 years), as this is the main interaction with water users and is an area in which the CMA should add value. A key principle of the CMA establishment process is that certain DWAF staff will be transferred to the CMA with these functions as a coherent “business unit” to ensure continuity of service delivery and institutional memory.

The concept of a service delivery oriented organisation is important, because a CMA will be largely funded through the collection of water use charges on registered water users (to fund the costs of water resources management activities)³. These may be supplemented by financial support from DWAF or from any other lawful source. The debate about level of financial support and for what functions is ongoing, particularly as an attempt to make a CMA entirely self-sufficient may introduce the perverse incentive to allocate water to those organised sectors that are willing and able to pay in the short to medium term. This may be in contradiction to the requirement for water allocation reform and redress of past imbalances in access.

Once these initial and early functions are being adequately implemented, other related water resources management functions would be delegated to the CMA, culminating in the responsible authority functions of authorising water use (i.e. issuing licences).

Implications for CMA governance

The challenge of establishing 19 new organisations over a period of 5 years has not been underestimated by DWAF. This is partly the reason that the first CMA has only been established 6 years after the promulgation of the NWA, particularly when one considers the need to:

- establish administratively and financially effective and *sustainable* organisations that
- enable the involvement and *participation* of water users and stakeholders (including historically disadvantaged groups), while they
- adopt an *integrated* approach to water resources management, which can
- contribute to social and economic *development* at a local level.

This will only be achieved by organisations that are based on an integrated consensus-seeking approach to decision making considering government's strategic objectives and the broad implications to all sectors, rather than negotiation and bargaining between narrow vested interests. Furthermore, the voices of the most marginalised segments of society need to be heard in these debates which itself requires a fundamental capacity building and empowerment programme.

In practice, people tend to participate in water resources management processes, where they have something to gain or loose. CMAs do not have the mandate to provide water supply and sanitation services to communities (as this is a local government mandate), which is generally the key water issue at a local level in South Africa. Until the rural poor have water allocations (or entitlements) and the means to support household livelihoods, enterprise development or small-scale commercial farming, or at least see the need to obtain these allocations, they are unlikely to broadly participate in CMA processes.

The issue is whether to delay CMA establishment until adequate local institutional development, empowerment and water allocation reform has taken place (to "even the playing field" over a period of 10 years) or whether to continue with the process of CMA establishment, focusing on capacitating rural and poor community representatives. The latter is dependent upon adequate representation on the governance structures of CMAs and decision making within a policy framework that reflects the objectives of redress and poverty eradication.

Over the past 15 years, DWAF itself has transformed from a relatively centralised technocratic management style, to one that is more decentralised and participatory in all parts of the country. This includes the recent restructuring process that will result in the creation of "proto-CMAs" within the DWAF regional offices, to be transferred to the CMA after establishment. However, DWAF is not accountable to the stakeholders in a WMA in the same way that a CMA would be and is unlikely to entirely fulfil the promise of integrated, participatory and developmental water resources management.

On the other hand, DWAF may be more able to make the locally difficult decisions required for environmental sustainability and water allocation reform, as it is one step removed from the influence of powerful organised WMA interests upon which the financial viability of the CMA may be dependent.

The need to establish CMAs to promote decentralised management, while requiring DWAF to ensure the "levelling of the playing field", has resulted in the policy of phased development of CMAs (over a period of 5 to 10 years) and the retention of certain key functions (such as water resources classification and compulsory licensing⁴) by DWAF.

From the above, it is apparent that the composition and mode of operation of the CMA Governing Board will largely determine whether the CMA contributes to integrated, participatory and developmental water resources management, with the empowerment of the poor and marginalised groups within the WMA. This is particularly critical for the first Governing Board, as they will oversee the creation of the CMA in its first 3 years, particularly in terms of its strategic direction (priorities) and organisational design (structure, systems staffing and culture)⁵.

Composition of the Governing Board

While the preceding discussion has highlighted the importance of the CMA Governing Board, the legislated process and considerations for appointing members of this Board [in terms of Section 81 of the NWA] is of particular interest.

1. Before appointing members to the CMA Governing Board, the Minister of Water Affairs and Forestry must appoint an Advisory Committee, to recommend “*which organs of state and bodies representing different sectors and other interests within the water management area of the catchment management agency should be represented or reflected on the governing board*” and “*the number of persons which each of them should be invited to nominate*” [Section 81(3)].
2. The Advisory Committee must “*consult with the relevant organs of state and interest groups before making its recommendations*” [Section 81(4)]
3. The Minister must “decide which organs of state and bodies will be invited to nominate representatives for appointment to the governing board, and the number of representatives each may nominate”, based on the Advisory Committee’s recommendations [Section 81(5)].
4. Once nominations have been made, the Minister must appoint the nominated persons in accordance with the invitation [Section 81(7)]. Three nominations will be requested for each seat on the Board, from which the Minister should be able to appoint a Governing Board that represents interest, demographic, gender, community and expertise requirements. The Minister may appoint additional members to balance the Board where these considerations are not met [Section 81(10)].

What is remarkable about this approach is that the size and composition of the CMA Governing Board is recommended by the Advisory Committee, while the individuals are nominated by the institutions representing the various interests identified for representation. This approach should result in a balanced Board, but with individuals that have legitimacy within their sector or interest group. It also enables the Minister to construct a Board with the required profile, based on the options of multiple nominations per seat.

This differs from the approaches that are typically adopted for appointing public sector Board members, namely publicly calling for nominations or holding elections for the office. These approaches tend to be biased towards organised groups, at the expense of unorganised, poor and marginalised groups, particularly in the context of a South Africa’s political history, uneven access to resources by different groups, and newly emerging democracy. They would likely contribute to the continued marginalisation and exclusion of large portions of the population.

However, it places considerable responsibility on the Advisory Committee, and therefore its composition becomes important to the process. The existing policy is that an Advisory Committee of between 7 and 10 individuals be appointed with the following composition:

- a Member of National Parliament (preferably from the WMA),
- a member of the Minister’s National Advisory Council (who knows the WMA),
- an official from each Provincial Government within the WMA (through the Office of the Premier),
- a representative of organised Local Government at the Provincial level, and
- 2 or 3 individuals that were part of the process of compiling the Proposal to the Minister for the Establishment of the CMA (nominated by the relevant stakeholder committee/s).

In appointing the Board, the Minister must consider the objective “*of achieving a balance among the interests of water users, potential water users, local and provincial government and environmental interest groups*” [Section 81(1)]. This provides an important basis for the Advisory Committee to not only consider the existing major users of water. From a rural development perspective, the Governing Board should represent people and communities that may have an interest in utilising water for household livelihoods, enterprise development or small-scale agriculture/irrigation.

At one level, the process of the Advisory Committee may be relatively simple, namely to identify all the interests in the WMA and provide them representation according to criteria around use of water, social and economic development, government mandates, and sustainable development. However, this is complicated by the DWAF guideline that the Governing Board should consist of between 9 and 15 members, in terms of good

governance practice. This drives the concept of trade-offs between interests and the difficulty in weighting representation according to membership, as there are generally in excess of 15 interest groups.

While this is a complication for the Advisory Committee, it is a potential advantage to the CMA Governing Board, because it is likely that no one “block” will have a majority on the board, but rather that different groupings may find alignment in interests on different issues. In other words, in the absence of domination from a majority block, one may hope that there is a drive towards consensus and cooperation, rather than polarisation. This is further reinforced by the responsibility of Board members to act in the interest of the CMA and the duty to “*exercise reasonable care and diligence*” [in terms of Schedule 3 of the NWA].

A means of addressing the representation problem at the CMA Governing Board level is the possibility of establishing committees on a catchment (geographical) or functional (issues) basis [in terms of Section 82(5) of the NWA]. Most of the nine stakeholder Proposals to the Minister on Establishing a CMA, that have been or are being developed at this stage, recommend the establishment of one or more representative catchment management committees of this nature.

These committees will generally consist of Governing Board members, CMA staff, stakeholder representatives and/or technical specialists, and provide an opportunity to include sector and interest group representation reflecting the local situation in a catchment. In many WMA, there are fundamental differences in the demographics, economic activities, and water resources problems between catchments that can be dealt with at this level. Where consensus can be reached between interests at this level,

Experience of the Inkomati CMA Governing Board

At the time of writing of this paper, the Advisory Committee for the establishment of the Inkomati CMA has made a recommendation to the Minister. It is instructive to review this committee’s recommendation and its potential implications for rural and poor households.

The Inkomati water management area is situated in the north-eastern part of South Africa and borders on Mozambique and Swaziland. All the rivers from this area flow through Mozambique to the Indian Ocean. The Komati River flows into Swaziland and re-enters South Africa before flowing into Mozambique. Topographically the water management area is divided by the escarpment into a plateau in the west and a subtropical Lowveld in the east.

Economic activity is mainly centred on irrigation and afforestation, with related industries and commerce, and a strong eco-tourism industry. A key feature of the water management area is the renowned Kruger National Park. The Sabie River, which flows through the park, is ecologically one of the most important rivers in South Africa, while the Crocodile River forms the park’s southern boundary. There is a significant impoverished rural population in the former homeland areas in the eastern part of the WMA. The water resources in the WMA are highly stressed, but there is a significant need to reallocate water to emerging farmers with access to land and to communities for productive purposes. In line with national government’s objectives, there is a major programme of water supply and sanitation delivery to the rural communities in this area.

A Board of 14 people was proposed with the following composition (from the recommendation to the Minister):

1. *Commercial Agriculture*: primarily representing commercially irrigated sugar cane and fruit in the Inkomati WMA, but includes other commercial irrigated crops, livestock and dryland farming.
2. *Existing Agriculture by Historically Disadvantaged Individuals (Emerging farmers)*: primarily representing existing small-scale irrigation by historically disadvantaged individuals, but includes the existing interests of stock watering and other agricultural activities by these groups within these areas.
3. *Potential Agricultural Water Use by Historically Disadvantaged Individuals*: representing the interests of those individuals with access to some land for agricultural production (particularly those engaged in dryland farming or beneficiaries of land reform), but who currently have no entitlement or access to water. This reflects the interests of groups that may require reallocation of water and/or local infrastructure development to enable the use of water for small-scale irrigation farming. The important element of this representation is

an understanding of the needs of this relatively marginalised group in the broader process of water resources planning, utilisation and development.

4. *Streamflow Reduction (Forestry)*: representing streamflow reduction activities defined under the NWA, which currently includes only forestry, in terms of both large commercial and small emerging forest growers.
5. *Industry, Mining and Power Generation*: broadly representing the industrial, manufacturing, commercial, mining and power generation sectors that use water and have a significant contribution to the economy of the WMA.
6. *Tourism and Recreation*: representing the interests of tourism and recreation associated with the water resource, including fishing and aquaculture.
7. *Conservation*: representing the formally established national and provincial parks, as well as conservancies and community conservation initiatives.
8. *Productive Use of Water by the Poor*: representing the potential productive use of water in local enterprise by poor and marginalised rural households (focusing on women) to improve their livelihoods, including but not limited to Schedule 1 use. There are two related but distinct elements of this productive water use, namely the use of water to support local enterprise development and the use of water to support rural household livelihoods¹. This reflects the need to represent this type of water use and the associated support requirements in the use of that water, though an understanding of the opportunities and constraints on productive water use to address poverty.
9. *Civil Society - Resource Protection and Sustainable Development*: representing civil society environmental interests in the protection of water resources, for ecological sustainability and sustainable utilisation of water and associated resources by local communities. This reflects an understanding of the utilisation of local resources and products for productive, subsistence and social activities.
10. *Local Government - Integrated Planning*: representing the local government mandate for integrated planning and development, particularly in terms of the Integrated Development Plan process and associated plans.
11. *Local Government - Water Services Authority*: representing local government mandate for water services planning and service delivery (as a water use for domestic and industrial consumers).
12. *Traditional Leaders*: representing traditional leaders as an institution of local governance with a role in the management of communal land in the former homeland areas.
13. *Mpumalanga Provincial Government*: representing relevant Mpumalanga Government interests in the majority of the WMA, including agricultural, environmental management and development planning responsibilities.
14. *Limpopo Provincial Government*: representing relevant Limpopo Government interests in the northern part of the WMA, including agricultural, environmental management and planning responsibilities.

For each of the formally organised groups one or more recognised representative institutions or bodies are requested to proposed nominations for the relevant seat, and the process of identifying those nominations is not prescribed. However, for the less formally organised seats (particularly 2, 3 and 8), a process is being conducted to bring representatives of that grouping together from across the WMA, to facilitate the identification of nominations. During this process, these representatives are expected to consult locally.

A review of this recommendation highlights representation of the main existing water users, balanced by the interests of emerging and prospective water users, particularly historically disadvantaged individuals, the rural poor and women. It also effectively represents local and provincial government, focusing on their relevant mandates for development planning and service delivery. Environmental interests are also adequately represented through relevant government, private sector and civil society representation.

A remarkable development is the recommendation for 4 seats to directly represent the different interests of the rural poor (in addition to their partial representation through the Local and Provincial Government seats), namely Seat 2 and 3 for emerging farmers (with and without water allocations), Seat 8 for productive use of water for household livelihoods and local enterprise development, and Seat 9 for the interests of people using the resource directly in terms of the “goods and services” it provides.

As implied above, there is no one block that can dominate the decisions of the Board, but rather a process of consensus seeking and alignment will be needed. The recommendation also highlighted the need for representation of catchment areas at the Governing Board level to be considered in the appointment of the Board members, supported by the establishment of catchment management committees in 5 distinct sub-catchment areas within the WMA. This was in addition to the need for demographic, gender and expertise related representation on the Governing Board.

While this Board is at the upper end of the DWAF size guideline, it was deemed to be important during the process of building the CMA legitimacy, as well as trust and maturity between sectors and interests in the management of water resources. In the future (after 5 to 10 years), this representation may be reduced to a Board of 8 to 10 members representing multiple interests and expertise.

Conclusions

The paper has outlined the legislative requirements for representation on CMA Governing Boards and highlighted the way that this may be used to support the interests of rural and poor communities in obtaining improved access to water. It has illustrated the advantage of the process through the experience of the Advisory Committee for the Inkomati CMA Governing Board leading to an outcome that would have been unlikely through an electoral or public nomination process.

However, ultimately the process will be dependent upon the calibre of the individuals nominated to represent the interests and their ability to voice the needs rural and poor communities within different WMA. The South African water sector waits with baited breath for the outcome of this brave new experiment in institutional change.

References

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Notes

1. In the South African context, it is important to distinguish water supply for domestic purposes, which is the Constitutional responsibility of local government, from allocation of water resources for productive purposes, which is a national (DWAF) responsibility. However, in practice these lines become blurred, because access to water for productive use includes the infrastructure required to bring the water to the household, which may be linked to the water supply system. The difficulty is that this is treated (and therefore expensive water).
2. The NWA refers to the “protection, use, development, conservation, management and control of the water resources”, which for convenience in this paper has been referred to as *management* of water resources.
3. The collection of user charges for water resources management has only been implemented over the past few years, following the establishment of the Pricing Strategy. This is a critical challenge to CMA viability, as the recovery rates from sectors that have not previously paid for water (particularly agriculture and forestry) are still relatively low and users are asking what value or benefit are they receiving for payment.
4. The classification process entails balancing the need to protect and sustain water resources with the need to develop and use them, according to WMA and nationally based ecological, social, economic and political imperatives. Compulsory licensing represents the process of fundamental reallocation of water use entitlements, particularly to ensure sustainability of the resource and/or redress past imbalances in water allocations.
5. Schedule 3 [Section 1(2)] of the National Water Act specifies the role of the Governing Board “*to decide the strategies and policies to be followed by the institution*” and “*to ensure that the institution exercises its powers or performs its duties in a proper, efficient, economical and sustainable manner.*”
6. While only one representative is recommended, the Minister was advised to monitor the performance of the Governing Board in terms of both enterprise development and household livelihoods, and if necessary to appoint separate representative for these two interests.

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