

Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa, 2005-2017

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DECLARATION

I declare that *Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017* is my own work, that it has not been submitted for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged by complete reference.

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ABSTRACT

This study examines the problems of implementing water allocation policy in the context of the local state bureaucracy as well as the specific experiences of local black emerging farmers in the Breede Gouritz Water Management Area. This study used qualitative research methods and is based on many hours of interviews and observing bureaucrats and stakeholders at the receiving end of the bureaucratic business process of water allocation. It is not only concerned with the physical and technical aspects of access but explores how the different role players interact, navigate, shape, frame and manage challenges to gain access to and control water for productive use. The actual experiences and understandings of the stakeholders in their own contexts when engaging with the access to water are crucial to gain a comprehensive understanding and insight into the influence of bureaucracy and power relations. This thesis therefore maps the confusions and incapacities and shows that even though the South African laws are based on the best international frameworks, they fail, as they do not sufficiently address the unique environment and landscape. Existing scholarship has not adequately researched local bureaucratic power. At the coalface of implementation, bureaucrats make up their own rules to cope with rapid policy churning. Combined with existing power relations, policy implementation and policy direction is steered towards different and unintended trajectories, making transformation a challenge to achieve. Consequently, my main finding is that there have been constant and rapid legislative and policy changes but they have simply added to the confusion and instability. Bureaucrats struggle to stay abreast of the ever-changing policies and legislation and are challenged by the complexity and lack of clear guidance, which is compounded by the irresolute institutional arrangements. At street-level, these bureaucrats devised strategies to deal with the complexity and uncertainty as they exercised their discretion in fulfilling the legislative and policy mandate, thereby inadvertently determining policy direction. This left water users in general and black farmers in particular, caught in a policy quagmire. White commercial farmers have benefitted from being able to continue enjoying privileges extended to them by the previous political regime, and despite the equity imperative in the new laws, economic considerations appear to trump equity.

KEY WORDS

Black emerging farmers, bureaucracy, law, power, water policy implementation, water management institutions, policy churning

LIST OF ACRONYMS AND ABBREVIATIONS

ANC	:	African National Congress
BGCMA	:	Breede Gouritz Catchment Management Agency
BOCMA	:	Breede Overberg Catchment Management Agency
BWMA	:	Breede Water Management Area
CASP	:	Comprehensive Agricultural Support Programme
CMA	:	Catchment Management Agency
CMS	:	Catchment Management Strategy
DoA	:	Department of Agriculture
DWA	:	Department of Water Affairs
DWAF	:	Department of Water Affairs and Forestry
DWS	:	Department of Water and Sanitation
DWM	:	Development Water Management
E-Wulaas	:	Electronic Water Use Licence Application and Authorisation System
GGP	:	Gross Geographic Product
GDPR	:	Gross Domestic Product per Region
GWUA	:	Groenland Water User Association
HDI	:	Historically Disadvantaged Individual
IB	:	Irrigation Board
IDP	:	Integrated Development Plan
MDGs	:	Millennium Development Goals
NDP	:	National Development Plan
NEMA	:	National Environmental Management Act
NWA	:	National Water Act
NWRS-1	:	National Water Resource Strategy-1
NWRS-2	:	National Water Resource Strategy-2
PAJA	:	Promotion of Administrative Justice Act
PFC	:	Pietercielieskloof Farming Cooperative
PMG	:	Parliamentary Monitoring Group

RSA	:	Republic of South Africa
SLB	:	Street-level bureaucrats
SDGs	:	Sustainable Development Goals
SIV	:	Spanjaardskloof Inwoners Vereniging (Residents' Association)
WAR	:	Water Allocation Reform
WARMS	:	Water Use Authorisation Registration and Management System
WSA	:	Water Services Act
WUA	:	Water User Association
WULA	:	Water Use Licence Application
ZACC	:	South African Constitutional Court
ZASCA	:	South African Supreme Court of Appeal

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CHAPTER 1: INTRODUCTION

1.1 Background

South Africa continues to struggle to build an equitable society as the divisive colonised history still haunts, greatly influences and shapes the lives of South Africans today. The infamous Natives Land Act 27 of 1913 was a defining moment as it brutally deprived the black population of land and by implication, its agency and power. Land is innately linked to water and since water flows over land, those who control the land inevitably control the water. However, it is often forgotten that water distribution was even more racially skewed through the apartheid system than land. The promulgation of the National Water Act, Act 36 of 1998, replaced the riparian doctrine with a public rights doctrine giving the State custodianship of all South Africa's water. Access to water were to be determined by issuing water rights and reallocation of water was dependent on an efficient water administration. Although the changed water regime separated land and water it meant that 'new' emerging black farmers faced the lengthy and bureaucratically laden application process to secure access to water.

Water is a scarce resource as South Africa is one of the world's 30 driest countries and has a total mean annual runoff of merely 49 210 million m³ per year. The Western Cape is a part of the country where sparse water rainfall led to an ongoing drought since 2015. On 30 October 2017 the dam levels in the province were at a precarious 30.9% whereas levels were at 64.1% at the same time the previous year (Western Cape Government, 2017: 2). In October 2017 the average water level of dams in the Breede Gouritz Water Management Area was 31.3% (Western Cape Government, 2017: 20) and during 2018 citizens prepared for 'Day Zero' when it was anticipated that the City of Cape Town's domestic water would run out (Western Cape Government, 2017: 4).

The Theewaterskloof Dam is an important provincial water source and is owned by the national Department of Water and Sanitation (DWS). It forms part of a wide-ranging Western Cape water supply system directing water mainly to Cape Town and is also used during dry months for farm irrigation in the Boland region (Van Vuuren, 2012). It provides storage for the larger quantities of runoff that become available during the winter rainy season in the upper reaches of the Rivieronderend and by pumping through tunnels from the Berg River catchments. During the dry

summer season water from the Theewaterskloof Dam can be transferred to the Berg River and Eerste River valleys (BGCMA, 2018: 58). At the peak of this devastating drought the Theewaterskloof dam level was at a perilously low 26.8% (Western Cape Government, 2017).

The drought severely impacted the agricultural sector, which contributes 2.5% to South Africa's Gross Domestic Product (GDP). In the Breede Gouritz Water Management Area (BGWMA) the Gross Geographic Product (GGP) was appraised at around R22 billion per annum and this adds approximately 1% to South Africa's Gross Domestic Product (BGCMA, 2018: 8). It negatively impacted on livestock and the production of the province's rainfed crops: wheat, canola and malting barley (Western Cape Government, 2017: 25). The Western Cape's key agricultural economic driver is irrigated crop farming such as pome fruit, wine grapes, wheat, barley, stone fruit, berries and olives and depending on the area and type of produce, the drought outlook was dire. In the Breede Water Management Area the irrigation of crops accounts for 68% of water use (Western Cape Government, 2015). According to the Western Cape Government, in the fruit industry,

...the economic impact of possible water reallocation away from agriculture could result in 6500 jobs and an industry loss of R1 billion in value added (Western Cape Government, 2017: 28).

...in the Ceres region, 50% less onions and 80% less potatoes were planted due to lack of water. This will, in phase one of planting, result in a R40 million loss in wages to seasonal workers (Western Cape Government, 2017: 34).

These horticultural commodities are heavily water dependent and a number of dams ensure water supply to these areas during dry summer seasons. At the height of the drought, a group of Groenland Water User Association (GWUA) farmers in Grabouw "donated" water from their privately-owned dam, Eikenhof Dam¹, to Cape Town. The Premier of the Province noted in her State of the Province address that,

¹ More detail follows later in this chapter and in Chapter 2.

We are also grateful to the Groenland Water Users' Association, a group of Overberg farmers, who have generously donated 10 billion litres of water to the residents of Cape Town from a dam they built themselves to prevent water running into the sea (Western Cape Government, 2018b).

With stringent water restrictions, other water savings measures and substantial rainfall, Day Zero was avoided and at the time of writing, Cape Town enjoyed more relaxed water restrictions. Of great concern are the lasting actual effects of the drought on agriculture and the impact on food security and socio-economic development in the region and nationwide. This backdrop provides insights into the challenges to implement the mandate of a changed water regime.

Since 1994 South Africa has been in a twenty-year process of rapid policy change in the water management sector. After the National Water Act 36 of 1998 was promulgated, new water institutions were set up for a decentralised and participatory system for water management. The Catchment Management Agencies (CMAs) and the Water User Associations (WUAs) were to become the central fora where local public and private interests could interact to shape water allocation strategies. Water allocation is about the rules and procedures to determine access to water coupled with the availability thereof. These rules and procedures become more critical to prevent conflict during times of high demand or expectation (Roa-García, 2014). South Africa's new water dispensation brought about many opportunities for and challenges in the allocation and reallocation of water. Water allocation reform in South Africa remains a fundamental political imperative. Water allocation reform targets for historically disadvantaged individuals (HDIs) were set at 30% of allocable water by 2014 and a further 50% thereof to be allocated to women (DWAF, 2008c: 4-5). Section 27(1) of the National Water Act (NWA) makes provision for the issuing of general authorisations as well as individual licenses for water use, with redress of past racial and gender discrimination being key considerations.

However, the water resource sector became more intricate: more role players are involved and the political environment also underwent considerable changes since the dawn of South Africa's democracy in 1994. Furthermore, the African National Congress (ANC) led government shifted policies to reflect the political and constitutional imperative of transformation (Meissner *et al*, 2013). While South Africa's water laws did not translate into real change as citizens continue to

struggle to access sufficient water for productive use, scholars were divided about the causes. The Department of Water Affairs and Forestry (DWAF) noted that the causes were multiple. It cited that a large number of authorisations were in the hands of whites; most water use applications received were from whites without any demonstrations or indications of how they were to contribute to redress and equity; most resources were being depleted, if not already depleted; black farmers experienced legal and institutional difficulties to access water use for productive purposes; and trading of water use entitlements between parties without any regulatory mechanisms means trading happened without appropriate redress and equity (DWAF, 2008a: 7). The Department (DWAF, 2008a) reported that no water was reallocated through compulsory licensing. This procedure requires the responsible authority to undertake reallocation in specific geographic areas regarded as water stressed or where it is necessary to review existing water use to achieve equity of access to water (RSA, 1998b, Part 8). A small number of licences were issued to black water users. Statistics revealed that in 2007/08 only 17.5% of water use licences issued were to historically disadvantaged water users (DWAF, 2008c). The issuing and finalisation of water licences took long and the backlog of licence applications mounted with only 91 licences having been issued during 2007/2008 period (DWAF, 2008c).

In 2005, the Chief Executive Officer (CEO) of Central Breede River Water User Association informed the Water Affairs and Forestry Portfolio Committee in Parliament that the association's water allocation reform initiatives were being frustrated by 'bureaucracy' (DWS, 2015a). Further implementation challenges in allocating water resources to both poor farmers and historically disadvantaged individuals were listed by the CEO of the Breede Overberg Catchment Management Agency (BOCMA)² as the failure to make resources available due to the current

² The BOCMA had undergone a structural change in June 2014 to include the Gouritz Catchment Management Agency (CMA), which borders the current Breede water management area. The Gouritz CMA was established on paper but fifteen years after the promulgation of the National Water Act (NWA) was still not a functional organisation. The new larger CMA is known as the Breede Gouritz Catchment Management Agency (BGCMA). For purposes of this research and ease the CMA is referred to by its new name, namely the BGCMA. Where direct quotes or sources are referenced, the previous name, i.e. BOCMA is used.

backlog of applications, inconsistent understanding of national policy and the lack of integration of land and water reform (BOCMA, 2012).

The NWA requires the Minister to progressively develop a National Water Resource Strategy (NWRS). The NWRS is the framework for the protection, use, development, conservation, management and control of the country's water resources. It represented a prerequisite for the full implementation of the NWA and was meant to be reviewed at intervals of not more than five years (RSA, 1998b: Ch 2, part 1, s5 (4)(b))³. The NWRS is legally binding, as section 7 of the NWA provides that,

The Minister, Director-General, an organ of state and a water management institution must give effect to the provisions of the national water resource strategy when exercising any power or performing any duty in terms of this Act (RSA, 1998b).

It sets out the plan of action for i.a., compulsory licensing and the establishment of CMAs and WUAs. CMAs are obliged to develop catchment management strategies (CMSs) to be aligned with the NWRS and these CMSs should include water allocation plans. The key principles of the NWRS (DWAF, 2004) were to achieve equitable access to water, that is, equitable access to water services, water resources, and associated benefits; sustainable use of water, by making progressive adjustments to water use; a balance between water availability and legitimate water requirements, and by implementing measures to protect water resources; and efficient and effective water use for optimal social and economic benefits. The NWRS specifies the details of the water reform targets, transforming policy ambitions into tangible outcomes. These principles were very ambitious and one has to ask whether they were achievable. It might be the nirvana concepts that Molle (2008: 132) referred to as the ideal situation to which all can merely strive to reach.

The Water Authorisation Registration and Management System (WARMS), a national register of water users, requires all authorised water use to be registered (on WARMS). This is the only

³ This deadline was not kept and the review in the form of the NWRS 2 was endorsed nine years later.

available official national data set of water use and is managed by the DWS. The WARMS was established to: manage the process of registering water use by storing the information; manage the complete process authorisation of water use from the beginning to end; invoice water users; create a link with other relevant databases; and report on all the above components (DWAF, 2004). The registration part of the WARMS was in operation since 2000 while the cost recovery functions were in full operation since 2003 (DWAF, 2004). The licensing capabilities and establishing links with relevant national databases came into operation in 2004. This information feeds into the DWS's Systems, Applications and Products (SAP) in data processing system and is used for billing water users (DWAF, 2004). These policies, together with the NWA, establish the state's discretionary powers to determine water use rights.

However, as indicated previously, South Africa is floundering at the implementation of this changed policy and legal framework. The water reforms were not exceptional in this respect. In South Africa it is a quite commonly stated reason for policy failure – the implementation gap. The implementation gap in the South African context is often blamed on a mixture of lack of available capacity and a propensity to formulate new plans and strategies before the previously formulated plans and strategies have been given sufficient time to run their course⁴. These problems form the main focus and rationale for this research.

The aim of this study is to explore the role of the bureaucracy, law and power and the relations between these in the implementation of national water allocation policy for productive use in the context of rapid policy changes. The research specifically focuses on black emerging farmers (BEFs) in the jurisdiction of the Breede Gouritz Catchment Management Agency (BGCMA)⁵ in

⁴ South Africa has a large sector of consultants (a legacy of the mining industry) and the implementation gap in the water sector had kept a large consulting industry flourishing.

⁵ Bond *et al* reported that,

In rural areas, the Departments of Agriculture and of Water Affairs and Forestry are making only minimal efforts to improve water access to black farmers, and indeed due to impending water shortages the government will only expand existing water supply systems (which irrigate white farmland) -- the Lesotho

the Western Cape between 2005 and 2017. The research explicitly analyses implementation processes of the BGCMA in the allocation of water and explores the legal and institutional difficulties experienced by black emerging farmers. This is the first time that this topic and this area are being studied in-depth. And, unlike other studies (see Schreiner, 2013; Schreiner *et al*, 2009), which focus on water allocations for farmers in communal areas, this study looks at farmers who have individual land ownership.

The promulgation of the Water Services Act 108 of 1997 (WSA) (RSA,1997a) and the NWA completely reformed South Africa's water law with section 2 of the NWA providing for redress of inequalities, i.e. racial and gender discrimination (RSA, 1998b)⁶. The redress of past injustices is an overarching objective as articulated in the preamble of the NWA:

...the discriminatory laws and practices of the past prevented equal access to water, and use of water resources.... the ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users (RSA, 1998b: Section 2).

A major drive of the new water act was to switch from the old dispensation of a centralised water management system to decentralised water management at the river basin level (Wester *et al*, 2003). The 2008 Water Allocation Reform Strategy (WARS) focused on compulsory licensing as an important tool of redress. Compulsory licensing allows for water uses to be revised in a specific area and reallocated to address, amongst others, the achievement of,

... a fair allocation of water from a water resource (surface- or groundwater) which is under water stress, or to review prevailing water use to achieve equity in allocations (DWA, 2013b: 46).

Highlands, the Tugela, Mkomazi and Mzimvubu basins, the Orange River and Western Cape sources -- with only a tiny fraction of resources spent on new irrigation schemes for emergent farmers (2002: 8).

⁶ For purposes of this research, water specifically refers to water for productive use, meaning water that is used for agricultural, economic and commercial use.

1.2 Research aim and research questions

The broad aim of this study is to determine the role of bureaucracy, law and power in the slow implementation of equity policies in the water sector. The study examines the legal and institutional difficulties experienced by black emerging farmers (BEFs) accessing water use for productive purposes, specifically the case of black emerging farmers in the BGCMA area between 2005 and 2017, juxtaposed against the experience of white commercial farmers.

The two research sites are both situated in the BGCMA in the Western Cape. The primary study site was Pietercielieskloof, a farming community near Bredasdorp in the Overberg East district. The second area within the Palmiet River catchment area, near Grabouw was also studied as a counter example as a mainly white farming area with an operational Water User Association. Pietercielieskloof, the primary site, is in the area of jurisdiction of the Groenland Water User Association (GWUA). This is the biggest zone in the BGCMA and falls in the Cape Agulhas municipal area. It is situated in the Nuwejaars Catchment and consists of predominantly black emerging farmers.

At the time when the research was conducted there were only three commercial farmers and fifteen black emerging farmers in the area. Four farmers were females. Most farmers have ownership of the farms and these farms have been in the families for generations. The sizes of these farms ranged from 2 hectares to 430 hectares and the agricultural produce are fynbos, proteas, rooibos tea, vegetables and livestock. Not all emerging farmers have access to ready markets and depended on more successful established neighbours to off-load their produce. The primary site has no Water User Association (WUA) and relies on the BGCMA and the DWS for their water resource management concerns.

On the other hand, the secondary site was in the area of GWUA in Grabouw in the Theewaterskloof municipal area. It is in the Palmiet River Catchment and consists of mostly seemingly successful white commercial farmers. The only black private ownership farmer is regarded as a commercial farmer. Grabouw has been a successful farming area for a long time producing apples, pears and

grapes for a well-established export market. This type of farming is irrigation intensive. The secondary site is managed by a very active and apparently well-organised WUA.

The central research question required an exploration of the legal and institutional difficulties experienced by black emerging farmers accessing water use for productive purposes compared to the experience of ‘successful’ white farmers and how the bureaucracy and power relations further enabled or disabled access. The research focused on the period between 2005⁷ and 2017 and specifically analysed implementation processes of the BGCMA in the allocation of water for productive use. This was the first time that the intersection of bureaucracy, law and power and these sites specifically were being studied in-depth. And, unlike other studies (see Schreiner, 2013; Schreiner *et al*, 2009), which focused on water allocations for emerging farmers in communal areas, this study considers emerging farmers who have individual ownership of their farms. In addition, the study contrasts the experience of black emerging farmers with those of white commercial farmers. The reason for choosing Pietercielieskloof was threefold. Firstly, the majority of the farmers are black and embattled; most have tried to use the legal application process; a WUA does not exist in this area and farmers are mostly organised into community groups.

The national policy and legislative aim was to redress past imbalances by including historically disadvantaged individuals, i.e. black people⁸ at this localised level of WUAs. Secondly, the commercial farmers have successfully gained or retained their water rights and were studied to determine the strategies employed by them to maintain access to water use. Thirdly, the area consists of individually owned landholdings with many families having been in the area for generations. In the area there are no communal farms and this added a different dimension to the

⁷ This was the year the BGCMA became operational.

⁸ In terms the Employment Equity Act 55 of 1998, chapter 1, section 1 defined black people as ‘a generic term which means Africans, Coloureds and Indians’. In this research context the term black people refers to the generic inclusive term unless specifically stated differently.

research. The second area in the jurisdiction of the GWUA provided a counter example as a mainly white farming area with an established WUA. The farmers in the GWUA produce for the lucrative international export market and are well organised, enabling certainty of business and seemingly experience no water problems. This contrasted sharply with Pietercielieskloof farmers who instead have to deal with the BGCMA or the DWS directly for their water needs. These Pietercielieskloof farmers further are members of cooperatives which offer a platform to develop networks to gain access to markets. Many have no direct access to markets but sell their produce via the commercial farmers. Thus as farmers in the primary site operated and accessed water use without a WUA and the secondary site was managed by a seemingly successful WUA it allowed the researcher to assess the effects of users organising themselves as opposed to those who were dependent on the CMA or DWS to organise their water.

The research posed a central question followed by several sub-questions.

The central question is: What are the legal and institutional difficulties experienced by black emerging farmers (BEFs) accessing water use for productive purposes compared to ‘successful’ white farmers?

The sub-questions are:

- What are the ambiguities in the laws about defining the ‘emerging farmer’ and how do various role players at the grassroots level identify and understand who the BEFs in the BGCMA are?
- What are the legal and institutional frameworks within which BEFs operate to access water for productive use and how does this compare with white farmers?
- Who are the interest groups (both powerful and less powerful) interacting with the process of water access for BEFs and how does their understanding, reconstruction and application of the legal and institutional framework impact on the implementation process?
- What are the procedural and substantive challenges experienced by BEFs and frontline staff enabling access to water for productive use, what is the impact of these challenges on water access for BEFs and how does this compare with white farmers?

- What institutional support (or lack thereof) do BEFs receive from the interest groups enabling them to effectively navigate the legal and institutional framework, what is the outcome of such support (or lack thereof) and how does this equate with white commercial farmers?
- What inter-departmental coordination strategies exist to streamline the process of accessing water for productive purposes by BEFs?
- What is the end result of all these processes?

1.3 Study area: Breede Gouritz Water Management Area (BGWMA⁹)

The research compared two case studies situated in two different sites that fall in the jurisdiction of the Breede Gouritz Catchment Management Agency (BGCMA) area. The CMA was established by the Minister of Water Affairs in 2005 to manage all water resources within the water management area. The Governing Board of the CMA, comprising of diverse interest groups, was appointed in October 2007 (BOCMA, 2012: 7).

⁹ See footnote 1 above. The acronym BGWMA was used throughout. However, where the source dictated the acronym BOWMA it was accordingly used. Similarly, the acronyms BGCMA and BOCMA were used to depict the CMA.

Figure 1: Breede Water Management Area (BWMA)



Source: Breede Overberg Catchment Management Agency (BOCMA) (2013)

The Breede Water Management Area (see Figure 1 above) has a Mediterranean-type climate and is characterised by hot dry summers and cold wet winters. Most of the rain in the Breede Valley falls between the months of May and August with an average of 200mm over Breede Valley and 400mm in the Overberg. The precipitation ranges from 160mm in the northern, more inland parts of the WMA to more than 3 000mm in the high mountainous regions of the Hottentots Holland and Franschhoek – water divides between Berg and Breede WMAs (DWA, 2012a). There are about 18 dams in the Breede and Gouritz sub-catchments in the Breede Gouritz WMA of which the Greater Brandvlei and Theewaterskloof dams represent 90% of the total storage in the catchment (47% and 43% respectively). Only 6 of the remaining dams have storage capacities of 10 million m³ and higher; the rest of the dams are in general very small. There are numerous smaller dams in the Gouritz sub-catchments (BGCMA, 2017: 23).

The capacity of the dams in the study area is tabled further down (see Table 1 below). From the information it is clear that the primary site of Pietercielieskloof does not have a known large dam

for domestic or irrigation purposes and these farmers rely on rivers, groundwater and their own self-created water resource means.

Table 1: Dams in the area

Quat	Dam	Sub-zone	River	Storage million m ³	Current users/ notes
H10C	Koekedouw	Ceres sub-zone	Koekedouw	17	Domestic and irrigation
H10K	Stettynskloof	Upper Breede sub-zone	Holsloot	15	Domestic and irrigation
H10	Fairy Glen Dam		Hartebees	0.52	Domestic
H10L/ H40E	Greater Brandvlei	Middle Breede sub-zone	Off channel	475	Domestic and irrigation
H40E	Kwaggaskloof	Middle Breede sub-zone	Part of Greater Brandvlei		Domestic and irrigation
H60B/ H60C	Theewaterskloof	Riviersonderend sub-zone	Riviersonderend	434	Domestic and irrigation
H70B	Meul	Lower Breede sub-zone			
G40B	Buffelsrivier Dam	Palmiet sub-zone	Buffels River	1	Domestic
G40C	Nuweberg	Palmiet sub-zone	Palmiet	3.8	Domestic and Irrigation
G40C	Eikenhof	Palmiet sub-zone	Palmiet	22	Irrigation
G40C	Applethwaite	Palmiet sub-zone	Palmiet	3.3	Irrigation
G40D	Kogelberg	Palmiet sub-zone	Palmiet	19	Eskom Palmiet pumped storage
G40D/ G40A	Rockview	Palmiet sub-zone	Off channel	16.8	Hydropower
G40D	Arieskraal	Palmiet sub-zone	Palmiet	5.9	Irrigation
G40H	De Bos	Onrus sub-zone	Onrus	6.3	Domestic and Irrigation
G40M	Assegaaibosch Dam	Uilkraal/ Ratel sub-zone	Uilkraal		
G40M	Franskraal Dam	Klein River sub-zone	Klein River		Domestic
G40M	Kraaibosch Dam	Klein River sub-zone	Klein River		Domestic
G40G	Donkerhoek Dam	Bot/ Swart Sub-zone		0.78	Domestic

Source: Adapted to reflect dams in the study area (BGCMA, 2017: 23)

Agriculture is the primary land use and is specifically dominant in Witzenberg, Langeberg, Theewaterskloof and Breede Valley (BGCMA, 2017) where the research sites are situated. In

1997, the local economy in the Breede WMA in terms of the Gross Geographic Product (GGP) was divided into agriculture, the most important economic activity in the WMA, at 32%, trade 19%, manufacturing 12%, finance 10% and government 10% (DWAF, 2003a). The WMA contributes less than 1% of the national Gross Domestic Product (GDP) and this constitutes amongst the lowest of all WMAs in the country (BOCMA, 2012: 17). Fruit cultivation and wine production dominate economic undertakings in the region with the Overberg grain belt supplying a large wheat production. These agricultural economic activities are water dependent whether through irrigation or rained cultivation. More than 67% of allocable water in the WMA is used for agriculture with 11% mainly for urban use. Irrigation in the Breede and Riviersonderend River valleys (Breede component of the WMA) as well as in the extreme west of the Western Overberg, notably in the Palmiet- and Onrus River catchments is intensive (BOCMA, 2012: 17). A report on water availability in the Breede WMA stated that,

Irrigation is by far the dominant water use sector in the water management area, representing more than 90% of the local requirements for water. Water requirements for urban and rural use as well as water use by afforestation, respectively represent 7%, 2% and 1% (DWAF, 2003a: 13).

The research sites are in the Breede section of the BWMA (see Figure 1 above) in the Western Cape Province. The Breede River and its tributaries flow into the nationally significant Breede estuary together with a many small coastal rivers flowing into large estuaries or coastal wetland systems (RSA, 2010: 21). The primary research site is in Pietercielieskloof, an agricultural area near the town Bredasdorp in the Overberg district which falls in the Cape Agulhas municipal area. It is situated in the Nuwejaars Catchment. Many of the Pietercielieskloof black farmers have close ties with the missionary station of Elim, whose village borders Pietercielieskloof. Elim is the town where many farmers grew up and still have personal community ties with the missionary station.

The researcher first set foot in Pietercielieskloof in 2014 and over the next three years forged relationships in the community, gained insight into their unique nature and composition and engaged and interviewed many of these farmers. These farmers are the salt of the earth, toiling hard to carve a living in this part of the Breede WMA. Some have their roots in the area, some come from other parts of the country, some have just started and others have years of experience,

striving to make a success of their farming. One of the older and more experienced farmers related his journey:

The size of this farm is about 109 hectares and my husband and I bought it about 30 years ago. We bought the farm because it was a family farm and we wanted to have our own property. We bought a piece of land at an auction. This land belonged to his grandmother. There was no water on this farm and we had to drive water in from the town to build our house. Here was absolutely nothing and we had to remove the bushes to make it habitable. We built our own water supply source for domestic use. We received no help from anyone. We started with sheep, cattle, wheat, oats and barley. The barley was for the brewer, the oats for the livestock and the wheat went to the mill in Bredasdorp. The livestock looks after our finances (Black farmer, Participant 3, 2016).

This next farmer had a different journey:

Our farm had been in the family for generations before we bought the farm. All these details are contained in the title deed going back as far as the 1800s. I did not inherit the farm but had to buy it because I am the daughter's daughter and not the son's daughter. The daughters could not inherit but the sons were eligible. During my grandmother's time she was allowed to inherit but somehow things changed and I had to buy the farm from my uncle who is my mother's brother. He moved to Australia. So we said, 'let's give it a try'. According to the title deed he was not allowed to sell it but it had to be given to another family member. To avoid family problems, I said, 'rather just pay the man and buy the farm'. The extended family had to give permission for the farm to be sold (BEF, Participant 24, 2014).

These farmers are proud of their endeavours but face many challenges:

My farm is not big but it is my own farm. I came to the area in 2011 and because the farm is too small for livestock I decided to cultivate vegetables. I am very privileged to have a constant water supply throughout the year from the stream. Like all other farmers in the area I had to apply for water use and I have permission from BOCMA. In 2011 when I bought the farm I was not aware that I had to get permission or have a licence to use water. The previous owner did not inform me and it was not indicated on the title deed. The previous owners did not produce at the same scale that I am producing vegetables. I am very successful with the vegetables (BEF, Participant 22, 2016).

My preliminary site visits revealed that the majority of the 15 farmers in the area are small to medium black farmers but for three who are regarded as commercial farmers. The small to medium

farmers have established and registered the Pietercielieskloof Farming Cooperative with the objective of offering services supporting different aspects of their farming. Some farmers are also members of the *Spanjaardskloof Inwoners Vereniging (SIV)*¹⁰. Membership is open to all farmers, i.e. emerging and commercial farmers and it seeks to provide social and general support to all its members. No water user association exists for this area.

A second area within the Palmiet River catchment area, near Grabouw was also studied as a counter example as a mainly white farming area with an operational water user association, namely the Groenland WUA. It contrasts sharply with Pietercielieskloof: the latter has no formal water user association but instead has a cooperative which represents the local farmers in the BGCMA. On the other hand, the Grabouw-based Groenland WUA manages and controls water resources accessible to farmers who produce for the lucrative export market. Apples, pears and peaches are the main agricultural commodities and the central Palmiet catchment is southern Africa's biggest exporter of fruit (DWAF: 2003b). This farmer's background echoes this:

We live in Elgin which is particularly fortunate as our rainfall is the highest in the country. We've always had water. Because of the topography, we've got dams on our farms. Our dams aren't necessarily enough for all our hectareage, so we rely on the Eikenhof Dam and the Groenland Irrigation Scheme, which was established by private farmers back in the late 60s. By damming the Palmiet River up in the corner of the valley it could supply the whole valley with water. It was a private scheme. We borrowed the money from the Department of Water Affairs to build a dam. I was born on the farm. My father started farming here in 1948. Many people came to the district after the war and my father was one of them and bought the farm in 1948 with the aid of a loan. When I took it over in 1982, I bought it from him and have since expanded the farm from 44 hectares into 250 hectares. We are part of the Kromco Packhouse group who handle all our packing, storing and marketing. We concentrate on producing fruit, namely apples and pears and not packing and marketing (Commercial farmer, Participant 14, 2015).

The reasons for choosing these locations were threefold. Firstly, most farmers in Pietercielieskloof are black and embattled; most have tried to use the legal application process; and most are not well

¹⁰ The English translation: Spanjaardskloof Residents' Association.

organised. Secondly, those farmers who successfully gained or retained their water rights were included in this study. Thirdly, the area consists of individually owned landholdings with many families having been in the area for generations. On the other hand, the Groenland WUA presented the opposite scenario. The majority of farmers are successful white commercial farmers who are well-resourced with access to well-structured and long-established water resources and comfortably assured of sound national and international markets. These sites were significant to illustrate the extremities in the uneven development generally and in the Western Cape specifically.

1.4 Motivation and rationale

The National Water Act (NWA) was lauded as one of the most robust and comprehensive water laws internationally (Merrey, 2008). Movik *et al* (2016) observed that:

In terms of creating the new legislation, water professionals across the world considered South Africa to be ahead of the game in many respects, particularly relating to the human right to adequate drinking water as enshrined in the Constitution, and the concept of the ‘Reserve’ (2016: 459).

They further noted that, ‘The South African case is particularly interesting because its 1998 National Water Act is considered one of the most progressive pieces of IWRM legislation in the world’ (2016: 474). Schreiner (2013) stated that, ‘It has been widely quoted and referred to, and a number of countries ranging from China to Zambia have used it as an example in the revision of their own water legislation’ (2013: 239). However, many scholars agreed with the pessimistic view of Funke and Jacobs (2011: 90), suggesting that the DWA lacked the capacity to implement the NWA and specifically to apply and enforce the licensing process. They further argued that any prospect of transformation was diminished due to the legal complexities of water allocation and this did not serve the interests of the emerging farmers well. Schreiner (2013: 240) further noted that the *status quo* regarding access to water for productive use remained for white commercial farmers and the challenges and deferrals in the process of water licensing to transform impeded economic growth. Similarly, Woodhouse (2008) commented that the new water regime did not

just introduce changes in “process (holistic, decentralised, participatory and economically costed), but also changed in social outcomes” (2008: 3).

1.5 The policy gap

Implementation of South Africa’s water framework proved to be demanding and many scholars and practitioners expressed opinions and insights into the policy implementation concerns. Factors contributing to poor implementation were policy ambiguities and the inability to strike the right balance between technical or scientific quality and to manage an enabling implementing process; and the department’s endeavours to implement all the NWA prescripts simultaneously. This proved to be unsuccessful due to limited available capacity as well as the department’s tardiness to adhere to and swiftly implement policy. A case in point is the establishment of the CMAs and the lack of capacity exacerbated by leadership challenges at both ministerial and director-general levels. During the nine years preceding 2013, the department had three directors-general and two acting directors-general. The country also had three ministers governing the sector during this period (Schreiner, 2013: 242-243). Implementation challenges were caused by institutional lack of capacity, the complex legal framework of water allocation, institutional failure to fully understand the intricate integrated water resource management (IWRM) approach, weak co-operation between the different government departments contributing to a successful water application and an administrative burden of water applications.

The space is further complicated and defined by existing and newly formed power relations. Wester *et al* (2003) posited that water was politically disputed and water management institutions and policies were brought about and continually reshaped through political practices. This created opportunities “to analyse how power pervades institutional arrangements and gives rise to differentiated access to and control over water, and, more importantly, how to design processes to redress inequities” (2003: 799).

Goldin (2010: 197) shared this view, although her work was largely on farmers’ participation in water management. She observed that commercial farmers gained experience and knowledge about government bureaucracy and combined with their social network within the bureaucracy

they could bargain with those who were involved with the decision-making (2010: 199). Laube (2009: 2) also noted that the participatory approaches frequently gave control to powerful interest and de-politicised the conflict over water resources. He believed that water reforms in Ghana and South Africa did not change the past but rather perpetuate the country's political economy and that the reform at local level was about neo-liberal development paradigms (Laube, 2009: 3).

This policy implementation problem did not go unnoticed. South Africa invested resources into this policy gap and in 2011 developed and finalised the National Development Plan (NDP) 2030. The NDP is a major overarching national strategic plan aiming to eradicate poverty and inequality by 2030, putting South Africa on a sustainable growth path. It was endorsed by all major political parties. Water in sectors such as agriculture, mining, energy, tourism and urban and rural development are critical to achieve the NDP's strategic aims of growth and development. In agriculture the NDP proposed "creating more jobs through agricultural development, based on effective land reform and the growth of irrigated agriculture and land production" (RSA, 2012a: 34). However, the NDP was sparse on specific detail and left it to different government stakeholders to devise, adopt and implement the NDP's strategic aims. The plan was criticised as an elaboration of neoliberal public management and should the NDP fail to tackle the real structural economic problems South Africa would continue to struggle with unemployment and getting the people to enjoy a respectable standard of living (Coleman, 2014). The NWRS2 aligns with the NDP strategic aim of inclusive rural economy through water allocation reform (DWA, 2013b: 5) and "aims to ensure that water serves as an enabler for inclusive economic and social development and not a hinderance" (DWA, 2013b: Chapters 2, 3). This dove-tailed and was interwoven with South Africa's obligation as signatory to the United Nations (UN) Millennium Declaration committing to work towards achieving the identified eight Millennium Development Goals (MDGs) by 2015 (RSA, 2010: 12). Goal 7 specifically aimed to ensure environmental sustainability which included the sustainability of water. This required South Africa to integrate the principles of sustainable development into its national policies and programmes. In the water sector, strategies were indeed designed to strengthen water sustainability through the approach of integrated water resource management. However, heed is taken that,

Progress in this area is hindered by a number of factors associated with highly unequal distribution of water and pressures on water resources, including excessive extraction by agriculture and mining, the depletion of aquifers, increasing water pollution, deforestation and the destruction of catchment basins and replenishment areas (RSA, 2010: 91).

The MDGs were followed by the Sustainable Development Goals (SDGs) which were adopted by the UN General Assembly in 2015. The agenda represents a new coherent way of thinking about how issues as diverse as poverty, education and climate change fit together. It entwines economic, social and environmental targets in 17 Sustainable Development Goals (SDGs) as an “indivisible whole” (Nilsson *et al*, 2016: 320). SDG 6 seeks to ensure availability and sustainable management of water and sanitation for all. Targets were set to be achieved by 2030 and countries have to develop and implement focused tailor-made policies and ensure that resources are directed to achieve these SDG targets. In South Africa the NWA and the WSA with the National Water Resources Strategy detailing the plans, guidelines, objectives and procedures to protect, use, develop, conserve, manage and control its water resources were already being implemented further legitimising the necessary reforms and ensuring that South Africa’s water framework is aligned to the 2030 Agenda for Sustainable Development. Additional related supporting programmes and projects to enable achieving national targets as set out in the NDP, Medium Term Strategic Framework and Annual Performance Plan are all connected to the SDG targets.

This research hopes to benefit South Africa generally and the BGCMA specifically. It generated data that could support the Catchment Management Agency to review its water allocation strategy. It could contribute to the national and local debates on the reform of water governance to ensure equitable water allocation. Moreover, it could contribute to an approach to effectively and efficiently manage water allocation for productive use for black emerging farmers in Pietercielieskloof specifically and the BGCMA in the Western Cape, South Africa generally. In the context of the current contentious and potentially policy-changing national land debate it may provide insight into the inter-connectedness and indivisible relationship of land and water and feed into policy development and policy-making. As South Africa seeks to resolve its land issues, it should simultaneously appreciate and grasp that these resources be dealt with concurrently for effective and efficient strategies for solutions to be devised.

1.6 Research methodology

This research employed qualitative research methods, which included semi-structured interviews with different role players, participant observation and document analysis.

The researcher undertook a detailed analysis of the relevant legislation, policies and regulations for equitable water resource regulation and allocation for productive use. In addition, an analysis of the decision-making processes, policies and practices of governmental departments and other relevant authorities in the BGCMA was undertaken to determine the impact on the implementation for equitable water resource regulation and the allocation for productive use.

The researcher gathered primary data by conducting in-depth semi-structured interviews with relevant role players and observed participants to elucidate the role of bureaucracy, law and power in the implementation of policy in water allocation for productive use within the BGCMA. The role players included existing water license holders, water license applicants, DWS and BGCMA staff instrumental in water allocation at local level, BGCMA governing board members, members of the Pietercielieskloof Farmers' Cooperative, commercial and emerging farmers, members of the GWUA in the jurisdiction of the BGCMA, consultants and experts in the water sector.

The method involved in-depth face-to-face semi-structured interviews conducted with the target groups on an individual basis. The researcher further employed participant observation in tracking water applications to determine how the policy and legislative framework unfolded. The researcher also set out to establish the role of bureaucracy, law and power in the implementation process. This also served to determine the effect of such implementation on the process and the role players. Furthermore, the researcher used observation at various meetings with the role players to understand the process of the implementation. This research heeded Laube's (2007: 425) cautioning that participants tend to obscure the real practice if confronted by formal research methods.

The researcher recorded the data collected, using voice recorders and descriptive and reflective field notes which were transcribed for analysis. The data was analysed using the approach of Miles and Huberman (1994) which they described as being a systematic and repetitive set of processes.

They identified three major stages of qualitative data analysis, namely data reduction, data display, and conclusion drawing and verification. These phases entail the process of selecting, focusing and transforming the data obtained during the interviews and observations. The researcher then organised and compressed the information to draw inferences. The last step was to draw conclusions by considering what the data meant and to evaluate the implications for reform in the water sector. The accuracy of the research was ensured by using triangulation through themes across the different types of data and the different participants. The findings were reported by description and the themes of the case study.

1.7 Ethical considerations

This was research of a sensitive nature and therefore the researcher obtained the mandatory ethical clearance and sought permission to conduct research from all the relevant stakeholders as prescribed by the applicable policies of the different stakeholders.

The researcher was granted general permission to conduct research within the jurisdiction of the BGCMA by the CMA based on the Memorandum of Understanding that was signed by the BGCMA, the University of the Western Cape (UWC) and the Cape Peninsula University of Technology (CPUT). The researcher was a member of the research teams of both institutions. The researcher sought specific permission from the different role players, namely the existing water license holders, the water license applicants, the CEO and BGCMA staff instrumental in water allocation, the governing board of the BGCMA, the Pietercielieskloof Farmers' Cooperative, the commercial and emerging farmers, the Groenland WUA, consultants who impact on the process of water access, the experts and all other persons who influence water reform. The researcher obtained ethical clearance from the University of the Western Cape, where the researcher was registered. The researcher adhered to the ethical principles of research and the research was conducted objectively and with integrity. The data was not falsified and work of others was not plagiarised while care was taken to adhere to the copyright rules. The participants were ensured of their anonymity and all data was treated confidentially.

The next chapter provides a historical perspective of South Africa and gives an overview of the devastating impact the brutal history had on its people. This history still plays itself out today as the historically dispossessed and disadvantaged people continue to suffer skewed allocation of resources and consequently the struggle for equity continues. Through the promulgation of a series of laws and policies South Africa is attempting and struggling to achieve some semblance of restoration for past injustices. In response to this need for transformation, the water sector underwent a comprehensive legislative and policy overhaul.

CHAPTER 2: LAND AND WATER: HISTORY AND POWER IN PRE-1994 SOUTH AFRICA

2.1 Introduction

This chapter provides an overview of the historical context and current laws and regulations as they pertain to water and specifically water for productive use. This historic outline is by no means a comprehensive explanation of South Africa's intricate landscape but it attempts to give an historical context to the study. It also provides an insight into the evolving power dynamics in the water sector and reflects on the power that white people acquired and continue to enjoy as part of the broader hydro-political system.

2.2 Historical overview

Land and water are intrinsically bound and those who own the land also have the power to control the water. The fight for South Africa's land and related resources started in 1652 when the white Dutch invaders set foot on South African soil. Before the colonisation, the indigenous people negotiated and settled any land and trade issues amongst themselves to best serve their needs and ensure their survival. They had a subsistence economy based on hunting of animals and gathering of food. The San in particular were hunter-gatherers while the Khoikhoi were stock farmers. For quite some time after arriving in South Africa the settler colonising community did not interfere with African communities and they were allowed to run as separate entities and follow their trade/business. This resulted in the dual system of land ownership which resulted in a dual system of water rights (Tewari, 2009: 694).

The indigenous people i.e. the Khoikhoi were descendants of hunter-gatherers who had acquired livestock...In most areas of southern Africa the pastoral Khoikhoi lived near hunter-gatherers who kept neither cattle or sheep...The Cape Khoikhoi herded their cattle and sheep... provided them with milk...and also skins...Livestock served...as a means...of prestige and power (Giliomee and Mbenga, 2008: 20).

The San, also indigenous people of southern Africa frequently attacked the Khoikhoi sowing terror...and stealing and frequently slaughtering Khoikhoi livestock...Yet many so-called San also lived peacefully in or on the fringes of Khoikhoi societies serving the Khoikhoi as hunters, guides or spies and soldiers in time of war (Giliomee and Mbenga, 2008: 21).

In these communities water, ... land was free, but land tenure was controlled by the chief and private ownership was not permitted (Tewari, 2009: 695).

The Dutch East India Company deployed the Dutch, under the leadership of Van Riebeeck to start a trading post at the Cape (Giliomee and Mbenga, 2008). The Dutch implemented the Roman-Dutch law. The water allocation regime under Dutch rule was the *dominus fluminis* principle which meant that the governing party had complete control of the resource. The state had the right to allocate water without concern for sustainability and equity (Tewari, 2009). They met the San and the Khoikhoi in the Cape who thrived as cattle and sheep farmers. The arrival of the Dutch changed the lives of the indigenous people as the Khoikhoi started trading with the Dutch while their pastures and hunting grounds were encroached upon by the Dutch (Giliomee and Mbenga, 2008). Trade disputes and great tension between colonists and the Khoikhoi who, for their part, feared that the settlement of free burghers in 1657 would eventually deprive them of their valuable pastures and watering places (Giliomee and Mbenga, 2008: 50).

The colonisers seized the land and its resources, dispossessing the San and the Khoi who eventually became slaves in their own country. The Dutch colonisers expanded their colony to the Hottentots Holland mountains¹¹ and Stellenbosch and to Paarl in 1688 whilst the hostile occupation of the southern tip of Africa gained further momentum with the arrival of the French Huguenots in 1688 (Giliomee and Mbenga, 2008: 60).

The British annexed the Cape in September 1795 providing “an injection to both the Cape economy and the institution of slavery” (Giliomee and Mbenga, 2008: 80). The British settlement of the Eastern Cape in 1820 marked a new phase of colonial conquest. Between 1835 and 1845 the burgher families, also known as the ‘Voortrekkers’, relocated to the north in vast numbers (Giliomee and Mbenga, 2008: 112). Under the British “the year 1856 was a critical year since it marked the development of a new water management system using the land-based riparian

¹¹ The secondary site is in the jurisdiction of the GWUA and falls in the catchment area of the Palmiet river and includes all its tributaries originating in the Hottentots Holland Mountains (north/north-west), the Kogelberg Mountains (west/south-west) and the Groenland Mountains (east up to the confluence with the Krom River and Palmiet River) (GWUA: 2009).

principle” (Tewari, 2009: 697). Riparian water rights were attached to land and it afforded land owners the right to share in the water of a spring or river flowing alongside or over their properties (Pienaar and van der Schyff, 2007). In 1860, over 83% of the nearly half million hectares of white-owned land was farmed by African tenants and during this period, the accumulation of capital and wealth by African farmers caused the Native Affairs Commission to comment that Africans were becoming wealthy, independent and difficult to govern (Adams *et al.*, 1999).

By 1870 the huge mineral wealth of South Africa became known and especially the growth of the diamond fields led to “monopoly capitalism and migrant labour” which “shaped the future of South Africa for the next 100 years or more” (Giliomee and Mbenga, 2008: 160). Cheap labour was required to off-set the capital intensive infrastructure and such labour was obtained in the form of black people as land struggles left many of them stranded (Giliomee and Mbenga, 2008). In April 1877 a special commissioner, Shepstone, was sent to capture Transvaal and the “great South African war of 1899-1902” (Giliomee and Mbenga, 2008: 164) led to “the consolidation of a single powerful state” (Giliomee and Mbenga, 2008: 164). By 1888 one owner, namely Cecil John Rhodes, formed the De Beers Consolidated Mines Limited and became one of the richest men in South Africa (Giliomee and Mbenga, 2008: 160). Swatuk (2010) noted that,

South Africa’s wealth derives primarily from monopoly capital’s successful exploitation of the country’s vast mineral resources: diamonds, gold, titanium, uranium, coal, to name some. In the beginning, this wealth accrued primarily to English colonists; the battle for hegemony having been fought and won against early settlers known colloquially as boers (Afrikaans for ‘farmers’), in a long series of skirmishes culminating in the South African War of 1899-1902 (2010: 523).

The discovery of gold in the north of the country and subsequent mining of the minerals promised prosperity and attracted many people. Johannesburg and surrounds grew exponentially and water needs exceeded the water supply system (Tempelhoff, 2003). Water provision offered lucrative business opportunities and in 1888 companies such as the Johannesburg Waterworks and Exploration Company Ltd whose business was sales of land, provided water to Johannesburg (Tempelhoff, 2003: 30). In 1903 a public entity, the Rand Water Board, consisting of role players from the Chamber of Mines, the town council of Johannesburg and relevant local authorities on

the Witwatersrand, was established. It was, and still is today, a major influence in the provision of water (Tempelhoff, 2003) representing business, politics and public interest serving the greater Witwatersrand region and national and business interests such as mining and the iron and steel industries. In 2011, the Rand Water Board provided 3.65 million litres of potable water per day to approximately 11 million people covering a region of over 18 000 square kilometres (King and Pienaar, 2011:10) and in 2018 Rand Water reported that the bulk potable water supply

involves day to day operations and maintenance of 3200 km of pipelines, 58 larger reservoirs, 13 tertiary pump stations and 5 (five) tertiary chemical dosing plants. A total of 1600 bulk consumer meters are read on a monthly basis. The distribution area of supply is divided into 3 (three) Regions, (West, South and North) which are further subdivided into 14 (fourteen) districts located strategically throughout the area of supply. The Rand Water customer base consists largely of municipalities, mines and industries (Rand Water, 2018: 66).

The local authorities eventually came to play a larger role in the provision of services and water but the residents of townships on the Witwatersrand were, at least in terms of water supplies, considered to be third-rate consumers. They were only taken into consideration after the white residential areas and industries had received their full quotas of water (Tempelhoff, 2003: 174).

On 31 May 1910 Britain declared the Union of South Africa and

(T)he African people paid a high political price when Britain decided to make South Africa an exclusive 'white dominion'. The Union of South Africa as it was constituted in 1910, was described by Lord Olivier as a slave state (Magubane, 1995: 7).

The Union consisted of the four "former British colonies of the Cape of Good Hope, Natal, Transvaal and the Free State...The Transvaal and Free State, for the greater part of the 19th century, had been frontier republics" (Tempelhoff, 2017: 190). A barrage of legislation was passed to strengthen the hand of white people. The Irrigation and Conservation of Waters Act of 1912, based on the riparian rights principle, was promulgated to collate all the water laws (Tewari, 2009). The riparian principle is premised on the right to use water attached to ownership of the property adjacent to the water body. The Act did not acknowledge indigenous water practices and focused on the control of water use by white colonists (King and Pienaar, 2011). The Irrigation and Conservation of Waters Act of 1912 promoted an agricultural hydraulic mission as it focused

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on providing enough water to the agricultural sector and to constructing water storage facilities.

The most notable and devastating legislation passed to further consolidate and strengthen the position of white people was the Natives Land Act, Act 27 of 1913. This notorious law separated black and white persons on a territorial basis and forcibly resettled at least 3 million black South Africans. It made provision for “the purchase, leasing, ownership and occupation of land by blacks...” (Giliomee and Mbenga, 2008: 233) in certain parts of the country only and these areas were declared “native areas”. These settlements for black South Africans “amounted to less than 7% of South Africa’s total land area” (King and Pienaar, 2011: 25). Giliomee and Mbenga noted that the Natives Land Act was conceived after white farmers from the Transvaal and Free State pressured government to stop blacks from buying land in “white areas” (2008: 233). Their white control was threatened. This Act prohibited land ownership by black people and coupled with the riparian water rights doctrine effectively limited access to water for black people:

...legislation such as the Natives Land Act (27 of 1913) (dividing the land between black and white people), the Development Trust and Land Act (18 of 1936) (preventing Africans from owning land in their own right), and the Group Areas Act (41 of 1950) clearly controlled the majority Black people’s access to land and hence to water (Tewari, 2009: 702).

This preferential treatment of white people was further solidified as,

...the government, through the Irrigation Department, focused exclusively on supplying irrigation to white consumers. The objectives were to ensure affordable food security so that the urban and mining wages of white people would be reasonable; to consolidate encroachment in remote rural areas; and to solve the poor white problem in a sustainable manner. Subsidies and very soft loans were provided that covered most, if not all, infrastructure costs and, in the case of the government’s water schemes, even the operational costs (van Koppen *et al*, 2009: 18).

Furthermore,

...the Land Bank of South Africa was mobilised to help white farmers as part of a policy to reduce white unemployment (Tewari, 2009: 702).

In response to the far-reaching 1913 Land Act black people rallied and organised against the ‘threat to the interests and well-being of virtually every section of the African population’ (Giliomee and Mbenga, 2008: 233). Although they failed in their efforts and segregation was legally entrenched in the Union, the build up and resistance to the Land Act mobilised black people. This resistance led to the formation of the African National Congress and at the meeting it was stated that,

(T)he White people of the country have formed what is known as the Union of South Africa - a union in which we have no voice in the making of laws and no part in their administration. We have called you therefore to this Conference so that we can together devise ways and means of forming our national union for the purpose of creating national unity and defending our rights and privileges (Giliomee and Mbenga, 2008: 236).

The 1913 Land Act was a vital basis to achieve a ‘white vision’ of a racially divided South Africa which was cemented during the apartheid years from 1948 to 1994 (Beinart and Delius, 2013). The apartheid system was geared to benefit and have whites flourish while black people were deprived of the same enabling rights. Today, the contentious apartheid history which defined South Africa’s political, economic and social trajectory still greatly affects the lives of black people as many continue to live in poverty and low levels of opportunity.

Rapid urbanisation put the water supply system under pressure (Tempelhoff, 2003) and consequently it was augmented through dam construction. This led to further storage schemes but very importantly the government of the day ensured white development and

(A)fter the South African War (1899-1902) the government increased its investment in irrigated agriculture – particularly through state-sponsored settlement schemes – in an effort to rebuild the country and settle both English soldiers and Afrikaner farmers who had lost their farms...By 1925, 27 large dams had been built in South Africa, including Hartbeespoort Dam, Kamanassie Dam, Sundays River Dam, Lake Arthur, Grassridge Dam, and Tygerpoort Dam...In the latter part of the 1920s, the South African government instructed its departments dealing with infrastructure, including the Irrigation Department, to fast-track large government-sponsored public works projects, mainly to relieve poverty among the white minority amidst world economic depression and a nation-wide drought (van Vuuren, 2013: 57).

Between 1960 and 1969 South Africa built 89 big dams and Inter Basin Transfer Schemes were constructed to transfer water to economic and agricultural areas to augment water supply (King

and Pienaar, 2011). Towards the end of the 1970s dam construction in South Africa reduced. South Africa has more than 500 government dams with a total capacity of 37 000 million cubic metres (Water Research Commission, nd). Other water expansion options such as water reallocation from low to high value users, conservation and water demand management, groundwater and water re-use are alternative considerations (van Vuuren, 2013: 60).

The Water Act 54 of 1956 shifted the focus from an agricultural hydraulic mission to an industrial hydraulic mission and the first objective was to consolidate and amend South Africa's existing legislation related to the control, conservation and use of water. But the primary long-term objective was to ensure that there were sufficient water supplies to support South Africa's growing social, economic and industrial development – with the mining industry a key beneficiary (Tempelhoff, 2017: 13).

It had traces of the *dominus fluminis* principle but entrenched riparian rights whereby holders were entitled to use water for agricultural purposes and urban uses. The Act (ss1&5) further distinguished between private and public water. Historically the 1956 Water Act did not explicitly determine who the owner of private water was, but established that the exclusive use rights of private water could be exercised by the landowner where it had its source or flowed over. Private ownership of groundwater afforded individual landowners exclusive use to water underlying their property. The promulgation of the Act coincided with apartheid and thus the 1956 Water Act was interpreted to benefit and promote the white minority in all political, economic and social spheres and suppress the black majority (Tempelhoff, 2017: 13). Although the legislation governing access to water in South Africa was not, in itself, overtly racist, access to water was linked to ownership of land through the concept of riparian rights, and 'private' ownership of groundwater or small tributaries found on or under private land. As riparian water rights were entrenched in South Africa, race-based access to land consequently resulted in race-based access to water (Clever, 1999). This implied that this natural resource was dominated by the small, white minority and thus access to water for economic good was also controlled by the small, white minority. The *dominus fluminis* principle applied and rights to public water were regulated by the state. Public water could be used for industrial purposes only, if permission was granted by the Minister of Water Affairs and also found expression in the Minister's authority to declare types of control areas where

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the Minister deemed it necessary for public or national interest (RSA, 1956: Sections 28, 59, 71, 3). This regime excluded most South Africans from accessing water rights.

The African National Congress (ANC), although banned prior to 1990, led the liberation of South Africa and 1994 heralded in the official end of apartheid. Lahiff (2007) observed that,

At the end of apartheid, approximately 82 million hectares of commercial farmland (86% of all farmland, or 68% of the total surface area) was in the hands of the white minority (10.9% of the population), and concentrated in the hands of approximately 60,000 owners (2007: 2).

The dawn of South Africa's democracy needed a significant change in water law dispensation to give effect to the constitutional imperative of every citizen's right to equality and specifically access to water (RSA, 1996: S27 (1) (b)). The promulgation of the National Water Act (NWA) 96 of 1998 meant that South Africa's water was managed in a changed water governance paradigm based on an integrated water resource management (IWRM) approach. Underscored by South Africa's long history of white empowerment at the expense of the black majority, it would require a concerted national mind shift if South Africa wished to achieve the national goal of ensuring that there would always be some water, for all who need it, contributing towards growing prosperity and equity in our land (RSA, 1997b: 7).

2.3 Historical background to the research sites

The Cape Agulhas and Theewaterskloof local municipalities (where the research sites are located) are under the Overberg District Municipality. The Agulhas Plain (see Figure 2 below) with its relatively flat arable terrain, natural vegetation, water resources and the climatic conditions, was the ideal terrain for the Khoikhoi and the San and their nomadic cattle farming. Farming in the Cape became difficult and it "drove disgruntled free burghers deeper into the Cape interior in pursuit of better economic prospects" (Viljoen, 2001: 29).

Figure 2: Map of the Agulhas Plain



Source: Privett et al (2014: 271)

As they migrated deeper into the Cape interior they came across Khoikhoi and San farmers who had been living in the area for thousands of years. Before the first colonists crossed the Hottentots Holland mountain range to settle in south-western Cape, the area had already been inhabited for centuries by three major Khoikhoi communities (Viljoen, 2001).

The European settlers reached the Cape Agulhas area in the 1700s and started crop farming on land that they enclosed and owned privately (van der Hoven, 2001). These colonists changed the land cover and land use when they introduced crop farming and enclosed grazing due to the environment being favourable to agricultural land use (van der Hoven, 2001: 17). Given South Africa's earlier segregation policy, almost all currently privately owned land on the Agulhas Plain continues to be owned by white landowners. Those disadvantaged under apartheid mostly inhabit the rural settlements and small towns of the area. Many descend from the KhoiKhoi people. The Agulhas Plain is characterised by marked spatial and social inequality (Blokker *et al*, 2015: 64).

The Cape Agulhas Municipal Area is economically largely dependent on agriculture involving a range of produce such as livestock (meat and wool), flowers, grains (wheat and barley), canola and vegetables (Cape Agulhas Municipality Revised IDP, 2014:73). The agricultural sector is

stable, producing for the international export market and sustains related food and beverage processing industries. Pietercielieskloof is typically one of the rural settlements in the Cape Agulhas area where smallholder farmers are predominantly black farmers. It is situated outside Elim, a Moravian missionary settlement, 46km from Cape Agulhas, the southern most point of Africa (van der Hoven, 2001). The missionary settlements such as Elim provided safe havens to slaves who were freed in December 1838 (Dooling, 2007). Those freed slaves left their former owners and settled at the missionary settlements. Missionary settlements did not receive any financial assistance from the colony and the freed slaves continued to suffer terrible land hunger. An Order-in-Council of 1838 prohibited unauthorised 'squatting' on Crown land. Government permission could be obtained but it was rarely granted (Dooling, 2007: 119).

Although land in Elim belongs to the Moravian church and some farmers lease property from the church, most land in Pietercielieskloof, situated on the borders of the town, is privately owned, by mostly black owners. As related in chapter 9 below some of these farms were inherited and been in the same family for generations whilst others were bought on the open market as and when it became available.

The secondary site in the Groenland Water User Association (GWUA) was also affected by this brutal divisive history of South Africa. The free burghers moved eastward from what is known today as Cape Town to settle in the current Theewaterskloof Municipal area where the GWUA has jurisdiction.

In these regions, Swellendam was declared a magisterial district in 1745 and became the third oldest town in South Africa. By the middle of the 19th century, the eastern districts were colonised by the British settlers. The encounter and interaction with the colonists through trade and bartering was the start of the economic, social and political decline of the Swellendam Khoikhoi (Viljoen, 2001: 29). As a result of dispossession and displacement, with subjugation to follow, the Khoikhoi were left with little choice but to become servants. The majority of the Swellendam Khoikhoi became landless labourers, eking out a living on white farms (Viljoen, 2001: 30).

The stark disparity between the privileged whites and struggling blacks are clearly visible in this area as the black people in agriculture are mainly farm workers and poor. Following this history of occupation in the Theewaterskloof municipal area and consequently in the GWUA, currently most of the privately owned land belongs to the white owners who continue to enjoy privileges of riparian water. The pre-1998 riparian water rights of these primarily white commercial farmers continue under the concept of existing lawful use as the DWS is still struggling to verify and validate or convert the pre-1998 water use to water use licences. These farmers successfully penetrated the international export markets.

South Africa enjoys great success in the international apple and pear export market. Together with Chile, Argentina and New Zealand these countries contribute approximately 22.3% of apples and 30% of pears to the international export markets. In the Western Cape the Elgin-Grabouw-Vyeboom-Villiersdorp region is the largest apple and pear production area and together with Ceres and other smaller areas produce 80% of the country's pome fruit. Since 2008 the apple production had increased by 2% every year, while pears showed a 1% annual increase (Western Cape Government, 2015: 113).

The town of Grabouw, where the GWUA is located, is the centre of the Elgin Valley. It has a population of 30 337 of whom 2% are white, 38% African and 56% coloured (RSA, 2011). Grabouw is the Theewaterskloof Municipality's biggest economic hub. Besides producing the majority of South Africa's apples and pears, three of the country's leading apple-packing facilities, namely Valley Packers, Kromco and Two-a-day, as well as Elgin Fruit Juices and the first of Appletiser's manufacturing plants, are located in this area. Grabouw has also seen the growth of a vibrant viticulture industry making an impact on the international wine circuit. It became well-known for tourism and the renowned Orchards and Peregrine farm stalls, the Eikenhof Dam-related leisure activities, several farm-based facilities and annual open gardens festivals are a few of the tourism attractions (Theewaterskloof, 2013: 5). Although Grabouw enjoys great economic success, 10.8% of inhabitants have no income and live in abject poverty.

In the Western Cape the difference between water demand and water supply was addressed through dam construction. In the Overberg Municipal District generally and in the Theewaterskloof and

Cape Agulhas local municipalities specifically, where the research sites are situated, state-owned and privately owned dams contribute greatly to the economic and social well-being of the province. Cape Agulhas, where the primary site is located, is a winter rainfall region and on average receives rainfall between 375-665mm per annum and 60% thereof falls between April and September (Cape Agulhas Municipality, 2017). The region does not have any major dams and the main sources of water are groundwater, the Klein Sanddrift Dam in Bredasdorp and the Uitvlucht spring. The Klein Sanddrift Dam was built in 1997 and is 5km west of Bredasdorp, the economic hub of the Cape Agulhas region. It has a storage capacity of 445, 000 m³. Water is also sourced from the Uitvlucht spring and piped to the Vleikloof Dam which has a storage capacity of 295, 000 m³ (Mukheibir, 2007). Farmers are reliant on water sources on their properties such as dams, reservoirs and boreholes. According to the Cape Agulhas Municipality,

... (the) challenge facing the agricultural industry in Cape Agulhas is the availability of good quality water for irrigation purposes. A number of dams are situated in the area but the water from all the dams is not suitable for irrigation purposes. A strategic intervention between the Municipality, Overberg Agri and the respective irrigation boards needs to be developed to ensure that the water capacity of the region is adequately addressed in the long term (Cape Agulhas Municipality, 2017: 59).

The secondary site in the Theewaterkloof local municipality and for purposes of the research two state-owned dams, the Steenbras and Theewaterskloof Dams and the Eikenhof Dam in Grabouw, a privately owned dam, are significant in the augmentation of the water supply in the region. The Steenbras Dam is situated on the slopes of the Hottentots Holland Mountains. Construction of the dam started in 1921 and since then the capacity was increased thrice to adequately meet the water supply needs of the greater Cape Town area (van Vuuren, 2012). The Steenbras Dam has a capacity of 2 million m³ and a 76km pipeline carries water to the greater Cape Town area (van Vuuren, 2012). In the 1970s Cape Town needed to find a source to supplement shortages in electric power and construction on the country's first pumped storage system was conceived. The system was completed in 1978, consisting of "430 metres concrete-lined tunnels and shafts 3.6m and 6.4m diameter, 350m of 3.6m diameter steel penstock and a surface power station located above the twin machine shafts" (van Vuuren, 2012: 175). The Theewaterskloof Dam is the seventh largest dam in South Africa with a capacity of 482 million m³ (van Vuuren, 2012). The dam is an earth-

filled dam situated on the Sonderend River near Villiersdorp in the Western Cape. Water is delivered using gravity from the different catchment areas with an intricate tunnelling system (van Vuuren, 2012). It forms part of the water transfer scheme connecting the Berg and Sonderend Rivers in the Western Cape. This region's rainfall is of the highest in South Africa and the water scheme effectively augments Cape Town's water supply and provides water for irrigation to farms in the Boland region. Remarkably, the Berg River water flow can be reversed from its winter storage in the Riviersonderend Valley back to where it originated to supply irrigation water during the dry summer months (van Vuuren, 2012).

The privately owned Eikenhof Dam was conceived in 1966 by white farmers in the GWUA area. The intent with an irrigation scheme was to provide irrigation water to farms during the dry summer months. Those farmers established the Groenland Irrigation Board (GIB) and was advised by the Department of Water Affairs to build a dam at their own expense (Bosch, 2008). The dam is in the upper catchment of the Palmiet River which covers about 61km² and has a mean annual run-off of about 45 million m³. The dam is situated on the confluence of the Wesselsgat, Keeroms and Palmiet Rivers and is about 2km from Grabouw (Bosch, 2008). The construction of the Eikenhof Dam was completed in 1977 with a total storage capacity of 22 million m³. The dam's capacity was increased twice in 1988 and 1998 to the current total storage capacity of 29 million m³ (Bosch, 2008). The irrigation scheme supplies irrigation water to approximately 6 400 ha of agricultural land on which predominantly deciduous fruit is grown. It further provides domestic water to the Theewaterskloof municipality, specifically Grabouw and local businesses such as Two-a-Day and Appletiser (Bosch, 2008). It falls in the GWUA but is owned, operated and maintained by the GIB (Bosch, 2008). The members of the GIB hold an extremely powerful position on the GWUA. They form what is known as the Sub-district 1 standing committee of the GWUA management committee¹². This constituent has full decision-making powers and control of the financial affairs, maintenance, repairs, improvement and election of members pertaining to

¹² More detail in Chapter 7.

matters of this Sub-district. They need not seek ratification from the Management Committee of the GWUA (GWUA, 2014).

2.4 Conclusion

As discussed above, South Africa's indigenous people were dispossessed of the land and by the early 1900s were treated like foreigners in their own country. The invasion and consequent occupation of the land by the Dutch, British and French over a period of 350 years still troubles and plays itself out in South Africa today. This created a society that is still divided racially and by implication, also economically divided, where the white minority continues to enjoy the privileges of South Africa's unjust and violent history. This privileged contradiction is currently evidenced in the GWUA's jurisdiction as these white commercial farms are among the most prosperous in the country while the majority of the black population continues to be mere farm workers. Since land and water are inextricably connected, water is inevitably part of this struggle for access and control. This struggle continues unabated in present-day South Africa.

The next chapter outlines South Africa's journey in redefining the management of its water resources and the influence of the intersection of the bureaucracy, law and power on implementation in a context of rapid policy changes. The chapter considers policies, concepts, theories and debates relevant to the phenomena generally and in the water sector specifically.

CHAPTER 3: BUREAUCRACY, POWER AND LAW – POLICY, CONCEPTS AND DEBATES

3.1 Introduction

South Africa embarked on the journey to completely redefine the way it manages the water resources from the implementing institutions to the permissible use thereof. However, since the promulgation of the National Water Act (NWA) in 1998 South Africa finds itself in a place of discontinuity between the noble intent of the legislation and the implementation thereof. This study explores the intersection of the bureaucracy, law and power in the implementation challenges in a context of rapid policy changes. This chapter considers the policy, concepts, theories and debates relevant to the phenomena generally and in the water sector specifically.

3.2 Bureaucracies

Bureaucracies are responsible for implementing policies within an environment of organised administrative ability characteristic of modern organisations (Parenti, 1988). Beetham (1987: 18) pointed to the four main features of classic Weberian bureaucracy namely, (i) a hierarchy whereby staff or the unit in the structure have delineated roles and are assessed by someone higher in the hierarchy supervising performance; (ii) rules dictating procedures and stability within established career structures; (iii) service rendered according to prescribed rules to ensure no randomness or preference; and (iv) proficiency by staff for the job specifications and suitability for positions to control access to confidential information. Staffed by permanent, neutral professional officials, and motivated by the *public* interest, the bureaucracy is also accountable to political principals and parliament.

The traditional or ‘top-down’ view of a bureaucracy has been criticised for its rigidity, unresponsiveness to change, fake neutrality, shallow accountability and empirical validity. The hierarchical model of bureaucracy where power appears to flow only downwards was criticised as empirically inaccurate. Hudson and Lowe argued

the connections of organisations, agencies and groups into clusters and communities of interest...lie at the heart of the reconfigured... state and the political system. Power flows through all levels of the policy process...it flows because there is a discrepancy in its

level of charge between locations and it is this flow that generates the energy that drives the political process (2009: 127).

Bureaucracy is a form of accumulated power, resources and expertise. Lipsky (1980) contended that,

(P)ublic policy is not best understood as made in legislatures or top-floor suites of high-ranking administrators, because in important ways it is actually made in the crowded offices and daily encounters of street-level workers and ‘the decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties and work pressures (that) effectively *become* the public policies they carry out’ (Lipsky, 1980: xii; original italics).

These lower level employees ‘make policy’ as they carry out their daily tasks as they interact with the general public (Lipsky, 1980). Lipsky defined street-level bureaucrats as “public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work” (1980: 3). These workers are typically teachers, police officers and other law enforcement personnel, social workers, judges, public lawyers and other court officials and many other public officials who grant access to government programmes and provide services within them (Lipsky, 1980: 3).

He stressed that street-level bureaucrats were specifically public workers who perform non-routine tasks under stressful conditions. He argued that this operated on a continuum. Hudson and Lowe (2009: 250) moreover, contended that policy-making is still under development at the stage of delivery and due to the way street-level bureaucrats operate at the coalface, they impact greatly on policy outcomes and those outcomes might be very unlike what was intended by the policy-makers. Gilson (2015: 384) pointed out that Lipsky maintained that street-level bureaucrats have discretion and agency in the policy process as they perform their tasks under pressure to make policies work with resource constraints, ever-increasing demands for services, conflicting policy mandates, complex measures of policy success and a public that often has no choice in using state services. Street-level bureaucrats are compelled to manage their jobs and apply their discretion under these circumstances. They modify their job descriptions, choosing to prioritise and routinise certain tasks. They interpret instructions, deal with overlapping and contradictory directives, and also display inventiveness in areas where there might be a policy vacuum. Hupe and Hill (2007)

summarised Lipsky's conceptualisation of street-level bureaucrats to consist of two characteristics namely, "(1) relatively high degrees of discretion; and (2) a relative autonomy from organisational authority" (2007: 280). Lipsky further argued that street-level bureaucrats have to deal with large numbers of complex issues and people and thus "invent modes of mass processing" (Gilson 2015: 385). Street-level bureaucrats are strongly affected by the conditions they find themselves in, in their workplaces and should not be seen as problematic individuals (Gilson 2015: 393).

However, on the negative side, street-level bureaucrats have the power to disregard, divert or thwart directives even when these are clear. Winter (2002: 3) asserted that limited and inadequate resources mean that these street-level employees struggle to meet the demands of their jobs and devise strategies to deal with them. In this regard, street-level bureaucrats attempt to,

...limit client demand for services. They reduce information dissemination about their amenities, ask clients and inspectees to wait, make themselves unavailable to contacts, or make ample use of referrals of difficult clients to other authorities. Or they resort to creaming. Frontline operators concentrate on a limited number of select clients, programme types, and solutions. They handpick easy, well-defined cases rather than difficult, amorphous, and time-consuming ones. They attend to cases that promise to be successful and downplay the trickiest ones (Vedung, 2015: 16).

Winter (2002) noted that they further control 'clients in order to make cases easier to process, gradually developing more cynical perceptions of clients, and modifying programme objectives making them easier to achieve' (Winter, 2002: 3). Hupe and Hill (2007) observed that Lipsky's observation was that the street-level bureaucrats who devise less than efficient ways of dealing with the public "behave in ways that are unsanctioned, sometimes even contradicting official policy, because the structure of their jobs makes it impossible fully to achieve the expectations of their work" (2007: 280).

Hudson and Lowe (2009: 250) similarly noted that they typecast clients and invent their own rules as this provided faster and easier results. In doing so, they create their own categories for dealing with a large number of clients or users. This process might have hidden racial, paternalistic, classist and sexist dimensions and hence they might miss some clients and those who might need it most might be completely excluded. At the same time citizens experience policy as it is

happening to them at the grassroots level. Lipsky noted that ordinary citizens do not know the intricacies of the legal and policy processes and regard the street-level bureaucrats' actions and decisions to be law. Thus citizens trust and rely on these bureaucrats for correct interpretations, implementation and outcomes of laws and policies.

3.3 Beyond Lipsky

Although Lipsky provided interesting tools, his analysis is inadequate for various reasons. As Evans (2011) pointed out, Lipsky ignored the role of a second layer in the implementation hierarchy, namely managers and professionals. He noted that Lipsky maintained that discretion takes place in the framework of the tension between frontline staff and managers (2011: 370). Evans further observed that according to Lipsky's street-level bureaucrats, "the key regulators of discretion are managers" (2011: 371) and they seek to limit street-level bureaucrats' discretion and manage it for the betterment of the organisation. Evans maintained that Lipsky did not give enough consideration to the intersection of professionalism and management (2011: 371). He pointed out that in organisations where frontline staff members were professionals, their managers were also drawn from the same professional pool. Professionally trained managers and professionals have loyalties to the standards prescribed by their profession and were not bound wholly by narrow organisational imperatives (Evans, 2011). Hupe and Hill (2007: 1) were concerned with the layer of frontline workers who hold supervisory positions, maintaining that they are the person "in the middle", showing resemblances both with higher-level public managers and street-level bureaucrats (2007: 3) as they fulfil their tasks. They have dual roles,

...as both a subordinate and a leader; a manager, although perhaps coming from the ranks of the professionals he or she is supposed to manage; while possibly aiming at being a 'professional manager' at the same time. (Hupe and Hill, 2007: 9).

They critically probed, asking:

What insights are available about the ways frontline supervisors in street-level bureaucracies fulfil their tasks? With what kind of factors can the variation in task fulfilling be related? And what are the possible effects of NPM¹³ arrangements here? (Hupe and Hill, 2007: 1).

Evans (2011) noted that policy and policy-making is not a clinical affair and drew on the insights of several other researchers, by commenting that,

...policy communicated in a pristine state is implausible. Policy has percolated through several political levels before it reaches street-level, and has been the subject of argument, dispute and compromise. Policy is, in fact, “often rhetorical or speculative: As politicians know only too well, but social scientists too often forget, public policy is made of language. Whether in written or oral form, argumentation is central to all stages of the policy process (Evans, 2011: 372).

Evans (2011) argued that due to shared professionalism and commitment thereto managers and practitioners work together. Interestingly, the local managers tend to side with the practitioners and not with the senior managers (Evans, 2011) as the former implement and deliver policy. Evans raised an important omission in Lipsky’s theory on street-level bureaucrats: a concern about the lack of focus on consultants and external agents as street-level bureaucrats and consequently by implication as policy-makers. Hill (2003: 266) argued that it was necessary to know in what way and from whom street-level bureaucrats acquired their insights into reform and how it unfolded in practical terms, as those insights would impact on how policy would be implemented and brought to the general public. Street-level bureaucrats employ external resources such as consultants and other service providers to help them make sense of policy which contains insufficient detail to guide them to the envisioned policy intent. Hill (2003) observed that,

...implementers must discern what policy means in terms of everyday practice ... policies rarely come with enumerated implications for implementers because policy-makers seldom trouble (themselves) with the minutiae of design and ... decisions are left to locals ... or to the experts ... Difficulties occur particularly in cases where there exist no socially known technologies for the attainment of policy; where there exist socially known paths to implementation, but these

¹³ NPM means New Public Management.

have not been communicated to implementing agents; and finally in cases where implementing agents know multiple ways to implement a policy and must choose among them (2003: 268).

Hill further noted that "...implementers might also recognise that they lack a skill or knowledge base needed to implement policy faithfully" (2003: 268). Hill reasoned that a solution to improved implementation could be to utilise "more or better implementation resources" (2003: 278) and argued that the challenge was in the "threats to the democratic accountability of non-elected officials posed by implementation resources" (2003: 279). Hill identified these resources as,

...many types of actors: consultants, academics, entrepreneurs, foundations, trade journals and journalists, and professional associations ... (that) exist primarily outside formal governments. What these actors hold in common is expertise and authority – expertise in the form of theory, knowledge, or technical advice that informs day-to-day practice and authority in the form of legitimate claims to expert knowledge and leadership ... (They) extend opportunities to learn about policy and best practices to implementers and use their authority to convince these actors to make reforms in practice (Hill, 2003: 269).

These external resources often operate with impunity as they are not held accountable by the implementation agency or government. They are contractually bound and predominantly contractually motivated to deliver as per their contractual obligation. They interpret policy from an intellectual or financial standpoint and might not have the context and nuanced understanding to inform and give effect to policy as intended in a purposive manner¹⁴. Hill (2003) claimed that, consequently,

...they may also change the implementation of official written policies by promulgating reforms without policy. Whether by design or by accident, some resources might instead substitute their own stylised definitions or practices for those of policy-makers. This may occur in part because these resources exist largely independent of state support and because the state has little capacity to organise or monitor resources (2003: 279).

¹⁴ The purposive interpretation is discussed in detail in Chapter 4.

Although Bond *et al* (2002) articulated policy challenges in service delivery, their comment rings true and can equally apply in the domain of water management. They pertinently observed that,

...there has been a clear continuity of policy between the late-apartheid era and democracy. Some key common features are an often untransformed bureaucracy, white consultants at the nerve centre of policy-making, influence by the World Bank or its proxies, and the ascendance of a new breed of conservative bureaucrats (once termed ‘econocrats’) (2002: 31).

The problem with much of Lipsky’s work is his neglect of power relations, ‘non-decisions’ and issues of political trust where, as Hupe and Hill (2007: 282) suggested, street-level bureaucrats will devise desired solutions to “exceptional situations” in a “creative and sensible way”. Professionals and street-level bureaucrats have self-imposed ethical ways of conducting themselves, which are key factors. The further problem with Lipsky is that in recent times policy changes have taken place at great speed without policies having been tested and reviewed and this puts the street-level bureaucrats under further pressure to find ways of making sense of these rapidly changing environments. This almost fluid situation provides a bigger platform for external agents such as consultants to influence policy outcomes and by implication, for street-level bureaucrats to make policy as they attempt to make sense thereof.

3.4 Power relations

Power is a central concept in policy analysis and as discussed above, the power of street-level bureaucrats or ‘bureaucratic power’ cannot be underestimated. Generally, power is considered as a manifestation of one agent dominating another and it generally applies to relationships between persons (Hudson and Lowe, 2009: 112). However, some literature sources (see for example, Whaley, 2014; Pantazidou, 2012; Hudson and Lowe, 2009; Gaventa, 2006) suggested that there were many layers to it and generally identified three dimensions of power namely, alternative faces of power; faces of power; and the power cube. The relevance of each dimension is determined by the situation. Bues and Theesfeld (2012: 268) suggested that a distinction should be drawn between the study of power relations and power resources. The first focuses on the interactions of the involved role players whereas the latter is result-oriented. Through power resources the aspects responsible for unequal bargaining power leading to uneven distributional outcomes could be

identified. Role players might have numerous resources, but only within specific socio-economic or biophysical contexts could these resources be used as bargaining tools for personal gain. Bues and Theesfeld (2012: 269) named various power resources which might influence outcomes. Power resources such as capacity to take risk, time preference and exit costs might impact bargaining outcomes. They identify exit costs as costs incurred when negotiating is either too long or eventually fail. The capacity to take risk and time preference is intimately tied to exit costs and dependent on the role players' resources. Positional power is the position that permits certain actions whereas network power provides actors information and reduces costs for specific exchanges or interactions. Sanction power is the risk of penalties imposed for non-compliance by one role player on another which might negatively bear on the negotiating position of the threatened actor. Information and knowledge are power resources which might influence a role player's assessment of individual options, hide institutional options or contribute to new options.

The second dimension of power refers to the three faces of power as developed by Lukes (Lukes, 2005), namely, classical pluralism, the power of 'non-decision' and the social discourses controlling theory (Hudson and Lowe, 2009). The first face of power, namely classical pluralism or 'visible power' is concerned with the control or coercion 'over' and is fundamentally concerned with difference and diversity. It is based on the idea that society consists of various social groups and that political power vests in the various issues as raised by these different groups. Hudson and Lowe (2009: 115) concluded that in the political science domain the state does not have power but merely acts as mediator between the legislature, executive and the judiciary. These centres of power are separate and policy process is dictated to by public needs and demands and thus the state is simply a neutral party (Hudson and Lowe, 2009).

The second face of power challenges this view that the state is an impartial referee and posited that those in positions of strength dictate and set the political agenda. Hudson and Lowe (2009: 117) referred to the Bachrach and Baratz concept of 'non-decision' or 'hidden power' denoting that concealed processes outside the public domain were used to keep certain topics off the public agenda. Thus the agenda was controlled by those influencing the debate, by excluding certain issues and dictating who the invitees to the debate should be. The powerful manipulate the debate to further their own ends and thereby exclude weaker role players. This suggests that people could

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be manipulated by the powerful to promote their own interests. Menga *et al* (2016: 376) referred to this as ‘soft’ power, reinforcing the existing state of water allocation favouring those who sway the ‘soft’ power. This leads to the third face, the ‘invisible’ power exercised over people’s thinking and by inference, shaping their psychological and ideological identity. This deeper level of power signifies that powerlessness is internalised and people’s thought processes are influenced, shaped or determined by the powerful.

The third dimension is the power cube developed by Gaventa (2006). This framework has three dimensions, enabling an analysis of the spaces, forms and places of power and these are all interrelated. Gaventa (2006: 26) referred to spaces of power as “opportunities, moments or channels” where persons might do something to impact policies, discourses or decisions which might affect their realities. These dynamic spaces were also created by the kind of power persons hold and the spaces might be closed spaces, invited spaces or claimed spaces. Closed spaces are those where the decision-makers, i.e. bureaucrats, experts or elected representatives decide not to consult broadly. The invited spaces (Gaventa, 2006: 30) are spaces into which persons are requested to join and these spaces are established to promote participatory governance. It can be seen at all levels of government. The claimed or created spaces come about as people with a common interest mobilise and assert themselves into spaces held by the powerful (Gaventa, 2006). Gaventa notes that these might not be the only spaces, as the spaces are dictated to by the context and historical milieus. He further suggested that these spaces are fluid as they interacted with each other (2006: 27). Thus, closed spaces might get actors invited to further spaces which might open up to created spaces. Any meaningful change strategy should have the three dimensions happen simultaneously. But this might present a challenge as alignment within the different dimensions itself might be difficult. The power cube is an analytical tool and Gaventa (2006: 31) stated that the tool is not prescriptive and how and when the different dimensions present themselves would be determined by the strategies used.

Governance is a political process involving the exercise of political power by political actors who seek to define the ends and values that must inform social development. It also comprises the identification of means to pursue those ends and values, and the adoption of suitable arrangements for the exercise of authority and power in the process (Castro, 2007: 106). Political power is crucial

because it raises the question of why certain problems are defined in certain ways and why some problems are picked up and others dropped off the policy agenda. Laube (2007: 421) postulated that powerful local interest groups are created because of the coalitions of politicians and administrators with ‘traditional’ authorities and those locals in power positions. He further argued that the struggle for resources and power amongst local groups relies on social networks and relations and not on legal frameworks. The interests of these factions cannot be ignored even if legislation and policy requires this. According to Gaventa (2003),

(T)he power to influence policies or institutions stems from the control of decisions with positive or negative effects. Stakeholder power can be understood as the extent to which stakeholders are able to persuade or coerce others into making decisions, and following certain courses of action. Power may derive from the nature of a stakeholder’s organisation, or their position in relation to other stakeholders (for example, line ministries which control budgets and other departments). Other forms of power may be more informal (for example, personal connections to ruling politicians) (Gaventa, 2003: 17).

Swatuk (2005) contended that,

All policy-making discourse is partial in that it is made by coalitions, which reflect those who can best construct and deliver the most persuasive arguments (2005: 872).

The problem of considering decision-making is that ‘non-decisions’ and the ability to control what is discussed (also called agenda-setting) is left out. Hudson and Lowe (2009) also referred to hegemonic power or “common sense” as the ability to use institutions and create a position of “total control of one social class over another” (2011: 120). They argued that this is analogous to the top-down view of efficient policy implementation requiring the street-level bureaucrats to perform exactly as they were instructed.

3.5 Hydraulic bureaucracies

The hydraulic mission started after a campaign to grow irrigation development and for central government to lead this drive thereby building the state and “deepened its control over territory and people” (Wester *et al*, 2009: 395). They defined the hydraulic mission as,

... the strong conviction that every drop of water flowing to the ocean is a waste and that the state should develop hydraulic infrastructure to capture as much water as possible for human uses (Wester *et al*, 2009: 395).

The state was thus entrusted with the duty to drive this hydraulic mission to ensure that water was used optimally and to develop water resources accordingly. Ironically, the state was cast in the lead water reform role but it continued unchanged, as Wester *et al* (2009) noted,

...the state needs to play a leading role in water reforms, while at the same time hydrocracies are most in need of reform. The resistance of hydrocracies to change and their resourcefulness in maintaining their command-and-control and construction orientation – under the guise of apparently drastic institutional reforms... (2009: 396).

Molle *et al* (2009) maintained that,

Hydraulic bureaucracies are, first and foremost, the creation of nation states and reflect a number of their concerns and objectives...But bureaucracies have their own sets of interests and ideologies. Bureaucratic power is strongly correlated with the size of the budget received from state coffers, the number of staff, and in the case of water the heavy equipment needed for infrastructural interventions. This power is therefore dependent upon fuelling and sustaining the cycle that goes from planning to the construction of infrastructures (2009: 336).

In this 'hydraulic mission' the bureaucracy is supported by professional indulgence and under the guise of water conservation,

(T)his professional ethos is pervaded by a sense of hierarchy, a faith in planning, and the belief that the considerable technical expertise needed to address water issues insulated engineers from public and laypersons' scrutiny... (Molle *et al*, 2009: 336).

Power is crucial in understanding the water sector. Molle *et al* (2009) contended that hydraulic bureaucracies are closely linked to four centres of powerful role players namely politicians, water business companies, landowning elites and development banks. These role players often worked together to dictate the flows of water using power and influence which were brought about through political or economic benefits. They stated that this complicity between business, politics and bureaucrats in the water sector was a commonality shared by virtually all countries (2009: 336).

Inevitably, “the ways the flows of water are created or modified by water infrastructure are intertwined with flows of power and influence, often manifested in the form of political or financial benefits (2009: 336). The framework used by Molle *et al* (2009) provided a useful set of concepts in a water context that also speaks to general theories discussed previously in this chapter. Swyngedouw (2006: 15-17) asserted that intricate hydro-engineering that draws on expert technical and management skills and labour will have big bureaucratic organisations involved and these organisations’ top structures will sway economic, political and social power and will usually be well connected with the powerful in the private and state sectors. Acquiring and/or retaining the flow of water was based on the power one commanded and if the control of water was obtained one’s power was further cemented (Swyngedouw, 2006).

Benson (1995: 1) warned that organisations should take cognizance that programmes were implemented by people who are fallible and have their own personal challenges which may lead to rules, regulations, and programmes not executed or impacted in the way that their designers expected them to do. Watson *et al* (2009: 449) also cautioned that bureaucrats claim to be experts and holders of exclusive knowledge and this placed them in positions of power to influence political decision-making but at the same time not being subjected to public inspection and interrogation.

According to Wester *et al* (2003) one approach to policy development was almost completely driven by government agencies and this was underwritten “by a combination of technical and economic concerns and interagency politics” (2003: 809). They argued that this did not allow the disenfranchised to participate. Because they were excluded it would not bring about anticipated transformation and this constituent would continue to be dependent on the state’s favour. The second approach shows a combination of a “top-down, government-driven process with inclusion of representatives of the organised users” (Wester *et al*, 2003: 210). They argued that this approach was acceptable where stakeholders were organised or where poor people were given economic opportunities to improve their existence. However, the authors warned that this combined approach may exclude many poor users who were not organised, thereby depriving this large constituent of an opportunity to participate in potential improvement and development. They apprehensively noted that,

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Although stakeholder participation in water management is frequently advocated, actually including the poor and achieving substantive stakeholder representation proved to be elusive in practice (Cleaver, 1999). More often than not, participation is little more than token consultation, with no decision-making power in the hands of the people concerned (Wester and Bron, 1998). Too often, the participation discourse draws attention away from the very real social and economic differences between people and the need for the redistribution of resources, entitlements, and opportunities. This is typified by the definition of stakeholders as water users with recognised water rights, thereby excluding those without water rights (Wester *et al*, 2003: 798).

They further lamented that,

... ‘democratisation’ of water management is fraught with difficulties and largely informed by liberal notions of democracy and a concern not to disrupt the productive capacity of advanced sectors of the economy through the redistribution of resources ... where the boundaries of consent for river basin management are drawn is a political choice, and should be treated as such in current water reforms (Wester *et al*, 2003: 810).

Suhardiman *et al* (2014: 445) observed that irrigation bureaucracy does not feature in all the attempts to advance irrigation performance. They argued that there was an assumption in reform policies that better irrigation system performance was paramount on all the agendas but it failed to consider how change might (or might not) assist the bureaucracy. Suhardiman *et al* (2014) further pointed out that within the domain specifically of irrigation literature the notions of bureaucracy; bureaucratic reform research and how the characteristics and features of irrigation bureaucracy were shaped by power structures were sketchy. The conceptualisation of irrigation bureaucracy and the focus thereof is dictated to by the discipline from whence the understanding is derived (Suhardiman *et al*, 2014). In the political science domain, the understanding is focused on power struggles specifically based on the relationship between the politician and the bureaucrat. This conceptualisation sees politicians and bureaucrats using their influences to promote their own interests, strategies and accessing resources. Suhardiman *et al* referring to Espeland (2000), asserted that “government bureaucracy’s main interests, and basic mechanisms in shaping its strategy are to gain, sustain, and reproduce power” (Suhardiman *et al* 2014: 445-447). From a public administration perspective, economic efficiency is at the centre and therefore change in government bureaucracy consists of privatisation, decentralisation of power, outsourcing, public-

private ventures, deregulation and so forth. The organisational science view bureaucratic reform in terms of structures, rules, procedures and its instruments and the impact of these on its operation. Bureaucratic reform is approached from one of two views: (i) institutional inertia, meaning it might be easier to continue on the known path than changing course that might be too costly; or (ii) institutional innovation dictates that the institution develops as new thinking is accepted and implemented.

South African irrigation bureaucracy has elements of all of the above approaches and this underscores the uncertainty of focus.

3.6 Conclusion

Bureaucracies are key to policy implementation and the role and influence of street-level bureaucrats on policy direction cannot be disputed. This affords them considerable power as policy processes happen and take shape. However, they are not the only constituents swaying power in the water domain. The power held by different role players have different layers and faces influencing outcomes at various times, ways and degrees. Hence the bureaucracy and related power dynamics should be taken into account when implementation challenges in a rapid policy change environment are explored. In the South African context, it begs the question whether this promotes or detracts from the black emerging farmers' ability to access water use as South Africa struggles to find continuity between the noble legislative intent of reform and policy implementation.

The next chapter outlines the key laws, policies and processes for water licensing and water use allocation and sketches the required interpretation and the role of relevant institutions in the implementation process.

CHAPTER 4: BUREAUCRACY AND LAW – THE SOUTH AFRICAN WATER SECTOR

4.1 Introduction

South Africa introduced a far-reaching new water regime in 1998 to address the profoundly racially skewed impact of a deeply divided and unfair dispensation which benefitted the minority white population and left the black majority dependent on the remnants of this valuable resource. Implementing authorities struggled with the execution of an administratively laden water system. It relied on a bureaucracy operating in an environment demanding high capacity where the exercise of discretion plays a huge role in the ultimate outcome of access to water use. This chapter provides a sketch of the key laws, policies and processes attached to water licensing and water use allocation. It outlines the interpretation required and the role of relevant implementing institutions.

4.2 Key laws and policies

The current water legislative framework commenced immediately after South Africa became a democracy in 1994. After extensive consultation with multiple sectors such as agriculture, mining, industry and environmental groups and finally approved by Cabinet in 1996, twenty-eight fundamental principles and objectives for water were developed (RSA, 1997b). The National Water Bill was tabled in parliament in 1997¹⁵. Four principles formed the legal basis of the current water law namely, (i) consistency with the Constitution; (ii) all water being a common resource and use thereof under national control; (iii) no private ownership of water is permitted and the only right to water is the Reserve; water use by authorisation is permitted and not granted permanently but subject to regular review; and (iv) the eradication of the riparian principle (Tewari, 2009). The National Water Act (NWA), Act 36 was promulgated on 26 August 1998 and replaced the 1956 Water Act. The purpose of the NWA is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways taking into consideration factors including meeting the basic human needs of present and future generations, promoting equitable

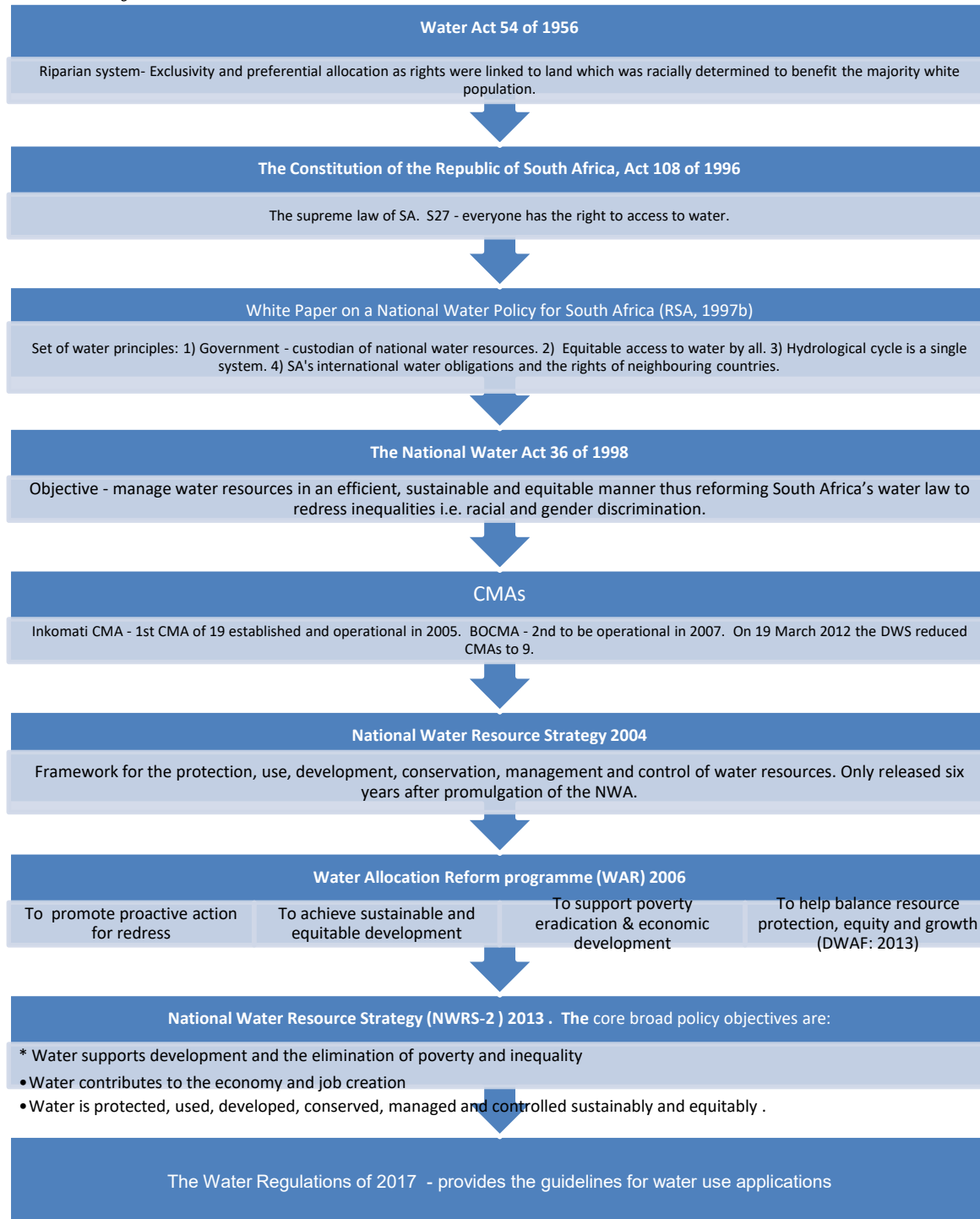
¹⁵ All the information pertaining to the process preceding the promulgation of the National Water Act (NWA) in this section was sourced from DWAF (1997b).

access to water, redressing the results of past racial and gender discrimination, promoting the efficient, sustainable and beneficial use of water in the public interest (RSA, 1998b: S2)¹⁶.

The NWA fundamentally changed South Africa's water resource management and was acclaimed as one of the most vigorous and wide-ranging water legislation internationally. The NWA assigns the National Government as the custodian of the country's water resources and mandates it to exercise its powers as public trustee (RSA, 1998b: S3). Government has to ensure that water is "protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate" (RSA, 1998b: S3). The public trust doctrine replaced private ownership and the preamble recognises that water belongs to all the people of the country. The Reserve was designed to meet the constitutional right of access to water. It consists of two parts: (i) the basic human needs reserve providing "for the essential needs of individuals served by the water resource in question and includes water for drinking, for food preparation and for personal hygiene"; and (ii) an ecological reserve relating to "the water required to protect the aquatic ecosystems of the water resource" (RSA, 1998b: Part 3). The previous riparian system of water allocation was changed to a licensing system and thus separating land ownership and water rights. The intent was to achieve equitable access to water especially for those who do not own or control land. The overarching approach is integrated water management to achieve environmental sustainability, equity and efficiency and no distinction should exist between surface- and groundwater and as such all water management strategies must reflect this cohesion. Giving effect to these new principles, heralded a changed water use allocation and institutional framework and approach. The key moments in South Africa's water policy development is mapped below (See Figure 3 below).

¹⁶ Section 2 makes provision for more factors but for purposes of this research, only these were focused on.

Figure 3: Key moments in the articulation and implementation of the NWA and water reform in South Africa



4.2.1 Water use authorisations

Chapter 4 of the NWA regulates water use authorisations (RSA, 1998b). It provides that water use is legislatively permitted only and the Minister of Water may limit the amount of water which a responsible authority¹⁷ may allocate. Section 22 provides that water use may be permissible, firstly *without* a licence when it was a Schedule 1 authorisation, if it was the continuation of an existing lawful use or as a general authorisation under Section 39. Secondly, water use is permissible *with* an individual water use license in terms of Part 7 of the NWA. Section 22(3) provides that a responsible authority might abandon the need for a licence, permit or other authorisation if it was sufficiently satisfied that it might be granted under any other law. Section 22 further provides that all water use might be permissible and allowed as directed by the relevant authorising body.

Schedule 1 authorisations are granted for negligible quantities of water use where there was a slight probability of it having a negative impact on the resource. Schedule 1 of the NWA provides that this might be used for,

...reasonable domestic use in that person's household, directly from any water resource to which that person has lawful access ... for use on land owned or occupied by that person, for reasonable domestic use, small gardening not for commercial purposes; and the watering of animals or store ... use run-off water from a roof ... in emergency situations, take water from any water resource for human consumption or firefighting or for recreational purposes (RSA, 1998b: Schedule 1).

General Authorisations (GAs) refer to water use involving larger quantities than Schedule 1 use. Part 6 of the NWA provides that a responsible authority, after public consultation, may permit

¹⁷ Section 1(xx) of the NWA defines a responsible authority as “in relation to a specific power or duty in respect of water uses, means -

- (a) if that power or duty has been assigned by the Minister to a catchment management agency, that catchment management agency; or
- (b) if that power or duty has not been so assigned, the Minister”.

the use of water by GAs which use may be restricted to a particular water resource, a particular category of persons, a defined geographical area or a period of time. The use of water under a General Authorisation does not require a licence. Existing Lawful Use (ELU) permits water use that was lawfully used two years before the NWA came into effect. It would continue to be lawful until such time that it could be changed into a water use licence after verification and validation of the relevant water use (DWAF, 2008a). Given South Africa's history of apartheid, this type of user is predominantly the white commercial farmer and today, due to the DWS's inability to validate and verify their use, they continue to enjoy their pre-1994 water use. Moreover, as Bond and Stein (2002) argued,

It is only through the compulsory licensing process (RSA, 1998b, S43-48) that existing lawful water uses are ultimately challenged, but this is constrained by the spirit of the orthodox economic approach, namely residual (and sacrosanct) property relations under the riparian system. The point was to avoid challenges to the NWA on the grounds of the Constitution's protection of private property (2002: 7).

Lastly, water use is permissible through individual water use licenses (RSA, 1998b: S22). This process is administratively laden and wide discretion is afforded to the water use authority in the licence application process (see below).

The legislative process was finalised within a relatively short period of two years but the implementation thereof was painstakingly slow. Twenty years after its promulgation, South Africa is still facing implementation challenges and struggles to address the discriminatory abhorrent history to achieve transformation, allowing all its people and, in this study, the emerging farmers, to enjoy all the benefits of South Africa's natural resources.

4.2.2 Brief overview of the water use licensing business process before 2015

Permissible water use would be granted as schedule 1 authorisations, the continuation of an existing lawful use, general authorisations under S39 and through individual water use licenses in terms of Part 7 (RSA, 1998b: S22). The Act further provides for compulsory licensing or water allocation to existing and new users in water stressed areas. The authority to issue licences vests with the Minister but the devolution of authority is crucial for,

...integrated management of all aspects of water resources and ... the delegation of management functions to regional and catchment level ... to enable everyone to participate¹⁸ (RSA, 1998b).

The licence application process is complex and bureaucratically heavy (See Figure 4 below). Before 2015 no clear guidelines existed to inform and clearly direct implementers and users and in the absence of such guidelines the NWA informed the process. The Department of Water Affairs and Forestry (DWAF) issued some form of guidelines but attached a clear disclaimer that,

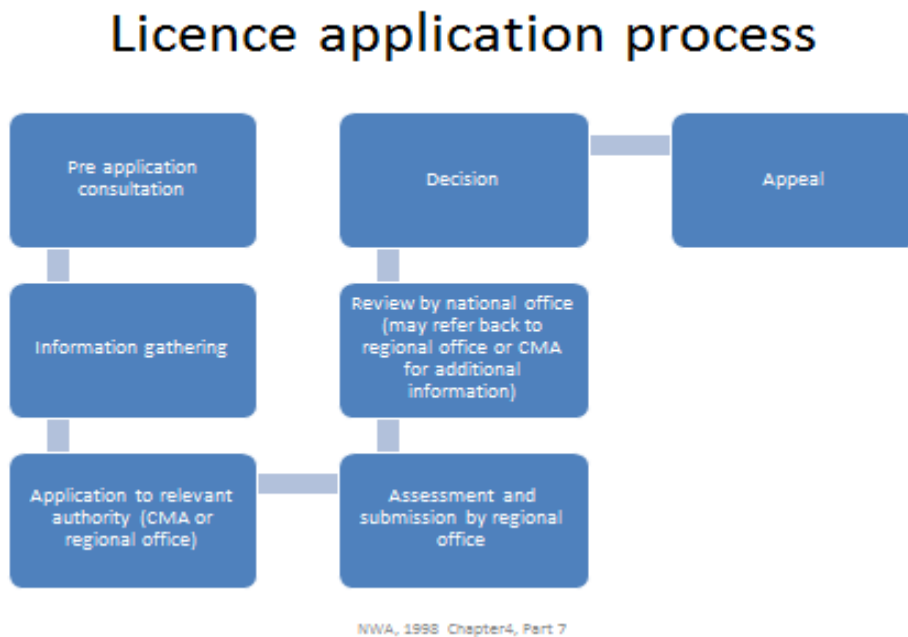
...it does not replace the National Water Act (NWA) (Act No 36 of 1998), or any regulations or notices published in terms of the NWA. It does not contain all requirements for water uses. If there are any differences or omissions in this document, then the NWA and its regulations and notices apply. Although the information contained in this document is presented in good faith and believed to be correct, the Department of Water Affairs and Forestry makes no representations or warranties as to the completeness or accuracy of the information, which is only based on actual information received (DWAF, 2007: i).

The licence application process started when the user discovered that water use necessitated authorisation. This realisation or 'discovery' of a need for a water use licence might be triggered by a funding application to a state department such as the Department of Agriculture (DoA). The process involved six broad steps and a further seventh step if the applicant wished to appeal as provided for in Chapter 4, Part 7, Sections 40-42 of the NWA. The water use application process started at either the CMA (if one is operational) or the regional office of the Department of Water and Sanitation (DWS). Step 1 entailed a pre-application consultation with the relevant institution. At this stage the DWAF advised and informed the potential applicant of application requirements, supporting documents and information and relevant application fees to successfully lodge the application. Step 2 was the information gathering phase whereby the applicant acquired all the relevant information and documents, amongst others a copy of the title deed of the property, proof of payment of the application fee, technical supporting documents, and reports from relevant departments to assess the impact of the application on the environment. Step 3 of the process saw

¹⁸ The preamble of the NWA.

the application being submitted to the relevant authority (CMA or regional office). The regional office gathered all the information required to make a decision on whether to approve the application and to make a recommendation to the national office or reject said application. This is followed by step 4 when the relevant authority assessed the application for technical and legislative adherence to determine recommendation to the national office. Step 5 was the review by the national office. The application was evaluated by specialists and recommended to the Chief Director: Water Use for decision. After due consideration of the application in its entirety step 6 followed to decide whether to approve or reject the application. Section 42 provides that after the responsible authority has reached a decision on a licence application, the applicant should to be informed in writing with reasons, if so requested, of the outcome. If approved, the licence would be issued with all relevant water use conditions attached. The licence would be issued for a certain period of time of no longer than 40 years. Should the applicant appeal the outcome of the water use application, an appeal could be lodged with the Water Tribunal (RSA, 1998b: Section 148).

Figure 4: Water use licence application process



The DWAF advised that the licence application process might take between 3 to 12 months to finalise pending the intricacy of the specific water use licence, the associated benefits to the nation and its possible impacts (DWAF, 2007). However, the process proved to be challenging and a number of applications were caught in the process for much longer than 12 months. The discretion given to implementers intensified uncertainty and greatly contributed to the slow pace of implementation. Since only two CMAs were operationalised in 2004 and 2005 and the Minister did not to date delegate the licensing authority to these two operationalised CMAs, it further exacerbated an already difficult implementation process.

4.2.3 The purposive approach to law and enacted law

The discretion of the responsible authority¹⁹ in granting permissible water use is unmistakable in Chapter 4 of the NWA. Part Two of the chapter specifically states that,

It guides responsible authorities in the exercise of their discretion to issue and to attach conditions to general authorisations and licences (RSA, 1998b).

Section 27(1) of the NWA provides a list of criteria to be taken into account by a water use authority in the judgement of a licence application. The section provides that,

In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including–

- existing lawful water uses;
- the need to redress the results of past racial and gender discrimination;
- efficient and beneficial use of the water in the public interest;
- the socio-economic impact–
 - of the water use or uses if authorised; or
 - of the failure to authorise the water use or uses;
- any catchment management strategy applicable to the relevant water resource;
- the likely effect of the water use to be authorised on the water resource and on other water users;

¹⁹ Responsible authorities are the CMAs and if not established, then the responsible authority is the Minister (Chapter 4, Part 2).

- the class and the resource quality objectives of the water resource;
- investments already made and to be made by the water user in respect of the water use in question;
- the strategic importance of the water use to be authorised;
- the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and
- the probable duration of any undertaking for which a water use is to be authorised (RSA, 1998b: S27 (1)).

The national water authority set implementation targets to specifically meet the redress objective of S27. These targets were to be achieved by 2014. It was determined that 30% of allocable water was to be allocated to historically disadvantaged individuals and at least 50% of the 30% allocable water was to be allocated to women. It set 60% of water be allocated to blacks, by 2024 (DWAF, 2008c: 4-5) and a five-year rolling plan was to ensure that these targets were achieved (DWAF 2008c: 5).

In South Africa two broad approaches to interpreting legislation were used, namely the literal or text-based approach and the purposive or text-in-context approach. The literal approach to statutory interpretation has a narrow application and the literal meaning of the words guided this approach. This approach does not consider other important factors to interpretation such as external aids i.a., history, commission reports, parliamentary debates, relevant memoranda, context, or internal aids such as the title, long title, preamble, chapter headings and so forth to determine the meaning of the text-in-context. Therefore, if the meaning of the words was clear it was put into effect and this was equated to the intention of the legislature. The golden rule of literal interpretation dictates that should the wording of the statutory provision be indistinct, or the normal meaning lead to such obviously irrational results that no legislature could have intended that such normal meaning should be applied under the circumstances, the court should depart from the normal meaning of the words in the legislation. South Africa's water dispensation pre-1994 was dictated to by the Water Act 54 of 1956 based on the riparian system and the distinction between

‘public water’ and ‘private water’²⁰ and the text-based theoretical or literal approach was applied to make meaning of the 1956 Act. Critique voiced against the literal approach was the assumption that the text was always so clear that only one interpretation was possible and courts were regarded as mechanical interpreters of the legislation with no law-making capacity.

Section 39(2) of the Constitution demands that all legislation be interpreted with a constitutional lens, i.e. a purposive approach to interpretation. In the case of *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* (Court Case, 2004) the Constitutional Court, the highest court in the country, affirmed the application of the purposive approach to interpretation, stating that:

Certainly no less important than the oft repeated statement that the words and expressions used in a statute must be interpreted according to their ordinary meaning, is the statement that they must be interpreted in the light of their context. But it may be useful to stress two points in relation to the application of this principle. The first is that ‘the context’, as here used, is not limited to the language of the rest of the statute regarded as throwing light of a dictionary kind on the part to be interpreted. Often of more importance is the matter of the statute, its apparent scope and purpose, and within limits, its background (Court Case, 2004: 662G-H).

In *Stopforth v Minister of Justice and Others, Veenendaal v Minister of Justice and Other* (Court Case, 1999), Olivier JA stated that the following aspects be taken into account when applying a purposive approach to legislative interpretation:

In giving effect to this approach, one should, at least, look at the preamble of the Act or at the other express indications in the Act as to the object that has to be achieved; study the various sections wherein the purpose may be found; look at what led to the enactment (not to show the meaning, but also to show the mischief the enactment was intended to deal with); draw logical inferences from the context of the enactment (Court Case, 1999: 11, para 21).

In 2009 in *Bertie van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* (Court Case, 2009a) the Constitutional Court again reiterated the application of the purposive

²⁰ See Chapter 2 for more detail.

approach to legislative interpretation and emphasised that the purpose of legislation should be considered in establishing a context to elucidate the scope and proposed effect of a law. Consequently, the literal approach became obsolete and the purposive or text-in-context approach²¹ dictates the interpretation of law in general and enacted law²² in particular as it pertains to water use. The purposive interpretative approach dictates that the interpretation of the NWA consideration be given to the historical background as well as *all* sections of the legislation and *all* related water policy to gain complete insight into the purpose of the Act. Informed inferences should be drawn to determine the application against the reality of its application by those processing the water use applications. Against this backdrop the water use licence business process should be applied.

Generally, the bureaucracy was failing to implement the legislation and policy and specifically apply the purposive approach to effect said implementation. The case of the *Goede Wellington Boerdery (Pty) Ltd v Makhanya NO*²³ illustrated the dilemma officials faced when applying their discretion in dealing with the implementation of the Act's water allocation priorities list. In November 2005 The Goede Wellington Boerdery (Pty) Ltd lodged an application for a water use licence. The application was duly recommended for approval in 2006 by the Regional Director of the Western Cape Regional DWAF supported by, amongst others, the Berg River Irrigation Board and the Department of Agriculture in the Western Cape Provincial Government. Two years later in 2008 the National Director of the DWAF vetoed the recommendation stating that it did not conform one of the S27 (1) criteria namely, "the need to redress the results of past racial and gender

²¹ These terms are used interchangeably but for purposes of this research the term purposive is used throughout.

²² Enacted law is law made by demonstrable, constitutionally authorised legislatures whose distinctive responsibility is law-making. It consists of the Constitution and all original (or primary) and delegated (or secondary) legislation in all spheres of government, i.e. parliament at national level, provincial legislatures at provincial level and municipal councils at local level (Pienaar: 2015, 1332).

²³ An appeal was first lodged by Goede Wellington Boerdery (Pty) Ltd against the decision of the Water Tribunal to the court *a quo*, the North Gauteng High Court; *Goede Wellington Boerdery (Pty) Ltd v Makhanya NO*(56628/2010) 2011 (Court Case, 2011: 141). It was eventually heard by the Supreme Court of Appeal, the highest court for civil matters.

discrimination” (RSA, 1998b). The officials ignored the priorities list focusing on one factor of equity only and rejected the licence application. The Goede Wellington Boerdery (Pty) Ltd first appealed to the Water Tribunal but was unsuccessful. They then appealed to the High Court who found that Makhanya, an additional member of the Water Tribunal, was wrong in denying the water use licence. The Supreme Court of Appeal²⁴ had to pronounce on, i.a.,²⁵ whether *all* the relevant factors should be considered when allocating water. The Supreme Court of Appeal stated that the Minister accepted that the Water Tribunal made an error of law in regarding the redress factor as “essential and decisive, rather than considering all the relevant factors prescribed” (Court Case 2012: par 22) as provided in S 27(1) of the NWA. The Supreme Court of Appeal found that without dedicated legislation providing that a specific factor be promoted amongst all the others, the conclusion should be that all factors should be considered and weighed holistically in deciding whether to award water use licences. The appeal by the Goede Wellington Boerdery (Pty) Ltd to the Supreme Court of Appeal against the refusal by the DWAF to grant a water use licence was upheld and the licence was granted. A DWS official, interpreted and viewed transformation, stating that,

Nothing is wrong with the legislation. We only manage the water, see that the water is enough and distribute it, not to the white farmer (Leading official, Participant 12, 2016).

The Supreme Court of Appeal decision and the interpretation by the official clearly pointed to the DWS not applying the purposive approach when interpreting legislation and policy.

²⁴ *Makhanya NO and Minister of Water and Environmental Affairs v Goede Wellington Boerdery (Pty) Ltd* ((230/2012) [2012] ZASCA 205) (Court Case, 2012).

²⁵ The other two issues were the right to fair and reasonable administrative action and the role of the Water Tribunal.

4.2.4 The water use licensing business process after 2015 and its impact

The implementation of water use licensing was of concern and by the Department's own admission, it

...is on an accelerated mode of optimising the processing of water use licenses to bring about the much needed radical economic transformation of South Africa (DWS, 2015c).

Regulations for the process of water use licences were issued and, for the first time, the process included time frames for the processing of licence applications (DWS, 2015b). The 300-day time frame (as per Figure 5 below) incorporated into the regulations could be a general improvement, provided it can be implemented effectively by the responsible authority. Figure 5 below presents the following timeframes that were promulgated.

Figure 5: Timeframes for processing of water use licence applications

Timeframes for processing of water use licence applications

Stages of water use licence application process	Days	Cumulative days
Inception of application at relevant State department (if so required)	7	7
Applicant to inform responsible authority of the intent to apply	5	12
Responsible authority acknowledges receipt of notice of intent to applicant	5	17
Meetings and site inspection and grant permission to proceed with application	30	47
Compile application/submission	100	147
Reject/accept application	10	157
Final Processing and recommendation	120	277
Decision and communication to applicant	23	300

Government Gazette General Notice 126 of 2015: Notice no 38465

Source: Government Gazette, General Notice 126 of 2015: Notice no 38465

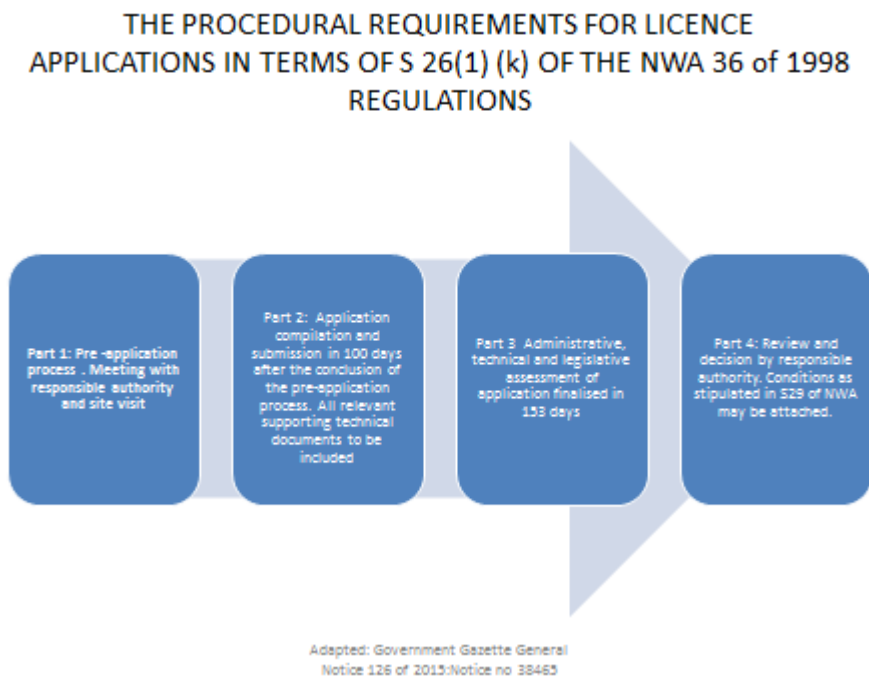
The water use licence application fee is R114 (DWS, 2017d) but if all supporting documents were considered then the cost increases exponentially. Due to the nature of an application, specialist studies and reports might have to accompany a licence application and it could cost the applicant anything from R10 000 to R100 000 (Visser, 2015). An applicant may approach the CMA or the DWS to assist with the technical specialist reports but this might prolong the application. This concern with the cost of a water use licence application resonates with the sentiments of emerging farmers from the West of Coast region in the Western Cape regarding the general cost of water. They perceived that the anticipated rate of transformation (PMG, 2008) was thwarted by expensive water and viewed the market price to be excessive. This hampered their ability to be competitive and submitted that special affordable low water tariff be considered (PMG, 2008).

These regulations were first published in 2015 and although in draft form, institutions adopted these processes and were using these regulations in the absence of anything else, as it promised certainty and clarity (DWS, 2015b). The regulations were meant to be clear and guide the role players in the water use application (see Figure 5 above). At first glance the process seemed to consist of six straightforward steps, namely the pre-application consultation; information gathering; submission of the application to the relevant authority; assessment of the application; review by the national office; and lastly the decision.

Step 1 is the pre-application consultation, which was forthright. Parties advise each other of the intent to institute the process and what it might entail. This is followed by the second step, information gathering. This might entail at least one pre-application meeting to establish the water use contemplated and a site visit. Step 3 follows with further detail such as provided by the applicant and this is where the process becomes technically and administratively laden. The applicant should complete the application form and attach supporting technical documents as specified and required by the responsible authority (Regulation 11). For the farmer applicant it implied the submission of agricultural technical report or business plan and a public participation report. The agricultural report should contain the project detail, water and waste management framework, water resources management plan, agricultural development and production plan, technical design plan, financing plan and a facility plan. The applicant was also required to attach

a public participation report whereby interested parties are given an opportunity to comment and give input. Failure to submit these technical documents in the 105-day time frame would lead to rejection of the application. Step 4 entails the assessment of the application for administrative, technical and legal adherence. The assessment should be finalised in 153 days, summarised and is called the Record of Recommendation. Step 5 is the review by the national office for the final outcome of the water use application. And finally step 6 which was the decision. If a licence was granted it would contain all specifics and conditions attached. Step 7 spells out the right to appeal the decision should the applicant be dissatisfied with the outcome of the application (DWS, 2017e: Regulations 21, 22 and 23). This might extend the process by at least another 120 days. Figure 6 below provides an overview of the process whereas Annexure A maps the detail as contained in the guidelines.

Figure 6: Flow chart of the guidelines for the licence application process



Scrutinising these procedural steps, (see Annexure A) reveals the complexity and red tape and a concern that the 300-day timeframe may be unachievable. The regulations were meant to be clear and guide the role players in the water use application but a number of concerns are raised. Is the process not still too administratively and technically laden? At the information gathering, i.e. the

step 2 stage, would the responsible authority have the resources i.e. human capital and skills to perform the site visit function? Would staff be appropriately trained for the task at hand or would it be a matter of learning the intricacies thereof as they experience the implementation process? If as argued, the process is time consuming and specialisation intensive, would it overburden the applicant and particularly the black resource-poor farmer as well as the street-level bureaucracy? The process might trigger the need for further technical supporting documents such as hydrology and geo-hydrological reports and wetlands and watercourse impact studies and consequently might require concession to prolong the process without penalty? Although it is appreciated that the resources be protected and all efforts be made to protect and manage the resource effectively and efficiently, this technical and specialised supporting information might put the emerging farmer on the back foot and would this added expense not defeat the purpose of equity and transformation with the intent of enabling poverty alleviation? Giving expression to the purposive approach, should some of the application supporting information be abandoned? It might also be the case that the whole process needs to be reconfigured.

The Electronic Water Use Licence Application and Authorisation System (E-Wulaas) has a twofold objective: Firstly, to provide an online portal to DWS clients to register and subsequently submit their water uses application alongside the current paper-based system. Secondly, the system will provide an internal web-based interface for the authorisation staff to manage, coordinate, track and finalise the authorisation processes of registered water uses culminating in the issuing of a water use licence (DWS, 2017d: 1).

The system offers applicants the opportunity to lodge an online application from wherever they find themselves and simultaneously affords officials the chance to monitor and finalise processes remotely. Both sides could follow the application and respond when the process so required. The system has the potential to positively impact on the duration of the finalisation of applications as it attempted to guide the process with step-by-step instructions. To be effective, an electronic system that was reliable and functioning optimally would be crucial. The system has to be current and contain recent and updated information at any given time if and when the user accesses the system. It should be fully operational at any given time and be effectively and efficiently supported and operated should any queries or assistance be needed at any time during the online application

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process. This would enable ease of implementation. If not, frustration and interruptions might further delay the application process. Is the department ready to take full responsibility and accountability for its effective and efficient functioning? It further implies that applicants have the relevant resources and access thereto to use the online system. Do role players have sufficient and the necessary capacity, knowledge and understanding to successfully navigate the online application process? Although the application system is online, technical supporting information and documents might still be needed to complete the application and would this not further complicate and delay the process? Given the inability of the DWS to establish and devolve authority from national level to catchment level, it is conceivable that water use applications would be exposed to the much longer bureaucratic route and raises further concerns about finalising the licence application within the 300-day timeframe.

4.3 Institutional structure

Chapter 7 of the NWA provides for the establishment of new statutory bodies, namely CMAs and WUAs. CMAs would manage water resources at regional or catchment level within a water management area as demarcated within a geographical area. The legislative intent is to,

...delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy (RSA, 1998b: Chapter 7).

The devolution of authority from national level to catchment level, i.e. CMAs, is a key aspect of the NWA, enabling stakeholder participation in water resource management at a decentralised level. This new institutional framework of integrated water resource management was meant to enable South Africa's water resources to be managed in a holistic, efficient and sustainable manner. Sections 79 and 80 of the NWA provide for the functions to be performed by the CMAs. The Minister may delegate or assign further functions, powers and duties to the CMAs, including the review, authorisation, extension and registration of water licenses. CMAs are primarily funded by the DWS and Treasury.

In motivating the establishment of the BGCMA, the DWS emphasised the importance and role of subsidiarity, noting that,

oo

...to ensure equity and sustainability, water resource management must be based on the principle of subsidiarity... such that all relevant stakeholder groups are actively involved in the decision-making process. This is also important in the effective functioning of a democratic developmental state...decentralised institutions often have a greater developmental and empowerment role than centralised institutions. Decentralised institutions have a greater ability to respond to developmental needs and opportunities on the ground...by involving stakeholders in the decision-making process and the management of the resource, decentralised water resource management will contribute significantly to the redress of historical inequities and support the equitable allocation and effective management of this limited resource (DWA, 2012a: 19).

The National Water Resource Strategy 2 (NWRS2) echoed the importance of the role of CMAs (DWA, 2013b: Chapter 8). However, South Africa struggled to establish the CMAs as intended and at the time of writing only two CMAs, namely Inkomati-Usuthu and Breede Gouritz CMAs were operational. An expert with thirty years' experience blamed it on the lack of continuity and leadership and stated,

CMAs have not been established yet, because it is more complicated than they thought it would be. At one stage there was a Minister every year, all with different ideas. So this time around, she is very positive about CMAs (Leading Official, Participant 20, 2016).

Chapter 8 of the NWA provides for the establishment of Water User Associations as the primary bodies to facilitate stakeholder participation at a local level. Chapter 8 of the NWA provides that WUAs are not water management institutions, but

...operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit. A water users' association may exercise management powers and duties only if and to the extent these have been assigned or delegated to it (RSA, 1998b).

These WUAs should represent water users from commercial farmers to emerging farmers to farm workers and informal water users to reflect South Africa's diversity. These were to replace existing Irrigation Boards (IBs) of commercial farmers which were established in terms of the Water Act of 1956. Membership of these IBs was open to white commercial farmers only and thus their water interests at local level were exclusively promoted. The NWA (section 98) requires all the existing

IBs to be transformed to WUAs to be more inclusive and representative of all water users. However, section 98 (2) provides that the IBs are to,

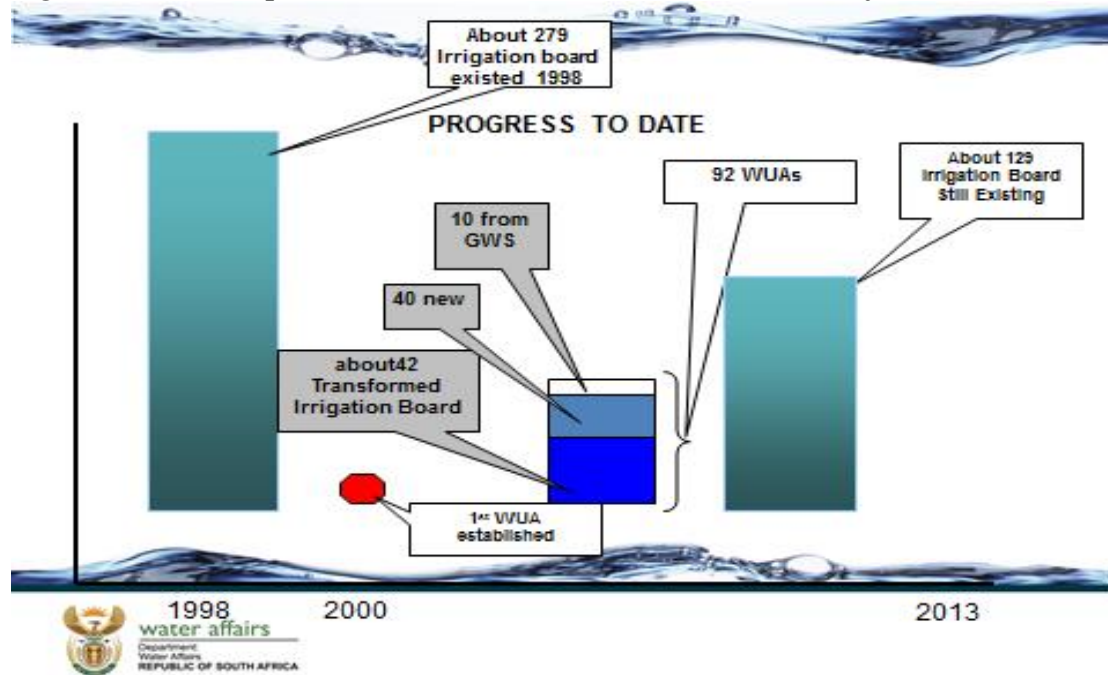
...continue to exist until it is declared to be a WUA in terms of subsection (6) or until it is disestablished in terms of the law by or under which it was established (RSA, 1998b: S98(2)).

This implies that no legal obligation or urgency existed to prompt these existing IBs to transform and these IBs could continue their pre-1994 exclusive dictates.

It was envisaged that IBs be transformed into WUAs within six months after promulgation of the NWA²⁶ but this was delayed and a number of these IBs still continue to operate untransformed. The process did not happen as intended and at a parliamentary session (DWA, 2013c) it was projected that all IBs would be transformed within a year. This did not materialise and at the time of writing IBs still existed and operated in terms of the 1956 Act. The DWA figures released (DWA, 2013c) show that transformation of the IBs were not at the pace as envisioned. The national figures indicate that of the total number of 279 IBs, only 42 were transformed into WUAs whereas 46% were still operating in 2013 as per the Water Act 54 of 1956 (see Figure 7 below).

²⁶ Section 98 of the NWA.

Figure 7: Status Report on Water Users' Associations in South Africa 2013



Source: DWA (2013c)

Inferred from the WUAs statistics (see Figure 7 above) of DWA it was clear that South Africa was struggling to convert the existing IBs to reflect and represent South Africa's diverse water users and transformation. Whether stakeholder inclusion would necessarily lead to redress was shown to be wishful thinking as the most powerful and articulate stakeholders i.e. the white commercial farmers stand to lose by impending transformation (Kemerink *et al*, 2013). By implication the old discriminatory practice which existed before the promulgation of the 1998 NWA, continues and black emerging farmers remain excluded from representation and participation at the localised level of water management. Thus the *status quo* of water management by the previously advantaged white IBs continued at the peril of the marginalised. Curiously, the DWA statistics were not exact. The report referred to the total number of IBs as 'about' (see Figure 7 above) and this again indicated the uncertainty that prevailed in the bureaucracy and the effect thereof on transformation. Four years later in 2017 the DWS reported that it had transformed 40 more IBs

(DWS, 2017d) but this slow pace was disconcerting as a large segment of stakeholders was voiceless and without agency.

WUAs are generally self-funded and according to the draft policy on financial support for WUAs,

The National Water Act provides conditions under which the Minister might provide financial assistance. The Act provides that the Minister may provide financial assistance to any person for the purpose of the Act. Such assistance will be in the form of grants, loans and subsidies, which are made under conditions laid down by the Minister (Section 61) (DWAF, 2008b: 3).

The GWUA generates funds via water use charges, membership fees and loans to fulfil its functions and duties (GWUA, 2009).

In 2017 the Minister proposed that a single statute for water management and sanitation be adopted for ease of management of all water. Contributing to this environment of chaos and uncertainty is the notion of the recently mooted single mega CMA. The DWS motivated that,

(T)he establishment of the single CMA would:

- Allow DWS to devolve operational functions and to facilitate a clear separation from its policy and regulatory roles
- Create an institution that is focused solely on water resources management
- Allow for water to be managed at a local level
- Provide a more effective platform for stakeholder engagement and partnerships
- Facilitate greater transparency on decisions and performance around water resources management (DWS, 2017c: 4).

The Department went further and noted that,

Amid growing concern regarding the costs associated with the establishment of multiple institutions and the need to rationalise and align existing institutions as a mechanism to unburden the state of burgeoning service costs. This is in line with the Presidential review of state owned entities and National Treasury's cost cutting measures. (DWS, 2015a: 4).

This did not deviate substantially from the functions of a CMA as provided for in S80 of the NWA. In view of the inability of the DWS to adhere to its own policy, i.e., the establishment and operationalising of the reduced number from nineteen to nine CMAs, one questions whether the

single mega CMA, being not substantially different from the functions of the existing proposed CMAs, would indeed achieve the legislative purpose and functions of a CMA. The DWS further justified this proposal by stating that,

The Department of Water and Sanitation (DWS) took the decision in June 2017 to establish a single CMA, amid growing concern regarding the costs associated with the establishment of multiple institutions and the need to rationalise and align existing institutions as a mechanism to unburden the state of burgeoning service costs. The CMA is seen as a vehicle to assist the South African Government to achieve its broader socio-economic objectives as referenced in the National Development Plan (DWS, 2017c: 2).

This drastic proposed institutional arrangement was driven by economics and it seemed as if effective and efficient water management was not at the centre of this proposed change. This is very concerning as economics seemed to be the key driver for this far-reaching decision and not the objective of subsidiarity having participation at the lowest level at its core. It also raises questions about the significance of transformation and the seriousness about giving access to water to the black emerging farmer. This would create another enormous bureaucratic structure in an environment where the bureaucracy was a key contributing factor to the implementation challenges. This seemed to contradict the principle of subsidiarity as it removed water management from local level placing it at centralised level. This might delay the process more than intended as this new proposal of one CMA adds another layer of uncertainty and might cause the process to be even further delayed. This proposal does not address the real challenges experienced by the officials and water users at local level as the struggle to implement legislation and policy and access water use continues. The questions to be asked were what and how this new policy of a mega CMA be any different and implemented as South Africa once again introduced a new policy to address unfulfilled policy decisions. This researcher is of the view that this merely adds fuel to the already volatile environment and it throws the sector into a tail spin.

Transformation was also slow at localised level where agency of the emerging farmer was intended to be most effective. The DWS reported:

The main challenge today was that irrigation boards continued to exist in their current form. There had been an effort to transform them, so far the Department had transformed 99 irrigation

boards and still needed to transform 100. In 1998 there were 278 irrigation boards, and currently 99 have been transformed (PMG, 2017: 3).

Although the concerns highlighted during the portfolio parliamentary briefing by the DWS refer to IBs, parallels may be drawn with CMAs. Parliamentary members raised concerns on the transformation of IBs whether,

...it was not willing to do what Parliament said. It had been almost 19 years, and the transformation of irrigation boards was failing. The Department could not brag about the transformation of 99 irrigation boards after 19 years of having the policy in place. It seemed the Department did not know the power it had. It had the power to go to irrigation boards and check the allocation and redistribution of... Was there general laziness, or did the Department not want to do this? It seemed it did not know its functions (PMG, 2017: 4).

The Parliamentary Portfolio Committee was briefed by the DWS on the state of the transformation of the IBs and the advancement of a national water and sanitation master plan. In October 2016 the DWS reported to the Portfolio Committee on Water and Sanitation that,

The Minister will specify a date by which WUAs and Irrigation Boards (IBs) will cease to exist, with the appropriate functions related to state-owned schemes being delegated to a CMA or Regional Water Utility (DWS, 2017a: 130).

At the time of writing the date was not finalised.

4.4 Equity and trade-offs

The key principles of the New Water Resource Strategy (NWRS) (DWAF, 2004) were amongst others to achieve equitable access to water and efficient and effective water use for optimum social and economic benefits²⁷. The NWRS-2 defines equity to mean,

...that special attention must be given to the needs of those that were historically denied access to water or to the economic benefits of water. Equity implies a concept of fairness, which allows

²⁷ Chapter 1 of the NWRS, 2004.

for different practices in the management of water in response to different social, economic and environmental needs (DWA, 2013b: 12).

It further emphasised the importance of distinguishing between equity in access to water services, equity in access to water resources and equity in access to benefits from water resource use through economic, social and environmental development and management. Although equity is one of the central guiding principles of the NWA in the access to water and the related benefits, the allocation of water to HDIs did not seem to receive the priority it deserves.

The Water Allocation Reform (WAR) (DWA, 2006) is the practical policy guide to implementation and sets the alignment between the Constitution, the National Water Policy, the National Water Act and the National Water Resources Strategy within the water allocation process. It further provided a code of practice to guide water allocation processes both inside and outside of compulsory licensing giving stakeholders a commitment regarding the intention and purpose of these processes. The WAR was the basis for developing the water allocation principles that should be included in Catchment Management Strategies (DWA, 2006: 6). Thus it accordingly set the scene for the purposive interpretation of the legislation and policy frame. Compulsory licensing is one of the key legal instruments to give effect to the WAR and potentially bring about change to the existing water use allocation.

The policy made provision for enabling mechanisms and approaches. The included: (i) Set-Asides allowing water-stressed catchments to issue individual licences or general authorisations after identifying available water from water conservation, water demand management and illegal water use recovered during the verification and validation process. (ii) General authorisations. (iii) Strategic alignments with other national initiatives such as the land reform programmes and Special Purpose Vehicle (SPV) of the Department of Agriculture²⁸. (iv) Compulsory Licensing

²⁸ Special-purpose vehicles (water resource management agencies) are a funding model generating funds for the development and management of water infrastructure using private or non-governmental funds (Ruiters: 2011). This is one of four institutional options for the development and management of water infrastructure (i.e. dams, large raw-water conduits such as tunnels and canals, distribution and reticulation networks, etc.) (DWA, 2012a, 2013a):

- The Department of Water and Sanitation (DWS)
- Water boards (bulk water services providers)

(RSA, 1998b: Sections 43-48) permits all the water use authorisations in an area to be reconsidered in order to achieve a fair allocation of water from a resource that is under stress or to achieve equity in allocations. It was further initiated to promote beneficial use of water in the public interest, facilitate efficient management of the water resource or protect water resource quality. This is a key legal instrument to give effect to the Water Allocation Resource Strategy (WARS) and potentially bring about change to existing water use. (v) Partnerships and business enterprises such as joint venture initiatives and public-private partnerships use water as a productive asset and implemented it on a scorecard basis. An example of such innovation is the smallholder outgrower schemes in the sugar sector. (vi) Development support such as financial support, funding of the infrastructure, grant funding, technical support, voluntary donations, and so forth could apply in river catchments where access water was still available for abstraction. This water could be captured through the construction of new infrastructure which could be funded through this development support (DWAF, 2008c:6).

The transformation goal was that 60% of allocable water should be progressively allocated to black people by 2024 (DWAF, 2008c:4). This national target was further detailed projecting that 30% of water was to have been allocated by 2014, 45% by 2019 and finally 60% by 2024. Further, half of the 60% of water should be in the hands of women by 2024 (DWAF, 2008c:4). A five-year rolling plan was to ensure that these targets (DWAF, 2008c: 5) were achieved. The experience on the ground dispels the notion of transformation. An emerging farmer had a very strong opinion on the transformation agenda and expressed his anger and claimed that,

You're talking about water restrictions? It's white oppressing black. Nothing has changed. There's corruption. There's politics still very much alive. White people are in charge, making decisions for black people. Apartheid put them in the position that they are. They're still reaping

- Municipalities (water services authorities)
- Special-purpose vehicles (water resources management agencies)

the benefits; you know? Yes, they talk about... how long is it going to take to compete? You know, they got farms, they got tractors and stuff worth a million rand... in 1990, the ANC was unbanned, so basically, in the late 80s, they were given stuff, two million rand's tractors. They're selling those tractors now for two hundred thousand, hundred thousand. They had farms the size of 10 000 hectares. They subdivided to their children... Why aren't we Drostdy-Hof, 200 years? Where are we? (BEF, Participant 1, 2016).

This assertion of lack of transformation was supported by the slow pace of water use authorisations which was acknowledged by the DWS. Between 1998 and 2012 4,284 water use licenses were issued over a period of 14 years; of these only 1,518 (35.4%) were issued to HDIs (DWA, 2013b). The largest users of water were still white commercial farmers (Schreiner, 2013: 126). South Africa was struggling to give access to new applicants; by implication the historically disadvantaged, i.e. the black emerging farmers, were included in this delayed processing of licences and thereby the transformation agenda of the state suffered at the expense of black emerging farmers²⁹.

The slow pace of transformation was glaring and in 2013, five years after the WARS was published, the focus of the NWRS2 was still on equity. NWRS2 again made detailed provision for the equitable allocation of water (Chapter 6). The DWS commented that,

Allocations are still largely in the hands of the previously advantaged. Most of the current water use licence applications are still from this group, usually with no indication of how the allocations will contribute to redress and equity (DWS, 2014: 45).

The strategy identifies compulsory licensing as a means to achieve equity but recognises that it is resource intensive and would require expert knowledge and skills and is a "*legally and technically complex process*"³⁰ (DWA, 2013b: 46). The NWRS2 principles of equity should inform the planned ways to achieve the Water Allocation Reform and the envisaged objectives namely, (i) redress race and gender imbalances; (ii) Broad-based Black Economic Empowerment; (iii) fair,

²⁹ The draft regulations came into operation on 24 May 2017.

³⁰ My italics.

reasonable and consistent; (iv) phased attainment of developmental and environmental objectives; (v) reduction of administrative burden; and (vi) capacity development (DWA, 2013b: 48). The strategy underlined the need to collaborate with other stakeholders to enable the success of the WAR. The NWRS2 specifically highlighted the disregard of the equity objective since the promulgation of the NWA.

In 2014 the DWS presented an overview (See Table 2 below) of the implementation of the NWRS to the Portfolio Committee on Water and Sanitation.

Table 2: Overview of achievements and challenges of the NWRS

OVERVIEW of ACHIEVEMENTS and CHALLENGES of the NWRS	
ACHIEVEMENTS	CHALLENGES
<ul style="list-style-type: none"> • Sustaining reliable supplies. • Development of new water resources infrastructure and investment in improved dam safety of state dams. • Improved insights into future water demands and supplies. • A significant proportion of reserve determinations complete and first examples of implemented environmental flows in place. • Water reconciliation studies done in the major urban areas. • Incentive-based regulation through the blue and green drop assessments. • Improved sector collaboration and participation. • Development of a Learning Academy to improve skills and capacity within the sector. • Two CMAs established and functional. • Support provided to a number of resource poor farmers. • Verification of water use well underway. • Water sharing agreements and institutional arrangements in place in all trans-boundary basins. 	<ul style="list-style-type: none"> • Achievement of the Water Conservation and Demand Management targets. • Streamlined water allocation reform to redress past racial and gender imbalances in access to water for productive uses and to address poverty and inequality. • Implementation of environmental flow monitoring and water resource classification. • Establishment of water management institutions and the decentralisation of water resources management. • Strengthening of regulation of water resources and compliance monitoring and enforcement. • Improvement of technical and management skills to implement developmental water management. • Improvement in the integration of monitoring and information management. • Reduction in the backlog of infrastructure maintenance.

Source: DWS (2014)

The DWS's own assessment of its performance on the objectives of the NWRS is disquieting as a key objective, i.e. equity, continued to be a challenge to be addressed. In 2017 the DWS could not account that the equity status improved. The Director-General (DG) of the DWS reported to the parliamentary portfolio committee (DWS, 2017b) that of the 2 355 water use authorisations granted to agriculture from 1998 to 2016 only 644 (27.3%) were issued to historically disadvantaged individuals and an overwhelming 1 711 (72.6%) to non-HDIs. Licences and water use authorisations were issued to only 439 HDIs in the last four years (DWS, 2017b). This was not close to the strategic redress objective of the WARS and the targets to achieve such redress³¹. This state of affairs did not reflect the spirit of redress. The total percentage of water allocations to HDIs was negligible and revealed that South Africa was not likely to achieve the projected targets.

4.5 Conclusion

South Africa's extensive new water dispensation is meant to bring about reform and transformation to a historically racially skewed society deeply divided and unfair along racial lines which advanced the minority white population with the black majority fighting to share equally in this valuable water resource. This chapter outlined the key laws, policies and processes for water licensing and water use allocation and provided insight into the required interpretation and the part that relevant implementing institutions play in the processes. Implementing authorities had difficulty executing an administratively laden water regime where high capacity and the exercise of discretion impact enormously on the final outcome of access to water use. A relatively small group of stakeholders i.e. white users, continues to hold the majority share of the water and it speaks to South Africa still being one of the most unequal societies in the world. The country was indeed struggling to bring about transformation in the water sector and this specifically underscores the aim and significance of this study. The next chapter unpacks the literature (both

³¹ By 2014, 30% of allocable water allocated to previously disadvantaged individuals (i.e. Blacks, Coloureds and Indians) and the long-term target is to have 60% of water allocated to black people by 2024 (DWAF, 2008c: 4-5).

legal and scholarly) of South Africa's transformation of its water sector and the related implementation challenges.

CHAPTER 5: REVIEW OF LITERATURE ON SOUTH AFRICA'S WATER REFORMS

5.1 Introduction

Commentators have put forward a number of reasons for the slow implementation of a policy that is regarded by the international community as 'revolutionary'. Bond (2000) presciently argued that there are conflicting frameworks within the South African Constitution and that these would be the root of many conflicts to come.

The Constitution also provides a caveat in mandating "reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development" (RSA, 1996), quite consistent with ecological modernisation. And, underlining the central orthodox economic precept, it goes on immediately to specify that, "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property" (RSA, 1996). Hence democratic South Africa is, even in its founding document, beset by conflicting discourses, the ramifications of which will be tested in the Constitutional Court for decades to come (Bond, 2000: 36).

This chapter presents literature (both legal and scholarly) pertaining to South Africa's mission to transform its water sector and the related implementation challenges.

5.2 The 2013 policy review

Almost ten years after the NWA of 1998 was promulgated in August 2013, the Minister published a policy review position proposing to amend the institutional and legislative regime³² (DWA, 2013a). Amidst uncertainty and lack of clear guidance the Department made known its intention to review the existing legislative water regime and this far-reaching proposed review change was

³² At a BGCMA/DWS workshop I attended on 03/04 July 2018 in George I enquired about the status of the 2013 proposed policy review. I was informed that it was accepted by the DWS in 2015. I was not able to locate this on the DWS's website.

published for comment without having the benefit of full implementation of the existing framework. This policy position proposed radical changes to the existing water landscape and five key policy issues were cited. These were (i) developmental water management; (ii) one whole water value chain from the resource to consumptive and productive use to the resource; (iii) developing a National Water Strategy; and (iv) water for equitable use. This entailed the principles of use-it-or-lose-it, water trading between authorised users, prioritising social and economic equity in reallocation of water, multiple water use approach in planning infrastructure, access to basic water supply and free basic water supply to indigent households. Lastly, was the issue of institutional arrangements and governance which meant economic regulation, the establishment and functions of water utilities, the roles and functions of WUAs, appeal functions to be aligned with the National Environmental Management Act 107 of 1998 (NEMA) and other appeal mechanisms, the powers and functions of WSAs and public water institutions and appointments of boards and chief executives (DWA, 2013b).

The developmental water management approach implies that,

...as part of IWRM principle in practice and which takes, as a central premise, the fact water plays a critical role in equitable social and economic development, and that the developmental state has a critical role in ensuring that this takes place (DWA, 2013b: 14).

Van Koppen and Schreiner (2014: 1) observed that the NWRS-2 departs from the widely accepted IWRM understanding in three ways. Firstly, water management was no longer seen as an end in itself. Water management should be aligned to the goals of the country's developmental democratic state of goals of equitable, redistributive and broad-based social and economic development. Water management is thus undeniably political in nature.

Secondly, water infrastructure and service delivery were critical and the directive to role players was to get the basics right to effectively fulfil this task. State investment in infrastructure development and management and water reuse were paramount factors. Thirdly, equity was operationalised (van Koppen and Schreiner, 2014). Hence NWRS2 dictates that equity was made tangible by specifying its threefold nature of access to water services, access to water resources and access to the benefits derived from having access to the first two components. Whether the

DWS has the capacity and collective institutional agenda to attain this is questionable as the DWS has to ensure,

...not only the continued development, operation and maintenance of water infrastructure that can be self-financed, but also the provision of subsidised infrastructure to support poverty eradication and the economic development of poor rural communities as part of a broader, irrigation-driven agrarian reform. To this end, if need be, water resources have to be taken away from uses that are less equitable and create fewer jobs (van Koppen and Schreiner, 2014: 12).

South Africa's water sector is presently uncertain as to what the future holds following this policy review. At the time of writing further indications are that more policy changes, amongst others a single CMA, are on the cards. This points to a phenomenon called 'policy churning' (Hess, 1999) whereby policy is passed by a set of role players and followed by further policy adoption by successive role players "at a dizzying pace, without any long-term success" (Marschall and Shah, 2005: 165). Monios (2017) added that policy churning occurs, without

establishing a clear link between the reasons for failure of the existing policy and how these will be overcome by the new policy...and possibly while decision-makers are under pressure to be doing something without sufficient evidence that the change would be better than the current policy (2017: 366).

Policy churning might be pointless as the new adopted policy might not address the actual problem or policy implementation concerns which might have been attended to by merely dedicating additional resources to the issue (Monios, 2017). Monios (2017: 364) developed a framework (see Table 3 below) identifying specific factors triggering policy churning.

Table 3: Framework of factors triggering policy churn

No	Factor	How it may lead to churn
1	Lack of rigorous testing of whether <i>status quo</i> has failed and if so, whether it was due to the policy itself or poor implementation.	Poor implementation of existing policy and higher likelihood of seeking a new policy that seems cheaper or easier.
2	Politicians reluctant to devote resources or take increased public responsibility.	Poor implementation of existing policy and higher likelihood of seeking a new policy that seems cheaper or easier, which is likely to fail for the same reason, therefore churn.
3	Serendipity of transfer.	Higher likelihood of inappropriate or incomplete transfer, therefore failure; therefore churn.
4	The central role played by external experts as policy entrepreneurs and their influence on civil servants and politicians.	External experts more likely to promote similar policies which may be positive but have the potential for inappropriate transfer, therefore failure; therefore churn.
5	Lack of rigorous testing of likely success of new policy (partly due to lack of information).	Higher likelihood of inappropriate or incomplete transfer, therefore failure; therefore churn.
6	Politicians apply political pressure for expedient change due to policy collapse (coercive pressures).	Rushed policy transfer therefore higher likelihood of inappropriate or incomplete transfer therefore failure; therefore churn.
7	Uncertainty brings more isomorphic institutions and monitoring becomes more ceremonial than useful (mimetic pressures).	Success of policy not objectively assessed, therefore higher likelihood of poor decisions, therefore failure; therefore churn.
8	Range of what is acceptable becomes narrower (normative pressures).	Becomes more difficult to bring in a totally new and disruptive policy (e.g. cycle lanes).
9	Greater centrality of resource supply and/or dependence on a small number of sources for vital resources (e.g. EU funds or national funds).	Similar to 8, also limits range of acceptable policies, increases selection of similar policies which may not be appropriate for each case.
10	Politicians reluctant to break fully with past policies	Rather than implement a new policy, continue with a new version of the old failing policy or a combination of both.

Source: Monios (2017: 364)

Monios (2017) suggested that whether and which aspects would be applicable to each individual case would be determined through empirical assessment. With the current policy implementation challenge South Africa is facing in the water sector one could not help but question whether further policy churning would translate into an improved implementation trajectory in a very complex and multi-layered environment. Or would the new policy injection improve the constitutional imperative to transform the water landscape and bring about the social and economic advancement that was so desperately wanted by the vast majority of South Africans?

Suhardiman *et al* (2014: 453) concluded that reform processes and thus water reform and implementation cannot be fully understood unless the concepts of bureaucratic interests, institutional trajectory, reform strategy and power struggles are explored. This study explores whether and how, the intricate policy and legal framework, the resulting greater bureaucracy and the existing power relations influence the transformation of access to water use for the emerging farmers within the BGCMA. This was undertaken by investigating two sites in the CMA – one being organised and managed by a WUA at local level whereas the other relies on the CMA and the bureaucracy at regional and national level to gain access to water use.

5.3 Legal framework – traversing the minefield

South Africa embarked on overhauling the water regime after the dawn of its democracy in 1994 adopting new policies, creating new infrastructures and revising and reinventing as objectives and needs change. The promulgation of the NWA was internationally lauded as one of the most robust and comprehensive forms of water legislation (Merrey, 2008) with water allocation reform as a fundamental concept in the South African legislation. Woodhouse commented that the new water regime did not just introduce changes in “process (holistic, decentralised, participatory and economically costed), but also change in social outcomes” (2008: 3). However, this paradigm shift did not translate into transformation and consequently a better life for many South Africans. According to Schreiner (2013: 239) implementation of the NWA fell short in key components, notably reallocation and equity and these are evident in the access to water for productive use for historically disadvantaged individuals. Currently, for white commercial farmers the *status quo*

regarding access to water for productive use remains and the challenges and deferrals in the process of water licensing continue to be a contributing factor to economic growth (Schreiner, 2013: 240).

The NWA introduced the concept of the public trust doctrine into South Africa's jurisprudence and Pienaar and van Der Schyff (2007:183) regarded this as the pivot of the new water law dispensation. They noted that the introduction of this imported Anglo-American concept into South African jurisprudence has provided the state with a means to integrate the needs of the different role players such as communities, farmers and industry and thereby achieving transformation (2007: 183). Tewari (2009: 705) cautioned that this role of government implies that the water allocation process is administratively greater. For this reason, the legislation was critiqued to be "unnecessarily interventionist" by Bronstein (2002: 469), who also argued that the allocation process should be guided by the market. Kidd (2009: 82) further submitted that the market should be the determining factor and not the use of powers as provided for by the NWA. Movik (2011) observed that whereas the old South African water regime required the application of fairly clearly defined legal principles, the new framework requires state's discretion in water allocations and warned that these processes might be greatly swayed by a "particular political economy context and the associated discourses that emerge" (Movik, 2011: 14). The legislation does not deal specifically with how water rights should be allocated and does not indicate how the concepts of "optimal resource allocation of water resources" and "beneficial use of water for public good" are interpreted and implemented (Movik, 2014: 191).

Transformation is a key driver of the new dispensation and cognisance should be taken of the White Paper on a National Water Policy for South Africa (RSA, 1997b). It denoted that the government when allocating resources "cannot be bound by past decisions which may be inappropriate in the light of current knowledge or inconsistent with current needs" (RSA, 1997b: 24) and is permitted to reassess previous allocation decisions (RSA, 1997b). It was a deliberate choice of the incumbent government for making the state (i.e. the administration) responsible for water re-allocation rather than the market. The reasons being that markets were not good at achieving equity (Bauer, 1997) and secondly, the option of making the stakeholders (i.e. water users) themselves completely responsible for the process was turned down by the incumbent

government because it feared the large-scale commercial farmers would get their way and obstruct any form of re-allocation for equity reasons.

Countries are faced with the challenge of harmonising equity, efficiency and sustainability in water allocation. Referring to Adger *et al* (2005) Roa-García (2014) observed that,

...the relative weight allocated to each criterion is not given but rather emerges from societal processes of consent and action; the balance between them is dynamic as they are promoted or contested by societies (2014: 298).

Roa-García noted that as the concept of equity was vaguely defined and as efficiency and markets continued to dictate water allocations, those who were economically in a stronger position would be able to demand greater access to water. This interpretation would certainly influence how users with different levels of power and water requirements access the resource (Roa-García, 2014).

Zwarteveen and Boelens (2014: 145) also questioned the prevailing discourses of efficiency. They maintained that IWRM analyses suggested that water users and uses were rated according to exact calculations of efficiency and that those at the top of this efficiency ladder such as large-scale commercial enterprises, agribusiness firms, private drinking-water companies, and mining and hydropower conglomerates were regarded as the model. On the other hand, those using old-style irrigation systems should adapt their ways of water use to enter the fray. Zwarteveen and Boelens (2014: 145) reasoned that dissecting the concept of efficiency would provide insight into water injustices and this search would enter the domain of politics and political implications of reforms in water governance and regulation. They were of the opinion that “prevailing modes of water distribution and water authority, as well as of the discourses, institutions and technologies through which these become articulated” (Zwarteveen and Boelens, 2014: 145) should be interrogated.

Funke and Jacobs (2011: 90) observed that the DWA lacked capacity to apply and enforce the licensing process seemed to award licenses as requested. They further stated that any prospective of transformation was diminished given the legal complexities of water allocation.

This all seems to bear on South Africa as water allocations were to be granted in the discretion of the relevant authorities. The discretion should be exercised taking into consideration the

fundamental principles of equity and sustainability with the need to redress the results of past racial and gender discrimination as a contributing factor (RSA, 1998b: Section 27(1)). The allocation of water by the DWS is a public service and thus an administrative action entitling every applicant to the constitutional right to just administrative action that is “lawful, reasonable and procedurally fair” (RSA, 1998b: Section 33) with the fundamental principles of equity and sustainability being pertinent. The Promotion of Administrative Justice Act 3 of 2000 (PAJA) applies to the administrative act of water allocation and Section 3(2)(b) of the PAJA dictates procedural fairness to mean: (i) adequate notice of proposed action; (ii) reasonable opportunity to make representations; (iii) a clear statement of the administrative action; (iv) adequate notice of any right to internal appeal where applicable; and (v) adequate notice of the right to request reasons in terms of Section 5. The right to appeal against a decision by the DWS vests in the Water Tribunal.

This does not serve the interest of the emerging farmer well as external factors dictate the outcome of emerging farmers’ access to water. Emerging farmers do not have the preferred economic muscle, hence the implication that the black emerging farmers could rely on water reform, i.e. equity alone to secure access to water use. However, Backeberg (2005) observed that the identification of especially the marginalised and disadvantaged is but just a single factor in a basket of factors to be considered. Furthermore, the uncertainty related to the identification and expropriation of existing lawful water users adds another dimension to reform and water allocation. Thus, more and more layers are added to this already complex process of water allocation and reform.

The IWRM approach is intricate and requires a thorough understanding of the hydrological cycle for it to be successfully implemented (Kidd, 2011: 16). The key challenge for redistribution is the lack of accurate information on actual water use by the main existing water use, namely commercial (predominantly white users) agriculture (Woodhouse, 2008). WARMS being the only available national water use data source has numerous restrictions and this compounds the challenges with water allocations. Anderson *et al* (2008: 732) discussed the restrictions extensively and contended that a disconnection exists between water allocation and water registration. Not all the water use data was validated or verified and hence the data could not be seen as reliable. They pointed out that Schedule 1 use (small-scale use such as gardening, feeding of livestock, etc.) and

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General Authorisations (GAs) use do not need WARMS registration. Use through GAs is more than Schedule 1 use and need not go through the administratively burdened license process and although the NWA requires the GAs registration it does not always happen. WARMS does not make provision for the different categories of water use sectors and therefore water allocated to municipalities is only defined as water service providers (WSPs) and does not specify to which specific sector the share of water is allocated, by the municipalities. The BGCMA noted that data is “outdated and irregular” and that,

(H)ydrological modelling for the Breede has not been updated for the past 20 years and this needs to be urgently addressed... Verification and validation projects are currently underway which should assist in assessing the legality of water use. Informed management decisions require reliable data and information, especially in such water-stressed areas. This issue must urgently be addressed. The water use data captured on WARMS will therefore need to be updated (BGCMA, 2017: 27).

The BGCMA set an 85% target but confirmed that it achieved “water registrations of 46% average on the Water Authorization and Registration Management System (WARMS), which is 39% less than the target” (BGCMA, 2018: 30).

The BGCMA justified the under-performance, citing the following factors:

- The constant and continual struggle with WARMS accessibility and connectivity is the major hindrance.
- Staff capacity and backlog ratio indicates human resource being overwhelmed and outnumbered by the workload.
- Continuous under-performance towards the target yields exponential growth in backlog (BGCMA, 2018: 30).

The monitoring and therefore prioritising of water allocation becomes challenging (Anderson *et al*, 2008) and the uncertainty about water quantity and thus allocations left the DWA with no choice but to deal with issues on an *ad hoc* basis (Perret, 2002).

The legislation is vague on the interpretation and implementation of key concepts (Movik, 2014). Backeberg (2005: 113) noted that the responsible authority should identify especially the

marginalised and underprivileged to enable fair allocation of available water in an attempt to ensure that emerging farmers were made provision for. He further cautioned that many issues were still uncertain such as expropriation of existing lawful water users and the identifying the disadvantaged and marginalised users. Movik (2011: 14) further cautioned that due to the state being burdened with the authority to define the content of these rights, the state's capacity might be overextended and thus the task might be impossible. This lack of capacity was glaring during the establishment of the Inkomati CMA and it was forced to rely on consultants. Woodhouse (2008: 7) noted that the DWAF outsourced important tasks such as preparing the CMA 2005/6 business plan, registration and verification of water use in the WMA and drafting the CMA's catchment management strategy in 2007. These consultants operate with impunity; they might not be loyal to the spirit of the Act, they undertake projects for monetary benefit and they are not held accountable for their recommendations. Woodhouse (2008) further observed that factors which further impaired implementation were the delay of delegation to local water agencies due to postponements in establishing the CMA, the technical requirements of the water use exercise, and the pervasive threat of legal action by the powerful local commercial farming community (2008: 8).

As illustrated above the policy and legislative framework to access water use is multi-faceted and multi-layered and for those who want to apply to use water and for those who have the responsibility of processing the application the process might be overwhelming. Farolfi and Rowntree (2005: 11) argued that "asymmetry of information is among the major causes of unequal, ineffective, inefficient and environmentally unsustainable water allocation among different users". Funke and Jacobs (2011: 93) also contended that many emerging farmers were "not knowledgeable enough" to effectively navigate the local water scene and administrative complexities to take up water entitlements whereas they argued that big commercial farmers were experienced with the administrative processes and were better equipped to deal with and obtain water use licenses. Much of this scholarship was informed by a particular construction of what counts as 'knowledge' and 'competence'. The understanding and interpretation of what is required in the application needs in-depth knowledge, insights, consideration and experience of the issues at hand. Is the DWA or

the BGCMA sufficiently equipped to do this effectively to bring about reform as intended by policy and how does this impact the emerging farmers' ability to access water for productive use?

5.4 Implementation concerns

Van Koppen and Schreiner (2014: 9) observed that the equity objective was difficult to achieve and identified several contributing factors. They argued that the IWRM approach was flawed as it emphasised management rather than water resources development and re-allocation. Given the lack of skills and technical capacity, the DWAF was unable to implement highly technical aspects of the NWA. This capacity gap was partly brought about by the exodus of experienced staff into retirement or to the private sector and the DWAF's failure to retain especially senior staff (van Koppen and Schreiner, 2014).

Msibi and Dlamini (2011) emphasise the inadequate human capacity and training in unconventional fields such as social justice, social development dynamics and soft skills such as management of multi-stakeholder processes, the resource-intensive nature of the WULA process, the lack of understanding by key staff of important provisions of the NWA and intricate technical procedures for reserve determinations and validations and verifications. They note the "exclusive dominant knowledge regime restricting and reproducing top-down government (that) cements closed networks and historical patterns of inclusion and exclusion" Msibi and Dlamini (2011: 59). Further challenges put forward by the DWA adding to the bottlenecks in WULA were insufficient guidelines, unwillingness to contribute to redress and equity amongst some stakeholders, delayed inputs from other Departments and incomplete documentation from applicants, probably brought about by inadequate assistance to HDIs (Msibi and Dlamini, 2011).

Contributing to the averseness to change, the water landscape was experiencing the impact of the previous and prevailing culture of the old order. Schreiner (2013) observed that implementation was mainly left to those "...who did not necessarily share the political vision of government or the departmental leadership" (Schreiner, 2013: 241) and this might thwart or delay transformation.

Reallocation could only be achieved if the state was brave enough to face the issue of the 'existing lawful user' head-on. The NWA defines the existing lawful water use as,

... (use) which has taken place at any time during a period of two years immediately before the date of commencement of this Act, or which has been declared an existing lawful water use under Section 33, which was authorised by or under any law which was in force immediately before the date of commencement of this Act; is identified as a stream flow reduction activity in Section 36(I); or is identified as a controlled activity in Section 37 (RSA, 1998b: S32 (1)).

The first WAR policy document draft read,

...if this re-allocation of water is done too quickly, or haphazardly, the country may suffer economic or environmental damage as emerging users struggle to establish productive and beneficial uses of water (DWAF, 2005b: 4).

The existing lawful users were entrenched, and reallocation of water to HDIs became linked to their potential for commercial efficiency (Movik, 2009). Classification as an existing lawful user meant that water use was to be registered in terms of S26 (1)(c) of the NWA. However, these uses would have to be validated, i.e. the current use needed to be accurately quantified, and verified, i.e. checking whether the use was lawful in terms of the Water Act of 1956 (DWAF, 2006). Following this, the Department would then know how much water would be available for reallocation. This required the Department to embark on a technical and highly skilled exercise. Further complicating this verification and validation process the Department was dependent on these very same existing lawful users to *offer* information regarding their water use to enable the completion of the process. The Department seemingly did not have the capacity to deal with the process as the staff exodus saw a transfer of skills from the Department to the private sector consulting community, increasing the dependence of the department on consultants to support the implementation of the new policy and legislation. Actual implementation however, remained in the hands of the civil servants, with all the challenges arising from lack of experience, lack of technical capability and high staff turnover (Schreiner, 2013: 241).

Consultants were used and it became a costly exercise. In the 2016/2017 financial year, the BGCMA reported that it approved and contracted R1 153 835 in 2015 and R238 566 in 2016 for “commitments for the validation and verification of water use” (BGCMA, 2016: 62). However, the exercise was ongoing as it reported that,

The BGCMA further rolled out the Validation and Verification process for targeted quaternaries in the Breede Gouritz Water Management Area. The water usage of 250 properties was verified (BGCMA, 2016: 18).

As Movik (2011) noted, many commercial farmers were still using water based on use rights that existed in terms of the old water regime. This situation was untenable as it implied that reallocation took a back seat. Movik (2011: 168) criticised the notion of the ‘existing lawful users’ and maintained that the perception that their continued use as the most productive users effectively excluded the emerging black farmers from having a fair and equitable chance to access water use. A further concern with the concept of ‘existing lawful user’ was the institutional technical incapacity to validate, i.e. the use had to be precisely measured and verified, and i.e. the legal status of the use had to be confirmed. It meant that these users were to be regarded as lawful users until this process was completed and consequently these users continued to use water without impeachment. The above did not serve the interests of the emerging farmers well. It refuted the objective of the NWA of promoting equitable access to water, redressing the results of past racial and gender discrimination and facilitating social and economic development.

However, the dilemma of the NWA was a trade-off between the three Es namely, Efficiency, Equity and Environmental Sustainability. Chapter 1 of the NWA provides that,

Sustainability and equity are identified as central guiding principles in the protection, use, development, conservation, management and control of water resources. These guiding principles recognise the basic human needs of present and future generations, the need to protect water resources, the need to share some water resources with other countries, the need to promote social and economic development through the use of water and the need to establish suitable institutions in order to achieve the purpose of the Act (RSA, 1998b: Chapter 1).

Owing to the South African history of inequality, equitable access to water was a prerequisite for poverty eradication (DWA, 2013b). Nonetheless, very little substantive equity was reached since the promulgation of the NWA and this might be due to the dilemma of the trade-off. Hence the predicament of a compromise between the three Es namely, Efficiency, Equity and Environmental Sustainability continues. The trade-offs between equity, efficiency and sustainability have been

well documented in the literature, particularly the trade-offs between equity and efficiency. Scholars such as Movik (2011), Wegerich (2007), Mehta *et al* (2007) and Zwarteveen and Boelens (2014) argued that efficiency was a preferred objective for the allocation of water, especially in instances where involvement in decision-making was ignored. Sustainability is the step-child and the connection with equity and efficiency was given attention to a lesser degree (Roa-García, 2014).

The case of the Goede Wellington Boerdery (Pty) Ltd³³ illustrated this dilemma in the South African context. The Goede Wellington Boerdery (Pty) Ltd applied for a water use licence in November 2005, which was duly recommended for approval in 2006 by the Regional Director of the Western Cape Regional DWAF. This application was supported by, amongst others, the Berg River Irrigation Board and the Department of Agriculture in the Western Cape Provincial Government. However, in 2008 the National Director of the DWAF rejected the licence application since it did not meet one of the S27 (1) criteria namely, “the need to redress the results of past racial and gender discrimination” (RSA, 1998b). The Water Tribunal dismissed the appeal of Goede Wellington Boerdery (Pty) Ltd against the decision of the DWAF. The court *a quo* found that Makhanya, an additional member of the Water Tribunal, erred in refusing the water use licence. The Supreme Court of Appeal³⁴ had to pronounce on, i.a.,³⁵ whether all the relevant factors should be considered when allocating water. The Supreme Court of Appeal noted that the Minister accepted that the Water Tribunal made an error of law in regarding the redress factor as

³³ An appeal was first lodged by Goede Wellington Boerdery (Pty) Ltd against the decision of the Water Tribunal to the court *a quo*, the North Gauteng High Court; *Goede Wellington Boerdery (Pty) Ltd v Makhanya NO*(56628/2010) 2011 (Court Case, 2011: 141). It was eventually heard by the Supreme Court of Appeal, the highest court for civil matters.

³⁴ *Makhanya NO and Minister of Water and Environmental Affairs v Goede Wellington Boerdery (Pty) Ltd* ((230/2012) [2012] ZASCA 205) (Court Case, 2012).

³⁵ The other two issues were the right to fair and reasonable administrative action and the role of the Water Tribunal.

“essential and decisive, rather than considering all the relevant factors prescribed” (Court Case 2012: par 22) as provided in S 27(1) of the NWA. The Supreme Court of Appeal determined that without legislation dictating a specific factor enjoying preference, the only inference to be drawn was that all factors should be weighed together when a decision to allocate water use licences is made. The Supreme Court of Appeal dismissed the appeal against the High Court’s finding that the Water Tribunal’s decision to refuse the water use licence to the Goede Wellington Boerdery (Pty) Ltd was unlawful.

5.5 Bureaucracy

South Africa adopted the approach of integrated water resource management (IWRM). Movik (2011: 2) noted that this requires a holistic and integrated approach to water management and therefore it necessitates greater bureaucracy and centralisation. Von Holdt (2010) posited that many South Africans were still left destitute more than twenty years after the dawn of democracy and state institutions were dysfunctional and ineffective (2010: 4). He maintained that,

...state capability is crucial for the successful developmental state, frequently encapsulated in the idea that such a state requires a Weberian bureaucracy, for which Peter Evans has provided the most detailed description: corporate cohesion and the insulation of the bureaucracy from special interests, the concentration of expertise in the bureaucracy...and the provision of long-term career rewards... (von Holdt, 2010: 6).

Parenti (1988: 264) warned that red tape might be used as a tool to jeopardise progressive programmes which might not be favourable to vested interests.

Wester *et al* (2003) maintain that developing countries have important different approaches in developing new policies and implementation measures. One approach is almost completely driven by government agencies and this was underwritten “by a combination of technical and economic concerns and interagency politics” (Wester *et al*, 2003: 809) where the disadvantaged has no agency to bring about change. The second option is a combination of a “top-down, government-driven process with inclusion of representatives of the organised users” (Wester *et al*, 2003: 210). The second approach might be appropriate if stakeholders were organised and had agency to bring

about change. However, the large unorganised constituent would remain excluded from potential improvement and development.

The South African approach to water use seems to include poor rural stakeholders by way of WUAs and if this succeeded, could lead to the empowerment of the disenfranchised (Wester *et al*, 2003: 810). This research had as one of its sites a fully functional WUA and in the greater scheme also investigates whether and how emerging farmers were organised and empowered with or without a WUA. At the same time South Africa's governance structure also reflects a 'top-down' approach as the Minister of Water and Sanitation is the trustee of all South Africa's water and water use authorisation is vested at national level. This governance structure resonates with Laube's sentiments that water bureaucrats understand water to be produced and managed through technical means while people's behaviour towards this resource could be controlled by rules and regulations and directed by economic rewards (Laube, 2009: 6). Laube stated that they were inclined to de-politicise managing water to justify "top-down planning and implementation approaches that are said to be driven by physical preconditions and technical necessities often believe in the manageability of water resources through technical as well as social engineering" (Laube, 2009: 6).

However, irrespective of how it was framed, water is a political issue, and more so when it was threatened, added value and access thereto was unequal favouring the privileged (Wester *et al*, 2003) as seemingly the South African reality exhibits. Mollinga (2008: 8) supported this view and stated that this was not always the generally held view as it was believed that social engineering dictates water resource management. He noted that the introduction of water governance brought politics into the discourse and argued that notions such as accountability, transparency and legitimacy, have political dimensions. Mollinga further argued (2008: 10) that water was inherently political due to it being about "water control" and any human intrusion which alters the characteristics of the hydrological cycle was a form of control of the resource. This might take the form of influencing the

...physical flow and quality of water, the guiding of the human behaviour, and the socio-economic, legal, administrative and other structures in which water management is embedded

and that constitute conditions and constraints for management and regulation (Mollinga, 2008: 8).

Hydraulic bureaucracies generally are influenced by four other categories of powerful role players, namely politicians, construction companies, landowning elites and development banks (Molle *et al*, 2009: 336) who collaborate to dictate the flows of water. Thus, if the bureaucracy managed to cumulate resources, capability and power it would be competitive and leading in the realm it operated in. Hydraulic bureaucracies tend to be oiled by constituency conscious politicians and profit driven consultancies at the expense of tax payers' money (Worster, 1985). The bureaucracy needs to stay in control of monetary flows and decision making. This might partially explain why it was so difficult for South Africa to establish 19 new CMAs and why, even after reducing it to nine only, South Africa still had only two CMAs fully operational in 2015.

Movik (2009) contended that the state's discretionary power as played out in a political context and coupled with the "technocratisation of the policy process, the failure to deal with the local dynamics and the inability to determine the extent of existing users combined with a lack of administrative capacity to handle the water licensing bureaucracy, contributed to leading the reform efforts into an impasse" (2009: 1).

This sentiment found expression at local level as the Chief Executive Officer of the Central Breede River Water Users' Association informed the Water Affairs and Forestry Portfolio Committee that the association's water allocation reform initiatives were frustrated by bureaucracy (DWA, 2005a).

One of the pillars of an effective bureaucracy is the expertise and skills required. Von Holdt (2010: 9) noted that in South Africa the bureaucracy is faced with the dilemma between bureaucratic skills and procedures which were introduced and driven by whites and the need to transform its unequal and unjust history into a bureaucracy that would serve the needs of all in a democratic South Africa. With the dawn of South Africa's democracy, the bureaucracy was transformed to mirror the country's transformation agenda to bring the previously disadvantaged into the fold. The transformation agenda led to an employment equity approach driven by race, gender and a political plan. Across the public spectrum more black South Africans were employed in the bureaucracy,

...who by definition were less embedded in the engineering policy network. However, their lack of experience has forced them to rely on the country's engineering consulting firms, which are dominated by the white engineers who left the water bureaucracy...the debate is not only over policy and securing the consultancies and contracts associated with water projects but also between policy networks that carry with them broader political interests and concerns related to race and the colonial, and post-colonial past (Crow-Miller *et al*, 2017: 203).

Therefore, the inadvertent result was an exodus of white officials with years of technical experience and many of them ventured into consulting, transferring sought-after skills into the private sector. Ironically, these former employees who managed and administered the previous water system continue to advise the under-resourced DWA to plan and implement the new water regime. Schreiner (2013) commented that this left the public water sector dependent on the old order that did not necessarily share the new political vision. Schreiner observed that,

...in discussing water allocation reform some years ago, one of the old-guard white officials in the department articulated clearly that taking water away from white commercial farmers to give to small-scale black farmers was inappropriate in a water-scarce country – the transformational requirements of building a racially inclusive economy being seen as secondary to the perceived superior farming capabilities (Schreiner, 2013: 127).

The outsourcing of technical capability and knowledge became common practice to such an extent that "... it is virtually unable to take decisions without resorting to costly consultancies" (Molle *et al*, 2009: 342). These consultants come from the very same civil service they were now contracted to and were able to gain financially from the new policy,

...by opening their own businesses; they now carry out studies similar to those they were formerly doing in the administration but with much higher payoffs...its desirability is predicated upon the (dubious and purported) claim for efficiency trumpeted by market fundamentals (Molle *et al*, 2009: 342).

Van Koppen and Schreiner (2014: 2) argued that the introduction of Development Water Management (DWM) required the state to be at the forefront of water management and not the corporate sector as promoted by IWRM and the Fourth Dublin Principle regarding water as an economic good rather than a public good. Gumede (2009: 9) contended that a successful developmental state possesses a number of characteristics. Firstly, the developmental vision needs

a political will and a long-term vision and resolve. South Africa's national policy directives, i.e. the New Growth Path and the National Development Plan: Vision 2030 foster this vision. Secondly, an efficient bureaucracy requires the state to be well sourced with efficient and skilled staff. It means that the state must be administratively, technically and politically strong to enable implementation of its policies. Lastly, it requires an efficient coordinating centre to manage development and drive economic transformation.

How does South Africa measure up? Edigheji (2010: 30) warned that the high turnover of high-ranking public servants was a challenge for South Africa in becoming an effective democratic development state. Long-term career paths were needed to build capacity and technical skills thereby ensuring a well-oiled bureaucracy to support an effective development state. This points to the fact that the bureaucracy would have a more prominent role in the allocation of water and it begs the question whether it was sufficiently equipped to deal with this mandate. Tewari (2009: 705) cautioned that due to the extent to which the bureaucracy was needed to implement the new legislative framework, conditions of transparency and clean governance were vital to ensure that the objective of the framework was realised. He stated that the ultimate objectives were attainable if institutional integrity was sought after and corruption was held at bay (Tewari, 2009: 705). Molle *et al* (2009: 339) also observed that water bureaucracies faced further challenges such as the call that environmental degradation should stop, challenges by other state institutions, reduced funding for water infrastructure, decentralisation processes and increased demonstrations by civil society.

In the South African context, it seemed as if these observations ring true as South Africans take to protest and legal action, struggle with establishing institutions at regional and local levels, the inter-departmental synergy not working and transformation seem to be a distant objective as emerging farmers continue to struggle to gain access to water use. Suhardiman *et al* (2014: 443) noted that it was understood that the introduction of new water management structures such as CMAs and WUAs would bring about bureaucratic change as this would necessitate authority and thus responsibilities be devolved to water users or their representatives at regional and local levels. They cautioned that when implementing reforms national governments very seldom alter bureaucratic structure and consequently the associated power dynamics remain unchanged. This proposition seemed to hold as the new South African water dispensation did not mean that the old

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existing Department of Water Affairs, and thus the bureaucracy experienced any fundamental change or reform or real power change ensued. It underwent numerous name changes after South Africa became a democracy but the challenge is whether the department is effectively equipped to deal with the new regime taking the country into a reformed/changed direction. Suhardiman *et al* (2014: 443) further suggested that water reform research shows that reform targets and not the role of bureaucracy, enjoy priority. They observed that research was needed on the analysis of bureaucratic identities and its characteristics and how existing power configurations impact on these issues. Suhardiman *et al* (2014) commented that irrigation bureaucracy as a role player in better irrigation performance was not considered and this is reflected in reform policies. They argued that,

... (an) understanding of irrigation bureaucracies roles and positions, and how they perceive and shape the overall idea of reform, is crucial to increase the actual significance of irrigation reforms (Suhardiman *et al*, 2014: 445).

This research explicitly unpacked the role of bureaucracy in the efforts by black South African emerging farmers to access water. Parenti (1988: 264) argued that bureaucracies were effective because of the power that its supporters sway and if it served this interest well, criticism about bureaucratic interference would be minimal. He further noted that red tape might be used as a tool to jeopardise programmes which might not be favourable to these interests. Thus, this might lead to an interrogation of the role of power in the process of the emerging farmers' ability to effectively access water and whether and how the bureaucracy and the legal framework enable or not enable it. The implementation of the South African water policy seems to occur within these different power resources and the multiplicity of actors having different interests and thus power in the significance of the water resource, add to the complexity of application.

5.6 Power

The political economy of such reforms was daunting, with strong vested interests and weak institutions affecting the capacity of the rural and urban poor and small-scale farmers to gain a voice in water management. Although stakeholder participation in water management was frequently advocated, real inclusion of the disenfranchised and achieving substantive stakeholder

representation demonstrated to be elusive in practice (Cleaver, 1999). More often than not, participation was little more than token consultation, with no decision-making power in the hands of the people concerned (Wester and Bron, 1998). Wester *et al* (2003) critically noted that,

Too often, the participation discourse draws attention away from the very real social and economic differences between people and the need for the redistribution of resources, entitlements, and opportunities. This is typified by the definition of stakeholders as water users with recognised water rights, thereby excluding those without water rights (2003: 798).

This seems to point to the translation of stakeholder participation in South Africa, as emerging farmers struggle and have to compete with powerful white commercial farmers who already have existing access to the resource. At the October Parliamentary Portfolio Committee hearings (PMG, 2008) emerging farmers from the West Coast region in the Western Cape raised the concern that the emphasis on white commercial farmers' interests were viewed as an obstacle for the emerging farmers in either articulating their opinions or procuring more experienced people to be their voices. Funke and Jacobs (2011: 93) were of the opinion that many emerging farmers were not knowledgeable enough to effectively navigate the local water scene and administrative complexities to take up water entitlements. Commercial farmers on the other hand were experienced with the administrative processes and were better equipped to deal with and obtain water use licences. Goldin (2010: 197) shared this view and added that the unequal power relations between water users further contributed to the stifling of participation in the decision-making process. Goldin (2010: 199) used two narratives about commercial farming in the Breede Overberg area and illustrates how knowledge, power and agency impact on participation, access and policy implementation. She observed that commercial farmers gained experience and knowledge about government bureaucracy and combined with their social network within the bureaucracy could bargain with those who were involved with the decision-making. Goldin (2010: 200) stated that these farmers were being asked to participate in and contribute to the new water planning and management in the post-1994 South Africa. Although the ideology dictates participation and equality, the existing practices merely continued as the unequal power relations and knowledge limited agency. Participation is regarded as the new 'tyranny' as it bound the previously

disadvantaged “more tightly to structures of power that they are not then able to question” and this ensured that they lost rather than gained power (Goldin, 2010: 204).

Warner *et al* (2008: 133), in the context of river basins, cautioned that new institutions could institutionalise inequality if factors such as different levels and types of education, languages, access to politics, beliefs about how nature and society function were ignored when determining new rules, rights and roles as the outcome might promote the agenda of the literate and those who have access to the legal system. They further noted that multi-stakeholder participation has the tendency to include only existing role players and not allow informal users to participate; thus the resource would be influenced by the ‘powers that be’ only.

In the South African context, existing irrigation boards (IBs) dominated by white commercial farmers and water boards would continue to operate until they were restructured as WUAs. This arrangement and any delays in transforming these institutions created the prospect of continued membership for white commercial farmers and consequently continued positions of power. Hence, acquiring and/or retaining the flow of water was based on the power one commanded and if the control of water was obtained, one’s power was further cemented (Swyngedouw, 2006). Laube (2009: 2) also noted that the participatory approaches frequently gave credence to the control of the powerful interests and de-politicised the conflict over water resources. Laube (2009: 3) was of the opinion that water reforms in Ghana and South Africa did not change the past but rather perpetuated the country’s political economy and that the reform at local level was about neo-liberal development paradigms. The above exposition might speak to the South African water reform dynamics and this researcher investigated whether and how these power resources influence the water reform outcomes.

It is clear that South Africa was struggling to implement a water policy regarded by the international community as ground-breaking. This led Schreiner (2013) to question whether this was a “Volkswagen vs. Rolls Royce” issue and to argue that policy and legislation should be such that it met the unique needs and resources of a developing country. There was a disjuncture between the policy and legislative framework on the one hand and the ability of the country to implement the provisions thereof, on the other. This disconnect does not bode well for the

transformation agenda because those who were intended to benefit from the objective of redress were not getting the 'Roll Royce experience'. Implementation was too slow or not happening at all for many emerging black farmers.

5.7 Conclusion

This research explored how bureaucracy and the complexity of the changed water legal regime coupled with the existing power relations impact the water reform process. It further explored the implications of these factors as they intersect within two study sites where emerging farmers do not ply the trade within a communal farming set-up but as owners or lessees of the farms. The communal farming scenario was the topic of numerous studies but not enough work was done on emerging farmers who were individual landowners or who were leasing property for personal benefit. This research juxtaposed the emerging farmers' access to water against that of the commercial farmers within the same geographic area to determine the experiences of these farmers within a bureaucracy where existing power relations still seem to dictate whether and how water was allocated. All this unfolded in a changed water regime having the objective of bringing change and improvement to historically disadvantaged individuals. The research also contrasted the two research sites in relation to water management. The primary, unorganised research site has no water user association or other institutions but for the existence of the BGCMA, while the Groenland WUA facilitated water allocation and access to the secondary research site. However, despite the slow implementation of the equity dimensions of WAR, the institutions and commercial and emerging farmers have no option but to continue navigating the South African water landscape. This research endeavoured to determine the user strategies employed by the role players to retain or acquire access to water, through lobbying, discursive strategies, access to and control over infrastructure, and access to flow data.

This leads to the next chapter, illuminating the research methodology to answer the central research question. This required an exploration of how the legal and institutional difficulties experienced by black emerging farmers intersected with the impact of the existing power relations in accessing water use for productive purposes.

CHAPTER 6: RESEARCH METHODOLOGY

6.1 Introduction

This chapter details the research approach and methods. This study used the qualitative research approach, which gives the researcher the opportunity to scrutinise participants' experiences and behaviour. It places the researcher in a position to identify issues from the participants' perspective and make sense of and understand these experiences (Hennink *et al*, 2011: 9). The central research question required an exploration of the legal and institutional difficulties experienced by black emerging farmers accessing water use for productive purposes, compared to the experiences of 'successful' white farmers and how the bureaucracy and power relations further enabled or disabled access. The research focused on the period between 2005³⁶ and 2017 and specifically analysed implementation processes of the Breede Gouritz Catchment Management Agency (BGCMA) in the allocation of water for productive purposes.

This thesis was designed as a comparison of two case studies, with both research sites situated in the BGCMA in the Western Cape³⁷. The primary study site is Pietercielieskloof, a farming community near Bredasdorp in the Overberg East district. This is the biggest zone in the BGCMA and falls in the Cape Agulhas municipal area. The second area investigated is in Grabouw in the Overberg District Municipality, which is the area of the jurisdiction of the Groenland Water User Association (GWUA). This was the first time that the intersection of bureaucracy, law and power and these sites specifically were studied in-depth. Unlike other studies (see Schreiner, 2013; Schreiner *et al*, 2009), which focused on water allocations for emerging farmers in communal areas, this study looked at emerging farmers who have individual ownership of their farms. The reason for choosing Pietercielieskloof was threefold. Firstly, the majority of the farmers are black and embattled; most have tried to use the legal application process to access water use rights; and

³⁶ This was the year the Catchment Management Agency (CMA) became operational.

³⁷ Greater details of the research sites are provided in Chapters 1, 2 and 7 of this thesis.

most are organised into a community group as a Water User Association (WUA) does not exist in this area. Secondly, the three commercial farmers have successfully gained or retained their water rights and were studied to determine the strategies employed by them to maintain their access to water. Thirdly, the area consists of individually-owned landholdings with many families having been in the area for generations. In the area there are no communal farms and this added a different dimension to the research. The second area in the jurisdiction of the GWUA provided a counter example as a mainly white farming area with an established water user association. The farmers in the GWUA produce for the lucrative international export market and are well organized, enabling certainty of business and seemingly no water problems. This contrasted sharply with Pietercielieskloof, which has no formal water user association but instead is forced to deal with the BGCMA directly for their water needs. These farmers further are affiliated to cooperatives which offer a networking platform to gain access to markets. Many of them have no direct access to markets but sell their produce via the commercial farmers.

6.2 Case study approach

The research questions dictated that the case study approach was ideal to answer the ‘how’ and ‘why’ questions as this research strategy permitted the researcher to acquire in-depth knowledge and rich data. It created an opportunity for the research questions to be answered. The case study approach is premised on the constructivist paradigm which recognises the importance of the subjective human creation of meaning, but does not reject outright some notion of objectivity. Pluralism, not relativism, is stressed with a focus on the circular dynamic tension of subject and object (Baxter and Jack, 2008: 545).

The constructivist approach allows the participants to convey their reality in their own words and this assisted the researcher to have a better grasp of the participants’ actions (Baxter and Jack, 2008). However, researchers should heed caution as a case study is time consuming and problematic to generalise (Yin, 2003). In light of the nature of the research a calculated risk was taken as the research questions could only be fully answered if the voices of the relevant role players were heard.

The phenomenon investigated was to unearth the mechanisms responsible for the lack of progress with implementing transformation for water allocation. The research methodology allowed the research aim to be addressed using a particular informative case and allowed for more general conclusions to be drawn from analysing it. Flick (2009: 134) warned that a single case study might present limits when one wants to generalise and thus for this reason a second study site offered the opportunity to juxtapose the two research sites. Consequently, two sites were selected, namely Pietercielieskloof, the primary research site, and the secondary site, the area in the GWUA in Grabouw.

The primary site consists of predominantly black emerging farmers who do not enjoy the privileges of a long established infrastructure, support and existing lawful use of water linked to the apartheid policy of land ownership. No WUA exists for these farmers and they are reliant on the BGCMA for the management of the water resources. The secondary site on the other hand offered a catalyst as these farmers have a notably different reality. They operate in an environment with continued essential infrastructure, support and access to water appropriated according to the pre-1994 divisive pro-white apartheid policy. Baxter and Jack (2008: 547) advised that the choice of a particular type of case study design would be directed by the general study aim. Ultimately what this research pursued was to uncover the mechanisms underlying the stunted implementation of the transformation dimension of water and hence the type of case study was exploratory. These two case studies helped to identify these mechanisms and placed the researcher in a position to generalise and determine whether and how the bureaucracy, legislative framework and power relations influenced the phenomenon of progress in granting water use access to the black emerging farmers.

6.3 Qualitative research approach

This research was not only concerned with the physical and technical aspects of access but explored how the different role players interacted, shaped around, framed and managed related challenges to gain access to and control of water for productive use. This placed the research in the qualitative domain. Table 4 below provides an exposition of the features of qualitative research, as outlined by Hennink *et al* (2011: 16) and applied to this research.

Table 4: Features of the qualitative research of this study

	Focus	Qualitative research	Research application in this thesis
1.	Objective	To gain a detailed understanding of underlying reasons, beliefs, motivations.	This research sought to understand the influence of bureaucracy, power and the legislative imperatives on the reform of water for productive use for irrigation. A parallel objective was to determine the user strategies employed to retain or acquire access to water, through lobbying, discursive strategies, access to and control over infrastructure, and access to flow data.
2.	Purpose	To understand the why, how, the process and the influences or contexts. It unpacks the key mechanisms explaining/affecting the outcomes of the process.	The delays in processing water licences for historically disadvantaged individuals, thus water reform, had significantly hindered economic growth and social and economic development. This state of affairs forces a questioning of the current system to determine why it seems to be failing the most vulnerable. Suggestion: due to the extensive bureaucracy operating within a certain power structure with the added impediment of the very complex legal framework, water reform was not unfolding as was envisioned.
3.	Data	Data are words (called textual data).	The data was derived from documents, interviews and observation.
4.	Study population	Small number of participants or interviewees selected purposively and referred to as participants.	The research was conducted by case study and the study sites are located within the Breede Gouritz Water Management Area (previously BOCMA). These sites are situated in the Groenland Water User Association and Pietercielieskloof and participants were i.a., farmers within the jurisdiction and institutional staff members and various relevant persons who are or were directly or indirectly involved in the process of access to productive water for irrigation.
5.	Data collection methods	Qualitative using in-depth interviews, observation, group discussions.	The methods for data collection entailed document analysis, meetings, in-depth interviews and observation.
6.	Analysis	Analysis is interpretative.	The analysis necessitated the understanding of the participants' experiences within their own contexts.
7.	Outcome	To develop an initial understanding, to identify and explain behaviour, beliefs or actions.	To provide detailed and in-depth insights into the impact of the intersection of bureaucracy, power and the legislative framework on access to productive water by black emerging farmers by studying the strategies and practices of a limited number of key (policy) actors namely the black emerging farmers, commercial farmers, water managers and policy-makers within BGCMA and DWS.

Source: Hennink *et al* (2011: 16)

The research questions for this study necessitated an engagement with participants in the setting where the process to gain access to water was initiated, be it at the behest of a personal, economic

or legislative demand – the research paradigm. The research paradigm could be explained as the way one sees the subject matter informed by

The way in which a people make sense of their surroundings; make sense of life and of the universe’...‘people have a worldview that is a product of [their] lived experience and that constitutes the lens through which the world of sense perceptions is reduced to described fact... a cultural group’s understanding of the universe (cosmology), nature of being (ontology), values (axiology), and knowledge (epistemology) all contribute to the ways in which a people make sense of reality, i.e. their worldview (Carroll, 2014: 259).

Hennink *et al* (2011) contended that qualitative research falls within the interpretative paradigm. The unique characteristics are threefold. Firstly, the importance of understanding that participant experiences stem from their own viewpoints. Research focused on subjective meanings implied that interpretation and observation were important tools to achieve this. Secondly, the participant experience was gained within a personal context shaped by social, cultural, historical and personal realities. Thirdly, the inherent subjectivity of the participants and the researcher is factored into the research and this paradigm acknowledges that the researcher’s values and background impact on the creation of data.

6.4 Research methods

Denzin and Lincoln (2008: 4) reiterated that the qualitative researchers use multiple interpretive practices which were interrelated and this allows for deeper deliberation of the research issues. This multi-pronged approach, they argued, is a “strategy that adds rigor, breadth, complexity, richness and depth to any inquiry” (2008: 7). A qualitative research approach informed the research methods chosen for this study and established who to interview and what to ask to elicit the best data to answer the research questions. It also provided discernment to who, what and when to observe in order to address the research questions.

The research questions dictated the choice of qualitative methods of data collection. Marshall and Rossman (2006: 56) claimed that the case study is the most intricate research strategy and it requires a combination of methods such as interviews, observation and document analysis. Thus, to make sense of participants’ experiences and to capture this, the researcher relied on, i.a., in-depth interviews and observation. This was supported by relevant documents impacting on

accessing water use for productive purposes. This mix of data sources and methods, including content analysis of government policy documents, literature and academic publications, observation at meetings, analysis of minutes of meetings and interviews with relevant role players implicated in the process of access to water for productive use presented a setting for the researcher to gain a deep understanding and make sense of the research issues.

6.4.1 Primary data collection

This study relied on semi-structured in-depth interviews as a primary method of collecting data. This offered a way to hear the voices of those who implement and those who are impacted by the process to gain access to water for productive use.

An in-depth interview is a discussion to acquire a detailed understanding of specific topics. During this process, parties create meaning and co-generate the reality of the research issues (Hennink *et al*, 2011: 109). In-depth interviews create opportunities to document the experiences and understandings of the participants in their own words (Marshall and Rossman, 2006). This study used a semi-structured interview guide in English and Afrikaans (see Annexure B). The in-depth interviews gave the researcher insights into the implementation of access to and allocation of water use. Interviews lasted two hours on average and a representative sample of a cross-section of relevant actors implementing or being impacted by implementation of water allocation, were interviewed. The interviews presented insights from role players' viewpoints of the practice of access to water for productive use and elicited the role players' understandings, how they make meaning of their experiences and how decisions were made. The in-depth but semi-structured interview allowed the researcher to establish a connection with the participant. It created opportunities to explain and modify questions as well as posing follow-up questions. The researcher controlled and structured the interview to yield rich data (Adler and Clark, 2008: 256). The challenge with the semi-structured interview was that it was often time-consuming and costly. However, for purposes of this study, due to the distinctiveness of individual experiences and understandings, it was the best way to address the research questions and to probe further into the participants' explanations. This presented opportunities for new themes to develop.

The interviews were prompted through emails, telephone calls, short message services (SMSs) and social media. Participants' access to these resources determined the way of communication to arrange and finalise interview meetings. Generally, this fluid way of requesting an interview meeting proved to be mostly effective. Sometimes participants immediately agreed to interviews and those interviews took place within a short lead time. In other instances, the researcher engaged with some participants over a longer period to get them to agree to meet for the interview. Although permission was requested and granted in 2016 at a Spanjaardskloof Association meeting, in the primary site farmers took longer to reply or did not reply at all when meetings were requested. The researcher found herself in the untenable situation of having to send more than one message before getting a reply. In some instances, the communication was simply ignored as was the case with a number of emerging farmers and also officials of the Department of Water and Sanitation (DWS). The quality of the research was paramount and therefore the depth and quality of the data collected and crucially the research aim dictated whether these participants should be pursued further or not. After the researcher used different means of communication, some participants eventually responded and agreed to be interviewed while others still ignored the requests for interviews or were not available to be interviewed. Although not all requests to conduct interviews were granted, the existing data corpus was appropriately wide-ranging and rich to satisfy the research aim. The researcher also experienced saturation and found that the different participants were repeating experiences and insights.

The researcher arranged meetings according to the availability of the participants, at places and times convenient to them, taking into account the nature of their employment or businesses. During peak periods of farming operations, the farmers were not able to spend time with the researcher. Meetings with individual farmers could only take place when the farming operations were quiet and they had time to meet. In some instances, meetings were cancelled due to the unpredictable nature of farming. In some cases, the interviews were conducted away from the farms at their homes in Cape Town. Similarly, participants who had other business responsibilities and staff at the various water institutions could only meet with the researcher, circumstances permitting. This meant that interviews were conducted, variously at private homes, on farms or in the city, at offices, restaurants or guest houses where the researcher stayed during the field visits. The

researcher went to the participants during the week or on Saturdays to conduct interviews. It was important to respect the participants' own constraints and the researcher wanted to nurture the relationship and retain access to the research space.

The researcher used an interview guide (see Annexure B) to ensure that the focus of the interview was to answer the central research question. According to King and Horrocks (2010: 35), an interview schedule with specific questions in a set order used for quantitative research purposes, as the wrong tool for qualitative research. They proposed that an interview guide offered flexibility, which a schedule does not. The interview guide for this study outlined only the important topics and the order and phrasing of questions were flexible. This gave the interviewer space to respond to and explore issues as they arose during the interview. This was necessary as people related their stories and experiences in their unique ways as not all started at the same place or told their stories in the same chronological order. Thus, the researcher made provision for deviation from the interview guide as the main aim was to elicit participants' accounts of their experiences and understandings related in their own words, in their own way as it pertained to their worlds. The deviation was determined by the flow of the interview but the purpose of the questions was still guided by the research topic. The interview questions were prepared in advance and captured in an interview guide, used to facilitate the interview. Different interview guides, determined by the participant's role or position in the water space, were prepared in English and Afrikaans, taking into consideration the different capacities and roles of the participants in the process of access. This allowed the researcher to gain insights into the unique experiences of the participants as they interacted with the process of access to water for productive use, whether as an emerging farmer, commercial farmer, representative of an institution or a consultant. The interview questions were devised to answer the research questions and the interview guide ensured uniformity of questions to specific categories of participants during all interviews. The in-depth semi-structured interviews were conducted in English or Afrikaans as preferred by the participant and lasted between 30 minutes and two hours. A voice recorder and handwritten notes were used to record the interviews after which they were transcribed into Word documents for analysis.

The researcher also used observation as a method to answer the research questions and this complemented the interviews, giving a more comprehensive insight. This method provided the

researcher with an opportunity to acquire a complete picture of the sociocultural context within which participants make meaning (Hennink *et al*, 2011: 170). This took place within the interpretive paradigm and, as a non-participant observer, it provided insights into the environment within which participants make meaning. It was further used to identify the values and relationships amongst the participants as they impact on participants' access to water for productive use. The observation method was used primarily at meetings to which the researcher had been invited or had requested permission to attend. The researcher attended meetings held by i.a., the GWUA, the BGCMA and the Spanjaardskloof Inwoners Vereniging (SIV). The researcher compiled extensive notes to record the events. This study specifically questioned the impact of bureaucracy and power relations on access to water for productive use and hence observation presented an opportunity to discern who set the agendas at the different meetings, who attended, their behaviour and their contributions during the meetings and how decision-making happened. The researcher had the privilege of conducting scoping visits to the research sites, which were organised by an emerging farmer and the manager of the GWUA. The interviews conducted at farms offered additional opportunities to gain insights into the research environment. These observations and the interviews with participants presented a more complete perspective of the research issues.

In addition, these engagements allowed for the collection of several primary materials such as license applications and correspondence from farmers to the DWS. The licence applications allowed the researcher to supplement the insights attained during the interviews and to draw independent inferences from these written records.

6.4.2 Secondary data collection

In the process of understanding and gaining a full appreciation of whether and how bureaucracy, power and the law impact on access to water for productive use, it was important to scrutinise how the reality was documented. Documents should be used to frame information as they denote but a particular account of reality (Flick, 2009: 259). Institutional documents are tools to record organisational practices and to justify operations. The documents accessed and analysed for purposes of this study were not used to authenticate interviews but rather served as a

complementary strategy. The main documentary sources for this study were minutes of meetings and annual reports relevant to the study. Several of these documents of the DWS, BGCMA and GWUA were freely available in the public domain, whereas certain documents were acquired from the various institutions as requested by the researcher and volunteered by participants. The researcher also used documents recording historical insights into the relevant institutions i.a., the DWS, BGCMA and GWUA and to gain an understanding of the governance of these institutions. Central to water allocation and reallocation was the data on water quantities and this was obtained using the statistics as provided by the DWS, BGCMA, GWUA and other relevant government departments. As a member of the UWC/CPUT research team, this researcher was granted permission to use research material such as transcriptions of interviews and minutes of meetings of the special BGCMA research projects for this study.

The above secondary sources were relevant to the study not only for their contents, but their context, use and purpose were important to gain a complete representation of the research issues.

6.5 Sampling

The research purpose was to determine the role of bureaucracy, law and power in the implementation of policies in access to water for productive use and this dictated the sampling process. The identification of the setting, site, sample and its size revolved around the aim of the study. The case study approach used for this research identified purposive sampling as the most appropriate sampling strategy (Flick, 2009). Coyne (1997: 629) noted that purposeful sampling means that the sample is deliberately chosen to reflect the demands of the study but suggests that the research method should be flexible enough to allow for further probing if the study presents such. Ishak and Bakar (2014: 32) asserted that purposive sampling was suitable in case studies under the following circumstances: (i) when a researcher wanted to select unique cases that were especially informative; (ii) when a researcher would like to select members of a difficult-to-reach, specialised population; and (iii) when a researcher wanted to identify particular types of cases for in-depth investigation. Bickman and Rog (1998: 87) submitted that specific settings, persons and events should be intentionally chosen for their ability to deliver important information that would be aligned with the research. Onwuegbuzie and Collins (2007: 287) asserted that when the research

aim was to gain understanding into a phenomenon then the researcher would decisively choose individuals, groups and backgrounds to obtain a thorough understanding of the underlying phenomenon. Sampling decisions should always be taken in conjunction with,

... (the) research relationship with study participants, the feasibility of data collection and analysis, and validity concerns, as well as your purposes and conceptual context (Bickman and Rog, 1998: 88).

This research purpose demanded an in-depth investigation aimed at the research phenomenon of the slow pace of implementation of transformation in the access to water use. Coyne (1997), referencing Patton (1990: 169), highlighted that,

... (the) logic and power of purposeful sampling lies in selecting information-rich cases for study in depth. Information-rich cases are those from which one can learn a great deal about issues of central importance to the purpose of the research, thus the term purposeful sampling (1997: 624).

For this reason, purposive sampling was employed in this study, as it could produce data that was 'information-rich', giving insight into understandings, beliefs, attitudes and experiences of actors as they navigated the water use space.

By inference, purposive sampling suggests that the sample should be specifically selected to fit the needs of the study. Thus the participants were specifically selected, identified and interviewed as they were significant to the study as they impacted or were impacted by the implementation of the policy and legislative framework on water allocation in the study sites specifically and within the region and country generally. The participants represented different role players at different levels of the water allocation chain i.a., commercial and emerging farmers, frontline staff, managers and supervisors, consultants, chairpersons of boards, experts and key state personnel. These participants interacted with each other at different times and negotiated and navigated the system in the process of gaining access. At various stages of the process the different participants, due to their roles within the bureaucratic framework, found themselves interpreting policy and legislation pertaining to the process and by implication, exerting power, influencing the process and outcome.

The researcher contacted and arranged meetings with the participants telephonically and/or via electronic messaging. The gatekeepers, and also key informants, within the two sites were the first participants contacted to gain access to the research area and conduct interviews. The primary research site, Pietercielieskloof is a relatively small geographical area. In Pietercielieskloof, the gatekeeper was an emerging farmer identified in March 2014 during the first scoping visit of the area. He was born in the region and had very close generational and communal ties with the people and village of Elim. He is the owner of a farm in Pietercielieskloof and was actively farming for more than ten years. This emerging farmer is well known in the area and knows the people and area intimately. He is a founding member of the Pietercielieskloof Cooperative and is at the forefront of any initiatives engaging institutions impacting or potentially benefiting emerging farmers. This emerging farmer's unique knowledge and insights helped greatly to understand and sketch a picture of Pietercielieskloof, as the area and its history are not well documented. The majority of emerging farmers and most commercial farmers were interviewed as this was the primary research site. The farmers who were not interviewed did not respond to numerous requests to meet or were not available due to time constraints or other commitments. The researcher further cemented entry by requesting formal permission from the Spanjaardskloof Inwoners Vereniging (SIV) at a meeting held on 30 March 2016 (See Annexure C). The members, who are farmers in the area, granted permission to conduct research in the area. The SIV represents all the farmers in the area and generally deals with matters of common interest to all farmers. The researcher thereafter contacted each participant to arrange individual meetings to conduct interviews.

In Grabouw, the secondary site, due to the centrality of the WUA, the gatekeeper participant was an important role player in the GWUA. Here the gatekeeper was the current GWUA manager. He was a farmer in the area and given the nature of his position, knew and had contact and access to the role players in the area. He was instrumental in the researcher gaining access into the area and due to the relationship forged with him, he facilitated the researcher's access to meetings and institutional documents. Formal permission to conduct interviews was requested and granted by the GWUA (see Annexure D) and this also facilitated meetings and interviews with farmers in the area as they were aware of the research.

The fieldwork in Grabouw started with the GWUA manager taking the researcher on a comprehensive scoping tour of the area. This provided a unique perspective of the research area through the lens of someone who had lived and farmed in the area for a long time. As he was the long-standing GWUA manager at the time, he further shared his insights and knowledge. It also gave the researcher the opportunity to forge a trust relationship with the manager as this ensured further access to other participants as well as access to GWUA documents. The researcher conducted in-depth interviews with five commercial farmers, the manager and the chairperson of the GWUA in the Elgin Valley in the Palmiet catchment. A number of female role players were interviewed. A research assistant helped with the field work at GWUA by conducting documentary searches, attending meetings and doing observation.

The total number of participants interviewed was determined by the purpose of the study and whether saturation point was reached. Bazeley (2013) explained that saturation is reached when no new information would be generated by interviewing more participants who might add to the coding categories. Each study would dictate its own saturation point, taking into consideration,

...the quality of the data, the scope of the study, the nature of the topic, the amount of useful information obtained from each participant, the number of interviews per participant, the use of shadowed data and the qualitative method and study design (Bazeley, 2013: 50).

Altogether 40 participants were interviewed, representing a cross-section of the water use application process at the different levels of implementation from applicants to the different levels in the bureaucracy. The actors in the bureaucracy were directly involved with the process and represented very senior staff, to those lower in the hierarchy, all dealing with the public at the coalface. At the implementing institutions key staff members responsible for licence applications across the spectrum were interviewed. Amongst these staff members were leading senior officials as well as lower ranked officials. The primary research area is relatively small with only 15 farmers whereas the secondary site was used as a contrasting catalyst to determine access of water use for black emerging farmers (BEFs). Farmers shared their experiences and insights and over a period of two-and-a-half years these experiences and insights were reiterated. As the interviews were conducted it became clear that the participants had similar stories and encounters as they accessed or retained their water use. Supported by field observations and related documents, saturation was

reached in the data collection as it was clear that further interviews would not produce new understandings. In some instances, the researcher engaged with participants again at meetings or interviews to clarify issues. The research focused on the effect of the legal demands, the dynamics of power relations and the bureaucracy governing access to water use for specifically the BEFs.

Table 5: Data collected from 2014 to 2018

	DATA TYPE	CONSTITUENT	DESIGNATIONS	TOTAL	
1.	INTERVIEWS	Farmers		22	
		-	Emerging Farmers	Black farmers – Pietercielieskloof	10
		-	Commercial Farmers	White farmers - Pietercielieskloof and jurisdiction of GWUA	12
		Bureaucracy			15
		-	Department of Water Affairs	Deputy Directors: 2 Senior officials: 2 Official: 1	5
		-	BGCMA	CEO: 1 Senior officials: 2 Officials: 3	6
		-	GWUA	Chairperson Manager Assistant	3
		-	Department of Agriculture	Senior official	1
		Consultants and Experts		Ex-Department of Water senior officials: 2 Academia: 1	3
TOTAL				40	
2.	MEETINGS and FIELD TRIPS	GWUA, BGCMA, Spanjaardskloof Inwoners Vereniging	Officials, members of institutions, farmers	9	
3.	DOCUMENTS	Minutes of Meetings, notes relevant to research & Licence application.			

Source: Researcher's own compilation of data gathered from the field (2014-2018)

6.6 Data analysis

Schutt (2012: 326) suggested that analysis should start from the process of note-taking during interviews. This helped with the both the analysis and assisted with the writing process. The researcher created a tool (see Annexure E) to reflect on the interviews as soon after having conducted the interview. The researcher employed thematic analysis as a way of categorising, analysing and recording themes within the data set (Braun and Clark, 2006). This study adapted the model for thematic analysis, as proposed by Vaismoradi et al (2013: 402) – see Table 6 below.

Table 6: Thematic Analysis Process

	STAGE	DESCRIPTION
1	Familiarising with data	<ul style="list-style-type: none"> - Listening to the recorded interviews and meetings - Transcribing the data sets i.e. the interviews and meetings - Reading and rereading the data - Noting and writing down initial ideas
2.	Producing preliminary codes	<ul style="list-style-type: none"> - Coding interesting and pertinent features of the data methodically across the entire data set - Collating data relevant to each code
3.	Finding themes	<ul style="list-style-type: none"> - Collating codes into potential themes - Collecting and organising all data relevant to each potential theme
4.	Reviewing and revising themes	<ul style="list-style-type: none"> - Checking whether the themes work in relation to the coded extracts and the entire data set - If necessary, appropriately reorganising the themes and coded extracts
5.	Refining, defining and naming themes	<ul style="list-style-type: none"> - Ongoing analysis for refining the specifics of each theme and the overall meaning of the analysis - Generating clear definitions and names or titles for each theme
6.	Generating the report	<ul style="list-style-type: none"> - The finalised set of themes for analysis - Selection of vivid, compelling extract examples - Final analysis of selected extracts, relating back of the analysis to the research question and sub-questions and literature - Generating a report of the analysis

Source: Adapted from Vaismoradi *et al* (2013: 402)

The researcher transcribed the interviews using professional services or transcribing it herself, determined by her budgetary and time constraints. The researcher identified codes by listening to the recorded data sets, supported by reading and marking the transcribed recorded data sets. The researcher collated the data according to the identified codes and this enabled identification of the themes. Themes were refined and named as required by the research topic and its aim. The whole

process of thematic analysis enabled the researcher to draw inferences leading to the findings and ultimately making recommendations.

6.7 Ethical issues

Prior to starting the study, the researcher obtained formal institutional ethical approval from the Ethics Committee of the University of the Western Cape (UWC). The researcher's application to the university identified four broad research relationships (Mouton, 2004: 238) which define ethical principles. Three of the identified relationships were relevant to this research.

The first was the professional relationship which demands objectivity and integrity, no falsification of data, the rejection of plagiarism and the acknowledgement of contributions made by all participants. The researcher undertook to adhere to these principles by consenting to and signing the University of the Western Cape's Plagiarism Policy and further undertook to record and report as per the research methodology and analysis disclosed in the proposal. The second relationship was the societal one (Mouton, 2004: 241) which required the researcher to be accountable to society and to this end ensure that the research was disseminated. The ownership of the research vests with the UWC and would be published according to the university's policies and guidelines. The third relationship pertained to participants' rights to privacy, anonymity, confidentiality, informed consent and protection. The researcher sought permission to conduct research from all the relevant stakeholders. The UWC granted permission for the research to be conducted and the researcher was bound by the Ethics Policy which required that consent be obtained from all participants. The researcher was obligated to disclose and explain to the research participants the research title and objectives of the research to be conducted before any data was collected, analysed and published.

At the start of the interview the researcher informed the participants of the ethical issues pertaining to the research, both verbally and in writing. The information provided stated clearly what the purpose of the study was. The researcher explained the confidentiality and for many within the CMA and DWS it was important that the researcher gave this undertaking and also ensured their anonymity. One participant clearly stated that he could not speak on behalf of the Department and

when the researcher explained the ethical issues, the participant was then prepared to be interviewed. The CMA consists of a small staff complement and the DWS also had a small number of staff working with water use authorisations. Similarly, the primary research site has a small number of farmers and an even smaller number of female farmers. This made confidentiality and anonymity critical and placed a greater onus on the researcher to ensure that the research be written in such a way that identities could not be read and disclosed in the text. The researcher requested the participants to sign the consent form (see Annexure E) as obtained from the School of Government before proceeding with the interview. Written permission was granted by the Groenland Water User Association to conduct research within its jurisdiction. This was communicated via electronic messaging. In the case of Pietercielieskloof no Water User Association exists and therefore permission was gained through the Spanjaardskloof Residence Committee. Permission was granted at a meeting attended by the researcher and further consent was obtained from the individual participants.

The researcher accommodated all participants by setting the time and place of the interviews at the participants' convenience. The interviews were conducted at participants' workplaces, homes or any other place as agreed upon. This was done to set the participants' minds at ease regarding confidentiality and also putting them at ease to be interviewed freely. The interviews were conducted in English or Afrikaans as preferred by the participant. This also presented the researcher with an opportunity to elicit deeper insights and understandings from participants which might not have been shared if this choice was not presented. Anonymity of the participants was of paramount importance. The case study was conducted in a relatively small farming community and to ensure that the identities of the participants were protected the research was written in such a way that no reference is made to names of participants, farms or locations of specific farms or any characteristics that might divulge any identities. The researcher used the terms 'he' and 'she' interchangeably when quoting the research participants. Research participants were labeled and identified according to their role, a number and the year in which they were interviewed, e.g. Emerging Farmer, Participant 14, 2017. In some instances, designations of portfolios might reveal an identity and thus even this was avoided. It was used if it was relevant to the academic argument but with circumspection as it was important to protect identities. The researcher took all the

necessary measures to safeguard the identities and confidentiality as undertaken with the participants. This did not detract from the validity of the data. In the secondary site a research assistant supported the data collection process and conducted the research under the same ethical principles.

6.8 Conclusion

This chapter outlined the qualitative research approach as determined by the central research question. This approach provided an opportunity to identify issues from the participants' perspective and make sense of their understandings and experiences. It was designed as a comparison of two case studies based on the constructivist paradigm to answer the 'how' and 'why' research questions, yielding in-depth knowledge and rich data. The sites are situated in the BGCMA in the Western Cape. The sites were chosen to study the juncture of bureaucracy, law and power and focused on water allocations for emerging black farmers who have individual ownership of their farms. These farmers are not part of a formal established WUA and continued to struggle to access water using the legal application process. On the other hand, the second study site provided a counter example with a formalised established WUA in a mainly white farming community.

The next chapter provides a synopsis of the different institutions interacting with and influencing water use allocations and role players in the local context.

CHAPTER 7: STRUCTURE, FUNCTION, NATURE AND COMPOSITION OF LOCAL INSTITUTIONS IN THE STUDY AREA

7.1 Introduction

This chapter gives an overview of the institutional nexus at regional and local levels of different institutions interacting with farmers and influencing water use allocations in the local context. This study provides an overview of farmers' interaction with the following institutions: the Department of Water and Sanitation (DWS); the Catchment Management Agency (CMA); the Pietercielieskloof Farming Cooperation (PFC) and the Spanjaardskloof Inwoners Vereniging³⁸ (SIV); the Groenland Water User Association (GWUA); the relevant Municipalities and the Department of Agriculture (DoA).

7.2 Local Department of Water and Sanitation

The issuing of water use licences, development of relevant infrastructure, water resources management planning and regulation and information management vest with the national office. The regional office (in this case in Bellville, Cape Town) has compliance monitoring functions within the region. It takes responsibility for amongst others the maintenance and management of WARMS, whose data feeds into the national database. Regional offices make recommendations to the national office to enable final decision-making at national level on general authorisations and water use licences. A Deputy Director at the regional office explained that,

...the Reserves are being done by our national office in Pretoria. The Reserve can take six months to three years depending on the number of people available...But functions are split between regional and national office. I feel that the Department is doing work that they're not supposed to do...even in the Department, there are directors with split functions (Bellville, Deputy Director, Participant 12, 2016).

³⁸ The Pietercielieskloof Farming Cooperation and the Spanjaardskloof Inwoners Vereniging (English – The Spanjaardskloof Residents' Association) are relevant to Pietercielieskloof only.

The regional office also performs oversight and regulatory functions. According to the Deputy Director,

We do have a regular interaction with the CMA. We have a team called 'institutional oversight'. They must see that the CMA is doing their work. They are normally engaged with the CMA. Then we have Regulation. They are regulating water use to determine whether the CMA is doing their function, do they issue the right directives? We do have regular integration and interaction. We provide support (Deputy Director, Participant 12, 2016).

The NWA provides that if a CMA was not established in a WMA, the Minister of Water and Sanitation would perform the function. As was shown previously, the Minister did not establish the decentralised institutions and continued to perform these functions, more than twenty years after the NWA was adopted.

7.3 Catchment Management Agency (CMA)

This study area is situated in a WMA where one of two of South Africa's CMAs i.e. the BCGMA is established and operates from Worcester (a town about a two-hour drive from Cape Town and Bredasdorp, and an hour from Grabouw and Swellendam). The water users or potential water users in this research area should therefore interact and engage with the CMA and not the Bellville regional office of the DWS for their water management concerns. The nature, powers and functions of CMAs are outlined in Chapter 7 of the NWA. The Act specifically provides in Sections 79 and 80 that CMAs should be responsible for water resources management at a regional or catchment level in accordance with national policies, guidelines and standards with participation by communities and stakeholders at local level (RSA, 1998b).

Before the total number of CMAs was reduced from nineteen to nine, the BOCMA was established by the Minister of Water Affairs in 2005 to manage all water resources in the water management area. The region is serviced by seven local municipalities, namely Cape Agulhas and Swellendam in the south-east, Witzenberg, Breede Valley and Langeberg in the north and Theewaterskloof and Overstrand in the south-west (see Figure 12 below). The population of the Breede Overberg WMA is estimated to be about half a million people, two-thirds of whom live in towns and villages (BOCMA, 2012: 17). Unemployment was at 19% and high levels of income inequality exist and

continue to exist with many of the rural and peri-urban communities working in farm labour (BOCMA, 2012).

The Governing Board of BOCMA was appointed by the Minister in October 2007 and became operational with the appointment of the CEO and staff (BOCMA, 2012)³⁹. The board consisted of a variety of interest groups namely: emerging farmers, civil society, industry and business, provincial government, commercial agriculture, local government, related environmental and agricultural statutory bodies and the DWA's Western Cape Regional office. After the first term of three years, the term of the CMA's governing board was extended by the Minister and these governing board members were still in office⁴⁰ at the time the BOCMA and Gouritz CMA merged into a larger BGCMA⁴¹ (BGCMA, 2016: 8). The BOCMA presented its draft catchment management strategy to the DWA in 2010. At the time of writing when the new CMA was established, the draft catchment management strategy was still awaiting approval during the 2012/13 period for implementation between 2013 and 2017.

A central challenge for the CMA was to ensure contribution to the economic development (growth) and social redress (equity) in the region. The Chief Executive Officer reported to parliament that allocating water resources to poor farmers and historically disadvantaged individuals was a key priority but the complexity of the issue impacted negatively on effective implementation (PMG, 2012: 12). The risks identified causing implementation gaps were the failure to make resources available due to the current backlog of applications, inconsistent understanding of national policy and the lack of integration of land and water reform. In this water management area there were 21 new or transformed WUAs and 26 IBs still to be transformed. The Water Policy Review published

³⁹ This research drew extensively on this CMA annual report for the demographics of the water management area and the CMA.

⁴⁰ Mr T.J Motshephe, a governing board member passed away in November 2015.

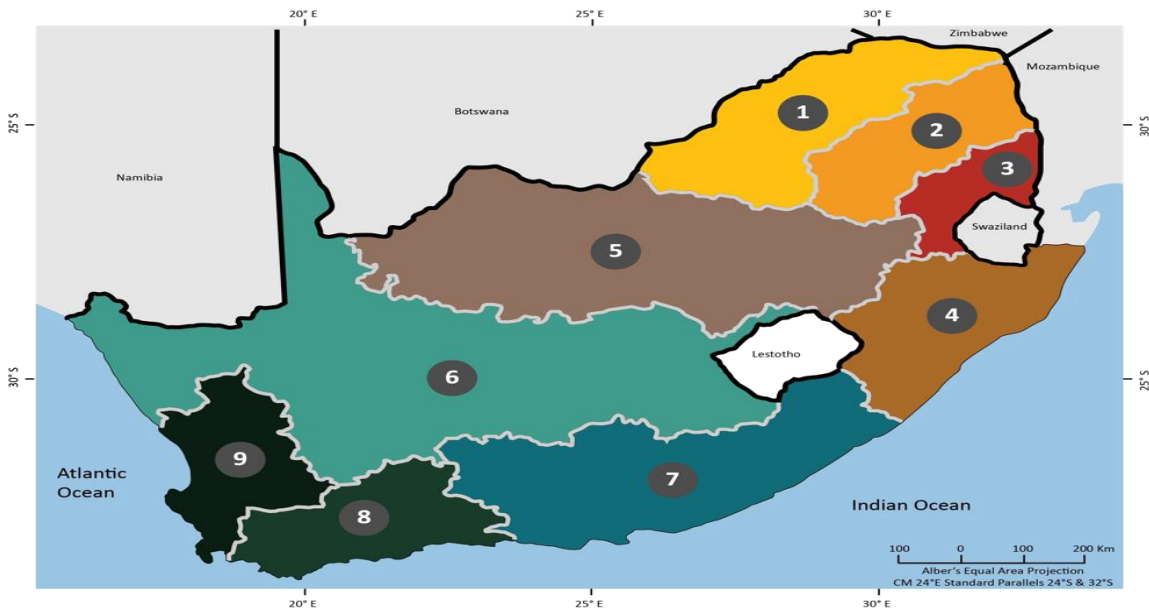
⁴¹ At a DWS/BGCMA meeting on 3-4 July 2018 in George, the researcher informally chatted with a BGCMA official during a break. The person, a senior official, commented that a changed board may bring about the injection the CMA required to put it on a path of innovation to deliver more effectively. The person further noted that the previous CEO still swayed a lot of power even though he had left about a year ago.

in August 2013 effectively stopped the transformation of all IBs into WUAs and hence the new BGCMA could not continue its implementation of transforming IBs into WUAs (BGCMA, 2015: 23).

7.3.1 The new Breede Gouritz Catchment Management Agency (BGCMA)

The second edition of the NWRS2 was published in June 2013 reducing the 19 CMAs to nine (DWA, 2013b). A new merged CMA, namely the BGCMA (indicated as number 8 in Figure 8 below) was approved in May 2014 (DWEA, 2014) extending the boundary and area of operation of the previous CMA.

Figure 8: The reduced nine CMAs



Source: CMRA (undated)

The area of operation of the Breede Gouritz Catchment Management Agency includes the previous Breede Overberg Water Management Area (WMA) and the Gouritz WMA (see Figure 9 below). This newly demarcated WMA is bordered by the Indian Ocean to the south, the Berg-Olifants WMA to the west, the Orange WMA to its north and the Mzimvubu-Tsitsikama WMA to the east.

The largest part of the WMA is in the Western Cape Province with small sections thereof in the Eastern and Northern Provinces. The largest rivers of the WMA are the Breede River (its main tributary is the Riviersonderend River) and the Gouritz River (its major tributaries are the Gamka, Groot and Olifants Rivers) both of which flow into the Indian Ocean (DWA, 2012c). The Gouritz and Breede WMAs are both subdivided into five hydrological sub-areas and fall under the district municipalities of Eden, Central Karoo, Cape Winelands and Overberg (BGCMA, 2015: 3).

Figure 9: Breede Gouritz Water Management Area



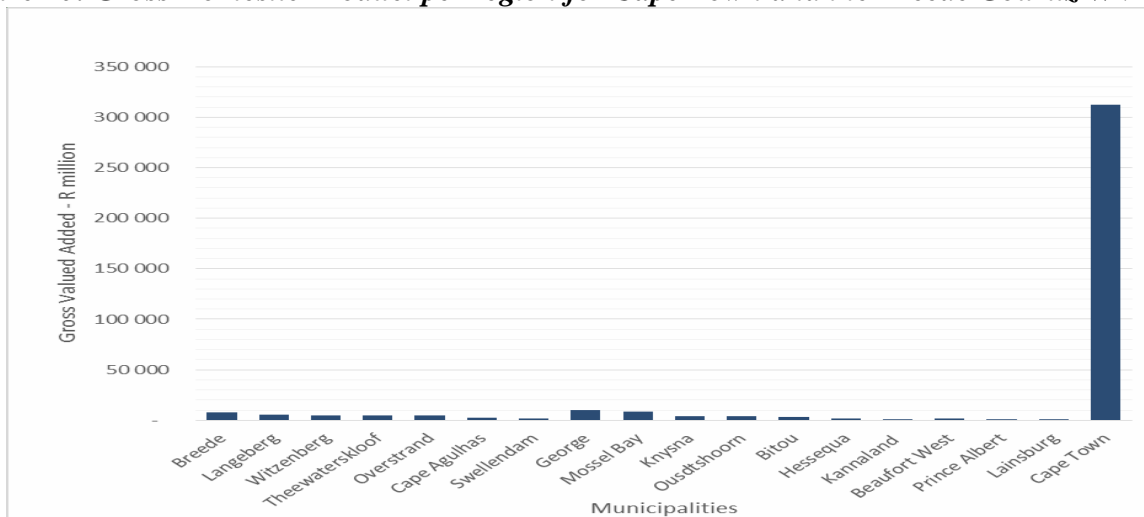
Source: BGCMA (2017)

The BGCMA appraised the Gross Geographic Product (GGP) to be approximately R22 billion per year contributing less than 1% to South Africa’s GDP (BGCMA, 2018). In the merged BGCMA the GDP per region varies considerably and figures showed that,

...George (has) over R10.3 billion per annum gross value added, while Laingsburg only has some R255 million gross value added (BGCMA, 2017: 17).

In the WMA the economy is driven by PetroSA, ostrich farming, export fruit and fruit products, uranium mining, renewable energy and tourism (BGCMA, 2018). Economic demands on the catchment's water are tremendous and the following graph (see Figure 10 below) illustrates the gross value added of 17 municipalities as opposed to Cape Town.

Figure 10: Gross Domestic Product per region for Cape Town and the Breede Gouritz WMA



Source: BGCMA (2017: 17)

The combined GDP of all 17 municipalities is R66 billion, while for Cape Town it is approximately R312 billion. This highlights that water supply to Cape Town from the Breede system is high value water, and that there is an acute imbalance between the Cape Town water supply and water demand (BGCMA, 2017: 17).

As indicated above, the BOCMA Chief Executive Officer informed Parliament in 2012 that the CMA was struggling to allocate water to poor farmers and historically disadvantaged individuals. He blamed the poor implementation on the current backlog of applications, inconsistent understanding of national policy and the lack of integration of land and water reform (PMG, 2012: 12). Thus a very real disquiet is how and whether the new BGCMA operating in a much larger and more difficult environment would be able to meet the even greater diverse needs and demanding transformation challenges when the previously identified implementation concerns were not addressed.

No directive exists for the BGCMA to generate revenue independently and it seems as if the BGCMA does not have too much insight into actual charges and gains of CMA's functions. Money from the DWS is largely treated as transfer of Water User Charges paid to Pretoria. The Treasury funds are paid to top-up the BGCMA finances and to cater for CMA functions which relate to the provision of public goods and not necessarily revenue generating. While the BGCMA has a clear understanding of its expenditure items, such as staffing, vehicle costs and projects, there is little information available on the costs and the benefits of the CMA's functions, such as water use authorisation, resource-directed measures and water resources. Since revenue was collected by the DWS in Pretoria, there is also little understanding within the BGCMA of the effectiveness of revenue collection activities (BGCMA, 2017: 87).

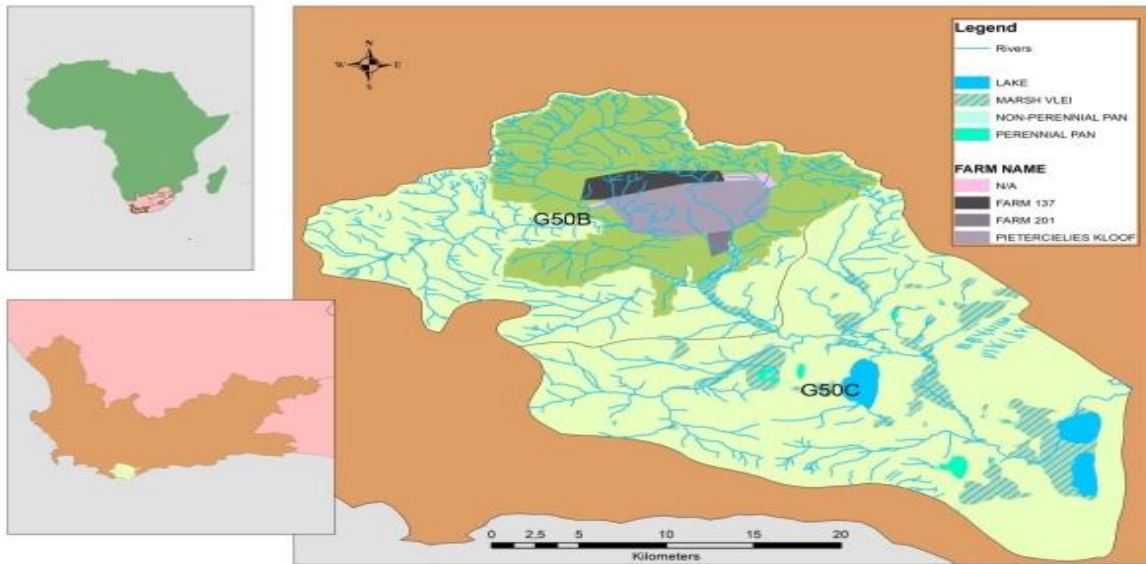
During the 2017/2018 financial year the BGCMA received R60 million from the DWS for its operations expenditures (BGCMA, 2018).

In the Grabouw/Theewaterskloof area, where the secondary research site is, agriculture is extensively irrigated and the area is known for its small town economy. The Agulhas Plains, stretching from Napier in the west to George in the east and to the south of the Breede River Valley, is a dry-land cultivation economy (BGCMA, 2018). This is where the primary research site, Pietercielieskloof, is situated.

7.4 Pietercielieskloof: Geographic area and institutions

Pietercielieskloof is a small farming community (see Figure 11 below) situated in the Overberg east zone in the Breede Gouritz Management Area. The Overberg east zone starts at the mouth of the Ratel River in the west and ends at the mouth of the Breede River in Infanta in the east. The Breede River is one of two large rivers in the WMA and it discharges into the Indian Ocean. There are no irrigation boards or WUAs in the region (BGCMA, 2010: 22) and no WUA exists for the Pietercielieskloof area. The Pietercielieskloof farmers thus have to direct all water-related concerns and issues to the BGCMA and water authorisations would be finalised by the national office of the DWS in Pretoria.

Figure 11: Map of Pietercielieskloof



Source: Mehl (2017)

The history of Pietercielieskloof is not well documented and to begin writing this history the researcher consulted maps, gathered historical data from the librarian at the Elim library in the neighbouring town and interviewed the farmers in the area and members of the community. Pietercielieskloof is a small farming community and was originally the Pietercielieskloof farm 202 (See Figure 11 above). The farm was later sub-divided into smaller farms and these farmers are predominantly black⁴². This is how a very experienced farmer who grew up in the area and who is one of the oldest farmers, described the area:

This area is Pietercielieskloof. Spanjaardskloof is the name given to the area where the school is. The whole area is Pietercielieskloof and Spanjaardskloof is in Pietercielieskloof. The cooperative is the Pietercielieskloof cooperative and consists of emerging farmers only, coloureds. There are no white farmers here. The state gives us assistance by providing poles, gates and such like. The Spanjaardskloof Association on the other hand is open to all farmers -

⁴² For purposes of this research the term black is used and includes coloured people, as they are officially classified. However, some coloured people identify as coloured and others as black which identification is politically and historically motivated.

white, black, any colour. We meet and discuss matters concerning the whole community (Black farmer, Participant 3, 2016).

The main agricultural activities are livestock, grain, wheat, oats, vegetables, fynbos and rooibos tea. A handful of these farmers are successful commercial farmers but the majority are small black emerging farmers. The black farming sector is small and mostly struggling and to facilitate economic progress and access to resources, established the Pietercielieskloof Farming Cooperative (PFC) and the Spanjaardskloof Inwoners Vereniging (SIV). Both bodies are registered entities with the relevant South African authorities and funded through nominal membership fees.

7.4.1 Pietercielieskloof Farming Cooperative (PFC)

The Pietercielieskloof Farming Cooperative⁴³ (PFC) was conceived to represent and promote the interests of the black farmers in the Pietercielieskloof area and to access resources. The chairperson informed the researcher that,

The coloured farmers established the Pietercielieskloof Cooperative in 2012, consisting of ten farms. We were told by the Department of Agriculture that we could only access funding and resources if we did so as a collective and not as individuals. The membership is open to coloured farmers only and not white farmers (SIV chairperson, Participant 28, 2016).

Another farmer retold this insight:

We emerging farmers established the PFC with the idea that we as individuals would not go on our own to the Department of Agriculture. More farmers would be assisted indirectly instead of one or two individuals only. The state gave us tractors and other farming implements which made things a little easier for us. (Emerging farmer, Participant 22, 2016).

⁴³ The background to the Cooperative was gleaned during interviews with farmers and minutes of meetings. The history is not documented.

The PFC is officially registered as a primary cooperative with the South African Companies and Intellectual Property Commission as a business entity having independent legal status. The PFC still exists today but experienced challenges:

I am not sure whether the co-op serves its purpose. It was supposed to create a market for these farmers but individual farmers went their own way to sell their produce. The co-op did not create the market. I think that due to political views some farmers insist on the co-op being for coloureds only. This cannot work to the benefit of the community of farmers. I tried to bring the two bodies together but it failed (SIV chairperson, Participant 28, 2016).

7.5 Grabouw: Groenland Water User Association

The research area of the Groenland Water User Association (GWUA) is well documented and the data was sourced from the DWA, the BGCMA and the GWUA. The GWUA existed as an irrigation board under the previous 1956 Water Act and was established in 1966. The DWA approved the transformation to a WUA on 10 June 2005. The GWUA is situated in the Overberg West zone of the CMA which covers the geographical area from Pringle Bay in the south-west to the mouth of the Ratel River in the east. The boundary to the north is between Sir Lowry's Pass and Theewaterskloof Dam in the west and the start of the Karringmelk River in the east. It also covers portions of two local municipalities in the Overberg District Municipality, specifically Theewaterskloof in the north within which the GWUA falls (BOCMA, 2010: 25). The Overberg West zone is a diverse agricultural area with barley, canola, wheat and sheep. In the Palmiet sub-catchment, where the GWUA operates, the majority of the Western Cape's apple and pear growing industry is found. The area also has several fruit and beverage manufacturers and a well-known fruit packing industry. A BGCMA report in 2017 indicated that the GDPR for Theewaterskloof was valued to be about R4.8 billion (BGCMA, 2017: 16). The water resources under the control of the GWUA fall within the catchment area of the Palmiet River, and includes all its tributaries from where it originates in the Hottentots Holland Mountains (north/north-west), the Kogelberg Mountains (west/south-west) and the Groenland Mountains (east up to the confluence with the Krom River and Palmiet River (GWUA, 2009).

The board consists of 21 representatives from the following constituents, namely five former irrigation board members, four other registered water users, two emerging farmers, three local

government representatives, two individual water users, one from a national industry, i.e. Eskom, one from a local industry, one public environmental organisation, one institution who has interest in water management and one forestry sector (co-opted). A closer look at the numbers suggests an interesting story about the social make-up and the likely political orientation of the GWUA. The founding members of the GWUA were the members of the previous irrigation board, i.e. white commercial farmers. They were the first members of the newly established GWUA and also appointed as the first Management Committee (GWUA, 2014). These members were in a powerful position, mandated to approve new membership. The members of the GIB are long established white commercial farmers and are very powerful as they form what is known as Sub-district 1 of the GWUA. Sub-district 1 is situated in the Palmiet River catchment area with the tributaries and includes the Eikenhof Dam and the water supply network. Although Sub-district 1 is part of the GWUA the members have full control over their own interests. The GWUA constitution provides that,

...(the) Sub-District 1 Standing Committee shall have full decision-making powers (to the exclusion of the Management Committee of GWUA, unless the contrary is specifically stated below) on the matters referred to below without the obligation to seek prior approval of or refer such decisions back to the Management Committee of GWUA for ratification (GWUA, 2014: Annexure 5).

Representation of this single constituent on the board is the largest, i.e. five and thus due to their substantial power could dictate decisions and decision-making. What cements these members' power position very significantly is that they own and manage the Eikenhof Dam. It falls in the jurisdiction of the GWUA but it belongs to, is maintained and operated by the Groenland Irrigation Board (GIB) (Bosch, 2008). The Eikenhof Dam was commissioned by the Groenland Irrigation Board and is approximately 2km from Grabouw. Construction of the dam was completed in 1977 and at the time had a total storage capacity of 22 million m³. After further enlargements in 1988 and 1998 the dam's current total capacity is 29 million m³ (Groenland Water User Association, 2010). It is situated in the upper catchment of the Palmiet River, on the confluence of the Wesselsgat-, Keeroms- and Palmiet Rivers (Bosch, 2008). The value of this dam to the local economy cannot be disputed. The scheme supplies irrigation water to approximately 6 400 ha of agricultural land, domestic water to the Theewaterskloof municipality and further supplies local

industries such as the well-known manufacturing plant Appletiser and apple packing facilities such as Two-a-Day (Bosch, 2008). The power of these farmers was clearly demonstrated when they very graciously ‘donated’ water to the people of Cape Town and helped push Day Zero further back for the drought-stricken Cape Town (see Chapter one above).

The 2009 Management Committee members showed that of the 11 farmers represented on the 21-member committee nine were white commercial farmers. Thirteen of the total members were white (two females) and thus carried the majority (GWUA, 2009: 11). Although membership changed due to a variety of reasons, the GWUA still reflects and continues to reflect white and male domination and with the authority it sways pertaining to water within its jurisdiction, it places the white commercial farmers in a powerful position to continue protecting their own interests and being the gatekeepers to any other development or growth. This puts the question of transformation head-on on the agenda. The Constitution of the GWUA does not have transformation or redress as a strategic objective or function. The business plan refers to a transformation plan which merely states that it has the intention to increase the number of historically disadvantaged individuals (42.8%) on the current management committee to 52.4% by June 2010 (GWUA, 2009). It recognises transformation as a challenge within the broader scheme of water management and acknowledges the following impacting issues, namely the under-representation of race and gender, that specified water to be kept in reserve for allocation to emerging farmers and the limited resources and finances obstruct the GWUA’s ability to assist emerging farmers and other HDIs. (GWUA, 2009: 10).

The GWUA business plan specifically stated that its key focus was its primary functions of water use and water resource management and it seems as if no tangible plans were evident to address transformation. The business plan simply referenced its transformation agenda with phrases such as,

...encourages and supports joint ventures...to develop them as emerging farmers...avidly aware of responsibilities toward the HDIs...willing to take whatever steps (within the ambit of their primary duties) as may be necessary to render any required assistance...in-principle decision to obtain water use entitlements, as and when they become available (GWUA, 2009: 13).

Transformation is thus not a priority as a tangible commitment. Hence the *status quo* benefitting and promoting the interests of the white majority of farmers in the area is seemingly retained with impunity.

7.6 The municipalities

The primary site, the Pietercielieskloof agricultural area, falls in the Cape Agulhas municipal area whereas the secondary site in the jurisdiction of the GWUA is in the Theewaterskloof municipal area in the Western Cape (see Figure 12 below).

Figure 12: Catchments and local municipalities in the Breede Overberg Water Management Area



Source: BOCMA (2012)

The Integrated Development Plan (IDP) is the main planning tool of a municipality and is aligned with the provincial and national development agendas and strategic plans. It is a five-year strategic plan and all municipal decisions should be based on the IDP.

7.4.2 Spanjaardskloof Inwoners Vereniging (SIV)

The Spanjaardskloof Inwoners Vereniging⁴⁴ (SIV) is a non-profit organisation⁴⁵ registered in 2007 with the Department of Social Development. The objectives of the SIV are to facilitate communication and cooperation amongst members, work with state and other organisations to improve the SIV, manage funding for related projects and facilitate concerns and challenges of members with the relevant authorities (Spanjaardskloof Inwoners Vereniging, 2014). Membership is open to all residents and property owners in the Pietercieliesrivier area. All members have an ordinary vote regarding the SIV matters with an ordinary majority carrying any resolution (Spanjaardskloof Inwoners Vereniging, 2014). In 2015 the membership was 29 of which 12 were partners from the same farm. At an SIV meeting that the researcher attended in June 2014 it was clear that social and economic matters affecting the community from building a bus shelter for school children to clearing rivers and other community hazards were SIV related concerns. A member noted that,

My reason for joining is neighbourliness and to know what's going on in the area and so that we can pull together as a team if there's a problem, a fire, a flood. We organised that the children in the area had bus shelters to stand under when they were waiting for the bus in the morning. Community-orientated stuff (White farmer, Participant 10, 2016).

The SIV also applied through the Department of Agriculture for the construction of a dam but the process seemed to be cumbersome and slow:

The Spanjaardskloof Inwoners Vereniging applied for a dam to be built to service all farmers. The SIV first applied for the dam in 2007 and engineers and various experts were appointed but then the process just stopped. This may be due to staff changes at the department. No continuity existed to see the application through. Apparently the application is enjoying attention again (SIV chairperson, Participant 28, 2016).

⁴⁴ English literal translation: 'Spanjaardskloof Residents' Association'.

⁴⁵ All the information pertaining to the SIV was gained from interviews and documents shared by the current chairperson of the SIV.

The SIV is represented at the Cape Agulhas Municipality Ward Committee level through the current SIV chairperson being a Municipal Ward Committee member (Cape Agulhas Municipality, 2017). These Ward Committees,

...are the communication channels between the Municipality and the community. Although they are not political structures, they are coupled to the term of office of the Municipal Council. Ward Committees are elected on a sector basis which may include geographic sectors. The diversity of sectors within wards results in the composition of the different Ward Committees differing from ward to ward (Cape Agulhas Municipality, 2017:83).

7.6.1 Cape Agulhas Local Municipality

The Cape Agulhas Local Municipality is in the Overberg District of the Western Cape Province and is the southernmost municipality in Africa. It borders the Overstrand, Theewaterskloof and Swellendam Municipalities. Bredasdorp is the economic centre of the municipal area and is also the administrative heart of the region (Cape Agulhas Municipality, 2017). With about 6 500 people, about 73% of the population are classified as ‘coloured’ and 10% as ‘black African’, with the rest being white’ (RSA, 2011)⁴⁶. It has 6 wards of which Elim and Spanjaardskloof⁴⁷ fall in ward 1 (Cape Agulhas Municipality, 2017). By implication, Pietercielieskloof falls in the same ward but is seemingly insignificant and not specifically identified in the report as a settlement.

The municipality reported that just over half of the population earn between R0 - R1 600 per month and more than half of households earn less than R3 200 per month and fall in the poverty category which has many social implications. Ward 2 has the leading poverty level trailed by wards 1 and 5 (Cape Agulhas Municipality, 2014: 35).

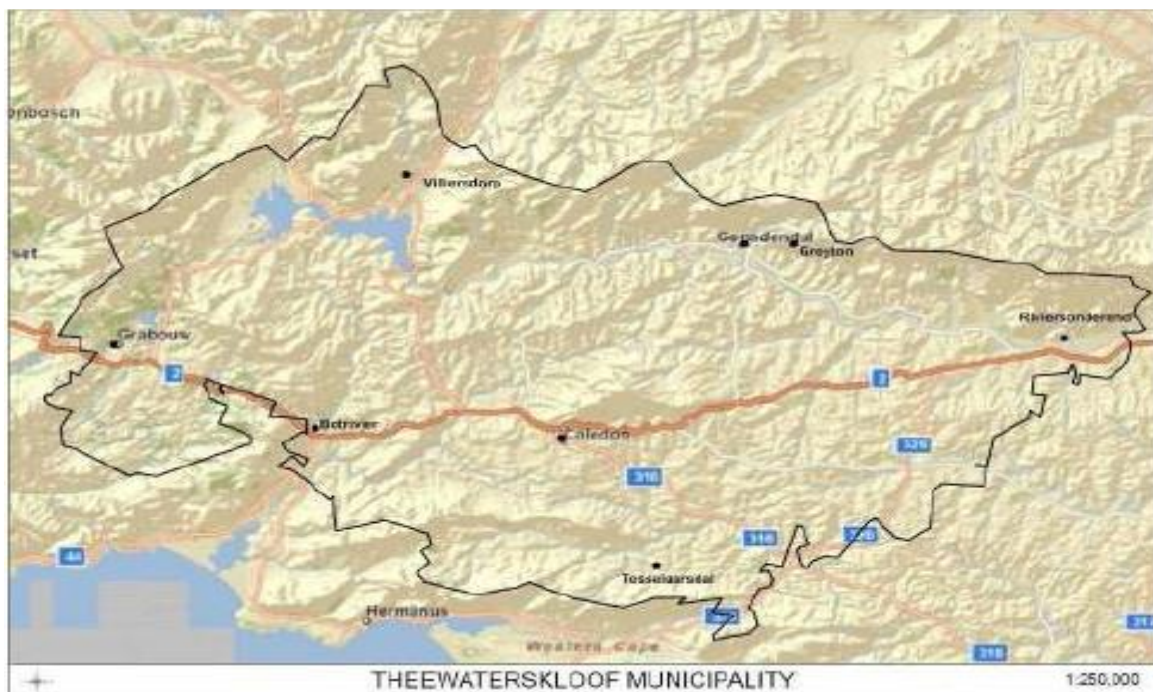
⁴⁶ See footnote 8 above.

⁴⁷ The official demarcation refers to the area as Spanjaardskloof but the inhabitants had always known it as Pietercielieskloof. When the researcher was first introduced to the area, the inhabitants introduced it as Pietercielieskloof and to avoid confusion, the research area is referred to as Pietercielieskloof.

7.6.2 Theewaterskloof Municipality

The secondary site in the jurisdiction of the GWUA is in Grabouw, the heart of the Elgin Valley in the Theewaterskloof municipal area (see Figure 13 below). The municipality is the biggest local authority in the Overberg District and at 42% of the total district population, is the most crowded in the Overberg District (Theewaterskloof Municipality, 2013).

Figure 13: Theewaterskloof area map



Source: Theewaterskloof Municipality (2017:174)

It is also the chief economic area with agriculture and related producing industries the main economic contributors (Theewaterskloof Municipality, 2013). This municipality,

Theewaterskloof, comprised the largest share (36 percent or R4.7 billion) of the District's GDP of R13.3 billion in 2013, making it the largest economy in the district, followed by Overstrand (34 percent; R4.6 billion), Cape Agulhas (17 percent; R2.3 billion) and Swellendam (13 percent; 1.7 billion). The Theewaterskloof municipal area experienced average year-on-year growth of 3.6 percent from 2005-2013, is on par with the Province's growth rate over this

period. Theewaterskloof is the slowest growing municipality in the district (Theewaterskloof Municipality, 2017: 22).

Economic growth slowed down due to agriculture's poor performance brought about due to persistent drought conditions. Agriculture contributes approximately 50% of the economy in the region. "Agriculture is likely to continue to shed jobs with estimates of a possible further 3 000 jobs lost in the sector over the next ten years" (Theewaterskloof Municipality, 2017:42). It has 13 wards with Grabouw in Wards 8-13. The white racial group dropped from 10 540 in 2001 to 10 173 in 2011 while all other races increased (Theewaterskloof Municipality, 2017: 18). The GWUA donated water to the City of Cape Town from the Palmiet River Catchment Management plan with the municipality being responsible for the maintenance plan and the water licence (Theewaterskloof Municipality, 2017: 96).

7.7 Department of Agriculture and related entities

Many farmers identify with the Department of Agriculture, Forestry and Fisheries (DAFF) and interact and engage with it for funding and agriculture-related concerns and challenges:

But our biggest role player is actually agriculture because that is where we get our funding from. Agriculture is a very big player and we must stay in their good books otherwise we do not have a door to go through (BEF, Participant 24, 2014).

Several farmers also 'discover' the water-related prescripts when they approach the DAFF:

I applied to the Department of Agriculture and they asked me about my water use. The process started with Agriculture and they directed us to the Water Department. We pushed Agriculture to let BOCMA see the seriousness of this. BOCMA came and brought the forms and met with everyone. (BEF, Participant 22, 2016).

The DAFF's main purposes are: to provide effective and efficient leadership, governance and administration of department, increasing production and productivity in the agriculture, forestry and fisheries sector, to enhance employment and economic growth, provide an enabling environment for food security and sector transformation... (RSA, 2017:1). It has provincial departments across the country with the Western Cape Department of Agriculture's administrative head office in Elsenburg near Stellenbosch. The Western Cape Department of Agriculture renders

support and development services to farmers and workers in the region but also conducts relevant research.

A leading implementing partner of the DAFF is the Cape Agency for Sustainable Integrated Development in Rural Areas (CASIDRA) (Western Cape Government, 2018a). The mission of the agency is to,

...maximise agricultural and economic development opportunities in rural communities through project management excellence (Western Cape Government, 2018a:10).

It provides services chiefly to the Western Cape Department of Agriculture but also extends to the private sector and other government entities. CASIDRA is further tasked with the execution of the Comprehensive Agricultural Support Programme (CASP) for the Western Cape Department of Agriculture (Western Cape Government, 2018a). CASP was launched in 2004 (DoA, 2004) with the objective of safeguarding access of agricultural assistance and service provision to recipients of land reform, HDIs and other vulnerable people in agriculture. CASP has a substantial budget and in the 2016/2017 financial year,

...R1,148 billion...directly support(ed) farmers with infrastructure, production inputs, training and capacity-building that includes the South African Good Agricultural Practices certification (RSA, 2017: 2).

Another significant entity in the agricultural sphere is Agri-South Africa (AgriSA) established in 1904 as the South African Agricultural Union (RSA, 2017). It aims to “promote the development, profitability, stability and sustainability of agriculture in South Africa by means of its involvement and input on national and international policy and the implementation thereof” (RSA, 2017, 4). This constituency is a powerful role player in the agricultural sector and during the Western Cape’s Day Zero threat wielded considerable power to decision-making processes to address a dire situation. The National African Farmers’ Union (NAFU) of South Africa is another constituency in the sector operating at national level. The Union focuses mainly on black farmers and their related interests. It continues to lobby for access to critical resources such as land, credit, information, extension and other support services. However, NAFU also played and continues to play a role in building the capacity and strength of its membership through the use of effective

communication systems, training, improving management skills and exposing farming to the latest and most up-to-date production technique (RSA, 2017, 4).

7.8 Conclusion

As illustrated above, the two sites are very diverse in terms of composition and management. This chapter juxtaposed these two sites and within the sites also compared the experiences of the commercial farmers to the emerging farmers when accessing water for productive use. The next chapter maps the voices of those implementing and those impacted by the process as they attempt to access or retain the access of their water use. It relates whether and how the farmers and especially the emerging farmers' destiny to water use was dictated to by their own circumstances and how the influence of external factors such as bureaucracy, power relations and the complexity of law affected their efforts to retain or obtain permission to water use.

CHAPTER 8: MAPPING THE CHAOS: THE WATER USE LICENSING BUSINESS PROCESSES

8.1 Introduction

Institutions are the vehicles to drive effective implementation and any policies or regulations are reliant on sound implementing institutions to have any real impact. The Department of Water and Sanitation (DWS) and the Catchment Management Agency (CMA) are these vehicles in the study area and at the helm are staff, amongst others the frontline staff, mandated to implement the water use business application process. This chapter maps the bureaucratic interaction with the water use processes and the influence of the bureaucracy's understanding, reconstruction and application of the legal and institutional framework. Four notable trends were laid bare, namely complexity and uncertainty of interpretation and application; knowledge and skills challenges; frustration fulfilling the mandate; and transformation concerns.

8.2 The implementation reality – an impression

Where CMAs were established and operational the DWS failed to have full confidence in its ability to carry out its mandate of subsidiarity. In 2016, after the Minister devolved authority to the CMA to issue water use licences as envisaged by Chapter 6 of the NWA, she withdrew the CMA's water use authority without warning and explanation after a mere 150 days. A senior BGCMA manager expressed the frustration:

The regional office cannot sign anything anymore. It's all taken up...Licences, which were signed, small licences, the Director General has to sign everything. I believe now it's directed to the Deputy Director General. If I write a letter and I know you're going to scratch out a lot of things anywhere because you want your style, then I'm not going to write it a hundred percent, because you're going to change it anyway. That's the culture that's now there. The work goes to a higher level and that delays it because there are more queries. If you want to accelerate and improve service delivery of the state, then I shall say that the powers must be brought back to where the function is performed (Leading Official, Participant 20, 2016).

Similar sentiments regarding the devolution of authority to local level were echoed by others:

If they give that delegations down, then the regional office, but definitely the CMA, will still have their respective specialists to look to it, but they will have their meeting and they will maybe do it a bit better, because they know that next Tuesday's meeting is now final. There's not a Head Office that's going to look after everything again. It can be better, more effective, even better. Yes, devolving it down will help (Consultant/Expert, Participant 23, 2016).

The Minister did not take the CMA into her trust and provided no reasons for the withdrawal of authority. This senior official of the BGCMA related this seemingly random, unexpected and unexplained withdrawal of the authority:

I do not know the reason for the decision. It was never communicated...I am not comfortable with the situation but I must just continue with the new ways. I know that the board wrote a letter to enquire but to this day had not received any clarity. And then it was taken away and given to the DG. We must now refer it to the regional office and they must make a recommendation (Leading Official, Participant 20, 2016).

These CMAs were not given enough time or afforded an opportunity to apply themselves and this unexplained rapid Ministerial decision frustrated all stakeholders. By implication CMAs changed their operations to accommodate the devolution of authority and consequent to the withdrawal was required to change the *modus operandi* again. The chairperson of the BGCMA board noted that,

In order to excel in our service delivery record, the need has arisen for the BGCMA to receive more meaningful delegations and assignments. As the CMA model reaches its maturity level, I am indeed positive of the fact that we will eventually get there. It was therefore extremely heartening to receive a word from our Honourable Minister that the catchment management agencies provide the best way forward (BGCMA, 2017: 3).

Before 2015 no clearly defined procedures existed but for the legislation and related policies and this greatly contributed to implementation uncertainty. The administratively heavy water use process afforded bureaucrats discretion to implement policy and due to a variety of reasons amongst others ambiguity, implementation was challenging⁴⁸. Consequently, in 2015 draft regulations for water use applications were published for comment (DWS, 2015b) with the intent

⁴⁸ See Chapter 4 above.

to make the process more effective. Although in draft form these regulations were used in the interim as they offered clarity and guidance to the licence application process. These draft regulations were finally promulgated in 2017 (DWS, 2017e) and the expectation was that it would improve implementation.

The delayed finalisation of water use applications created unacceptable backlogs and all parties, i.e. applicants and institutions, were frustrated with this state of affairs. The process was additionally influenced by continued institutional power struggles which also shape the implementation process. These ingredients were a recipe for disaster as institutions and users or potential users alike are challenged to make sense of the intricate rapidly changing water resource management environment.

The DWS and the CMA are at the helm of implementation in the study area. To gain a complete understanding of the impact of the bureaucracy on access to water for users and specifically the black emerging farmer, the insights and experiences of staff, amongst others the frontline staff, mandated to implement the water use business application process, were crucial. In gaining a balanced view it was necessary to explore the inner-working of bureaucracy. It afforded an opportunity to gain an understanding of how the bureaucracy interacted with the institutional processes when handling water use applications. It further gave an insight into the impact of the bureaucracy's understanding, reconstruction and application of the legal and institutional framework. Gilson (2015) quoting Lipsky noted that it was necessary to,

locate the problems of street-level bureaucrats in the structure of their work, and attempt to identify conditions that would better support a reconstituted public sector dedicated to appropriate services and respect for clients (p.xix) (2015: 2).

It was essential to understand how frontline staff viewed and navigated the legislation and policy when dealing with the process of water allocation. The following is a depiction of staff's insights and experience and they navigated the relevant legislation and policies. Staff at the regional offices of the DWS and the BGCMA were interviewed and four notable trends were revealed, namely complexity and uncertainty of interpretation and application; knowledge and skills challenges; frustration fulfilling the mandate; and transformation concerns.

8.3 Complexity and uncertainty of interpretation and application

Water legislation and policy gives implementers considerable discretion. No guidelines existed before 2015 to facilitate the interpretation of said legislation and policy by the CMA and officials at the DWS regional office. As discussed in Chapter 4, policy-makers did not provide the finer detail in the policy design and thus implementers (or street-level bureaucrats) were left to determine what policy means in their day-to-day practice (Hill, 2003). A local CMA senior official expressed frustration with the legislative framework:

The NWA on its own is not easy to understand. The Act is not specific. Policy is there but it sometimes depends on individual interpretation. The Act is the main instrument. Remember I'm not a lawyer, we should be using guidelines, there is room for interpretation and that is how I proceed (Official, Participant 19, 2015).

The same official went further and lamented that, "Interpretation of legislation and policy create uncertainty. We must find a way of interpreting what's being said" (Official, Participant 19, 2015).

This uncertainty and lack of clear guidelines led these street-level bureaucrats to "know multiple ways to implement a policy and (*they*) must choose among them" (Hill, 2003: 268). A senior DWS official with more than twenty years' experience expressed his resolve to interpret the NWA by commenting that,

...the moment you write it on paper it becomes easy for persons to criticise it and query your interpretation. But so what? This is my interpretation (Senior Official, Participant 13, 2016).

The same senior DWS official explained that,

...if we evaluate a licence, certain parts are clear in the Act. However, some parts must be evaluated but the Act does not inform us of the process to follow to evaluate the licence. Thus we do what we want (Senior Official, Participant 13, 2016).

Another CMA official involved with the processing of water use licence applications articulated the engagement with the legislative framework and lamented the uncertainty, stating that,

I think that we don't know our rules. It's not clear. I think the rules have not been clearly set out. People say different things, people have not been trained (Official, Participant 9, 2015).

This senior DWS official confirmed the difficulty with interpretation and that they were left to their own devices. She admitted that, at times, they interpreted and consequently made incorrect decisions. These mistakes were a direct consequence of the doubt when implementing the legislation and policy:

...interpretation of the legislation? It's your opinion. Well, you get the various different opinions, on one specific point... We made a few mistakes, I can guarantee you, and we had made a few mistakes. We've had a few comebacks... but what we've learned is that, as we made these mistakes, we tried to correct it along the line (Official, Participant 12, 2016).

One official stated that,

...we do not get guidance to how it's to be applied... we must find a way of interpreting what's being said and get more certainty (Official, Participant 19, 2015).

An expert who has more than thirty years' experience in the water sector and actively involved with the drafting of the NWA was scathing about the lack of knowledge and the weak leadership:

The Department failed because the top management does not know what is going on. Not one of them grew up through the ranks. They do not understand the principles of the Act. And I say that because I was there. I was Acting Chief Director and I sat in those meetings talking to the Minister and I was ashamed of them not knowing what they do (Consultant/Expert, Participant 29, 2015).

The prevailing uncertainty gave newly appointed senior staff almost *carte blanche* to change processes. This senior official stated that,

...at this stage we are falling around. No one knows what is really expected from them. Someone comes in and says, 'I am the new Licence Manager. This is now how you will do things from now'. And then everyone just does it without question (Senior Official, Participant 13, 2016).

This uncertainty existed in both the regional office of the DWS and the CMA and this inconsistent interpretation adversely impacted fair and equitable allocation of water use. A DWS Deputy Director realised that there were shortcomings and commented that,

...there should be a lot of changes happening still within the Department, the CMAs, in order to narrow the vacuum, so the users meet the Act in such a way that they complement each other. It'll make life so much easier. And, in the vacuum are finances, capacity and communication. If you sort those three out, communication like we're having now at the moment? I can tell you we'll live in an ideal world (Senior Official, Participant 12, 2016).

This inconsistent interpretation cut across different WMAs, as noted by an official:

They have been given a licence – a general authorisation – from Mpumalanga for the same activities. They said in other regions we've been given authorisation in other regions. So, it means we are not doing the same thing. We are not uniform (Official, Participant 19, 2015).

The official provided further insight into the confusion and diverse outcomes on the same provisions of the NWA in the different WMAs and this might be blamed on the lack of guidance and leadership at national level from the DWS:

Yes, because the person in Mpumalanga interpreted it in a different way. And I asked them to send me the authorisation they received from Mpumalanga. We looked at it... And really, the authorisation didn't make sense at all. How do you authorise septic tanks? So, you could see it's the way people interpret it, because it's about interpreting the Act, at the end of the day. Sometimes the Act says, this is twenty-one G of disposing of water or water containing waste which may be detrimental to the environment. You might say, 'No, this may not be detrimental to the environment, so it's not twenty-one G'. It's how we interpret it (Official, Participant 19, 2015).

Another senior official confirmed the discrepancy in interpretation but despite the uncertainty they attempted to find some informed understanding in order to finalise applications:

The biggest problem is that no process is contained in the legislation. The Act does not specify how the licence and evaluation be done. If you speak to people in the different regions, then everyone does it in his own way and differently. Everyone will be more or less in line because we all want to get to a point where we can finalise the licence application (Senior Official, Participant 13, 2016).

Bureaucrats bemoaned the obstacles impeding the effective performance of their duties and uncertainty pertaining to roles of the different role players in the water allocation process. They continued to carry out the mandate in this uncertain and difficult environment and it seemed to impact on the transformation agenda. A very senior official with more than thirty years' experience expressed her concern with the lack of clarity and the impact this had on transformation:

...we always interpret it to the side of redress to weigh the heaviest. We do not get legislative support. And then the applicants come to us and say, but what do you understand under redress? Then every official in the CMA, Water Affairs, Pretoria...will give different answers. Everyone does not have the same answer. If the legislation can be clearer on those things that are open-ended and indicate that this is what it should be, I think the process will be better (Leading Official, Participant 20, 2016).

The uncertainty and the lack of guidance exacerbated the implementation concerns, prolonged the authorisation process and by implication delayed transformation. However, when the draft regulations were first published, staff welcomed them as they offered some relief to their need for guidance. Staff expressed desperation but was still committed to carrying out the mandate, mentioning that,

Although the regulations are in draft form⁴⁹ we try and make sense thereof and use it. There is nothing else to use (Senior Official, Participant 13, 2016).

Staff realised that they needed assistance and relied on their own knowledge, skills, experience, insights and understandings and further sought guidance from within their own ranks and their professional and work networks to make sense of the mandate. Street-level bureaucrats devised ways to deal with the short-comings in their arsenal. They forged relationships and relied on colleagues to guide the exercise of their discretion:

In the horizontal dimension they have co-workers in their departments – some of them colleagues with the same vocation – with whom they can consult. They may maintain contact

⁴⁹ This was a sentiment expressed at the time of interview when the regulations were still in draft form.

with peers (working in ‘neighbour’ organisations) about the treatment of clients or patients. Those peers may be both members of their own profession or members of other professions. Professionals working at the street-level have organised themselves in vocational associations, in varying degrees of institutionalization, and with different external consequences (Hupe and Hill, 2007: 285).

However, the uncertainty prevailed. An official related that,

Interpretation of legislation is about litigation. Our interpretation is the reality. If person who deals with the application does not understand then he will ask others in the office. It is about experience. I am not a legal person (Official, Participant 19, 2015).

The regional office of the DWS realised this and drew on each other’s strengths, insights and experiences to make sense of the NWA and how to implement it. They convened on a weekly basis where,

...we’ll discuss the work...we call it brown-bagging...We will have the legislation right in front of us and we will discuss it...Even the administration person will try to understand it...The Civil guys, the specialists, the administrators, our legal guys or whatsoever, I mean the social guys as well, we’ll sit around one table in this very office...And then one person will say, ‘Last year this is what happened’ and he interpreted the Act in this manner. Is he right or wrong? If we can’t resolve it over a year, we will speak to a legal person (Participant 12, 2016).

Officials consulted widely in their own institutions and also outside to confirm the understanding of the provisions of the NWA. It prolonged the process as officials sought clarity consulting colleagues at the BGCMA, the manager at the CMA and personnel at the DWS regional office and also personnel in another DWS provincial office. The probe was whether an authorisation for water was required by the DWS:

It took me two months, but I told the person, ‘No, I cannot grant or confirm authorisation for this. It doesn’t trigger any authorisation’ (Participant19, 2015).

The assistance sought also verified interpretations and allayed uncertainty felt by staff:

...while we’re doing a duty over here, we also collaborate with our legal services or our specialists in Pretoria. In many cases they agree, cases they agree in terms of our viewpoint...For example, one specific case is that people interpret the policy of development

within five hundred meters of a wetland...legal opinions from various other departments in terms of how we've seen it...we gave our opinion and I think our legal team supported it. They were in favour in terms of how to view it and I think that gave us some sort of confidence to say no, we're on the right track (Participant 12, 2016).

At street-level officials relied on each other to deal with ambiguities but seemed not to get support from national office:

Because there is such a lot of uncertainty we work together amongst officials. If I struggled with a farmer after I had advised and consulted with them and the farmer still does not listen, I'll ask an official at regional office to intervene from a regulators point of view. The official will then support me and amongst us we work well together. But higher up in the hierarchy there are problems (Senior Official, Participant 5, 2016).

However, not everyone sought assistance and this might have had an adverse effect on water use outcome and delayed the process. This official noted that,

If you do not know what to do and you are not someone who will ask because you are too proud then it can prolong those processes (Official, Participant 9, 2015).

The institution also relied on external assistance to carry out its mandate as and when required. This uncertainty often led to the CMA having to commission external expertise at significant expense. The uncertainty ran deep and external input was sought even when it was unnecessary:

They (the CMA) get the consultant. And no-one knows exactly about this, because some they will say, 'No, if the impact is not that much, you don't need a report' and the other ones say, 'we always need a report'. So you don't know which one is which (Official, Participant 19, 2015).

The insight of an official with more than thirty years' experience corroborated how the institutional lack of knowledge and understanding of the complexity of water might lead to gratuitous contracting of consultants and by implication incurring avoidable costly expenses. He noted that,

The consultant will do what you tell him to do. However, you will not know what to tell him because you do not have knowledge of the problem (Senior Official, Participant 30, 2016).

However, a senior official argued that the services of consultants were necessary when specialised skills were needed for focused projects. He stated that,

...the reason is that specialised knowledge may be needed over a short period. To develop people and capacity for this purpose does not make sense. What will happen to the capacity thereafter? We appointed consultants for the verification and the process to drive the catchment management strategy (Leading Official, Participant 20, 2016).

An official with more than thirty years' experience was very critical of the motivation and role of consultants. He lambasted the use of consultants, stating that,

...the problem is not the water. The persons who know about water and how it works are outside of the state. If you want appoint a consultant to allocate water fairly you will not find one. The consultant will do what you tell him to do. However, you will not know what to tell him because you do not have knowledge of the problem (Senior Official, Participant 30, 2016).

He continued questioning consultants' sincerity to follow a fair and reasonable process since they had vested interests. He enquired, "How can a consultant do a job for money? And be reasonable and fair? Explain that one to me" (Senior Official, Participant 30, 2016).

8.4 Capacity challenges

Hill (2003) noted that "...implementers might also recognise that they lack a skill or knowledge base needed to implement policy faithfully" (2003: 268). A senior official from the Department of Agriculture with more than thirty years' experience offered this insight into effective implementation:

It does not depend on who or what the structure is. A structure can only be effective if people in the structure have two things. Are they authorised to make a decision? And do they have the knowledge to make the decision? If one of the two is missing, then they are useless. And you can only take a decision with confidence that is reasonable and fair if you have adequate knowledge (Senior Official, Participant 30, 2015).

He went further and had little confidence in the ability of the water institutions. He said that,

We work more through Breede Gouritz CMA. This is the agent for Water Affairs. And I think that things are starting to be better but the one big problem is the lack of knowledge because all the people are new; in both Water Affairs and Breede Gouritz. You have a number of people who retired who had the knowledge... and they have now left and there is a vacuum. And this is a big problem (Senior Official, Participant 30, 2015).

This sentiment resonated with a Deputy Director of DWS who felt that the Act was not the problem, but implementing institutions fell short and thus an implementation vacuum existed:

I know what the Act guides me to do. The Act in my eyes is one of the best Acts in the world. We've got great citizens as well. But there's like a loophole, there's like a vacuum between the two. Can't we narrow the vacuum? How do we narrow the vacuum? In the vacuum are finances, capacity and communication. If you sort those three out, communication like we're having now at the moment? I can tell you we'll live in an ideal world (Participant 12, 2016).

Staff at the CMA realised that the NWA and related policy were difficult to interpret and thus to implement as articulated by this street-level bureaucrat, averring that,

...rules are not clear – they say different things. People have not been trained and it's training that we need (Official, Participant 19, 2015).

The same bureaucrat identified the inability to deal with the demands of the job:

We don't have dedicated staff for licences. It is a matter of prioritising as there are more urgent matters...A case file just lands on your desk and whatever it is you'll have to do it, process it (Official, Participant 19, 2015).

Another official confirmed this assessment and added that having to perform outside of their own abilities further delayed processes.

You need to know everything. There is no one else to do it. You need to find the answer if something comes across your desk. This contributes to delaying the processes. If I am told internally to do water use licence then I must leave everything else as this enjoys priority (Official, Participant 27, 2015).

He added that,

I was extremely frustrated as I was not getting results. I had to find ways to interpret what was being said in the policy. Then thereafter I got no reason why it was not working (Official, Participant 27, 2015).

The lack of skills and experience seems to permeate across different levels in the bureaucracy. This official at local level observed that,

There are many people, especially in high positions, who do not have the necessary experience to do that work. And you find it a lot. It may prolong the process if you do not know what to do (Official, Participant 9, 2015).

Another official also expressed concern about the capacity of higher level staff.

The application would go to Head Office, Pretoria and there we encountered problems with the application. We did not have insight into their comments and we thought it was Head Office who had problems. Eventually we persuaded them to come and meet with us. We found that the problem was with the Regional Head and Director. We deduced that the Regional Head and the Province were not sure what to do and we were not confident in their knowledge (Official, Participant 27, 2015).

The acknowledgement of the incompetence and incapacity and that staff was not necessarily trained for specialist tasks of water use authorisation, is welcomed as staff appreciate this shortcoming in implementation. This lack of capacity might be ascribed to the poor record keeping of institutional knowledge and exacerbated by the exodus of skills and knowledge of experienced personnel who either retired or moved to greener pastures. A senior official noted that,

They left the Department and took with them all the knowledge. Not many of the processes are written up. One of the biggest problems in the Department is that the processes are not documented (Senior Official, Participant 13, 2016).

The official shared this illustration of the weak documentation and related that,

More than five years ago I started the Licence Unit. My first task was to walk from office to office to find licence applications amongst documents and papers. What happened was that the people who worked at that office left. The documents were also left behind and no knew what

to do with them. I went through the documents and I found licence applications of ten years ago (Senior Official, Participant 13, 2016).

He went further and explained how the department attempted to capture the institutional memory:

...knowledge management was identified as one of the problem areas so they tried knowledge harvesting. I do not agree with it. We had a person who had fifty years of service at the Department. The Department wanted to conduct an interview with him. How do you contain fifty years' experience into an hour-long interview? It's impossible (Senior Official, Participant 13, 2016).

This official corroborated this view and expressed frustration in having to find answers to fulfil the mandate.

When I came into this position (three years now) no one could tell me how to go about to assist EFs. I had to find out myself if a policy existed and figure out what was required. I did not know if the staff did not know or did not want to divulge the information. But they did not and I had to find my own way. I could not find people to say to do this or that. No one could tell you how to do it because there are a lot of problems with framework. Our struggle is still ongoing because the policy is outdated (Official, Participant 27, 2015).

The capacity was not necessarily replaced. A Deputy Director suggested that,

...with the budget constraints we didn't appoint people over here lately. So that's a huge challenge for the Department at the moment. It's capacity. I know we've preached it since back in the days, but it's still an issue. It doesn't matter how you look at it, it's still an issue (Leading Official, Participant 12, 2016).

This capacity void, coupled with the poor record keeping and unclear processes made fertile ground for inconsistent and delayed implementation. The lack of knowledge and skills also stemmed from staff being 'forced' to take on responsibilities outside of their portfolio or formal training. They diversified when the job demanded it, in order to carry out the mandate of the institution and this contributed to further delays as staff had to 'find' answers in an unfamiliar domain. An official noted her experience:

I am trained in water quality and was strictly in water quality only. But when I came to work here, at Breede Gouritz, I did not only deal with water quality but had to deal with water use also. I had to develop myself in those aspects of the job. For example, I had to develop myself on dams (Official, Participant 9, 2015).

Another official was in the employ of the Department for more than twenty years. He related that,

I had 'travelled' in the Department. If you worked at Water Affairs then you grow from the one job to the next one. So you know something about everything. So there was never one specific job but my formal qualification is in engineering (Senior Official, Participant 13, 2016).

Yet another senior official shared her journey and noted that,

My formal training is in Civil (engineering). But they put me in all various aspects from Human Resources to Information Technology. Just to get exposure in terms of what they're doing. I was from Compliance and Enforcement. So, I got some sort of a legal background in terms of the Act. I've just been exposed to all of that. However, getting new people on board and just throwing them in at the deep end, it's selfish, from any manager (Leading Official, Participant 12, 2016).

The department had a very structured, dedicated training programme and although it still offered various training programmes, it is not as focused:

...the Department was a very good training department. It trained civil engineers, technicians and the like. There was a standard programme and if completed the person would be qualified to operate in the field. Unfortunately, it is not done anymore (Senior Official, Participant 13, 2016).

Another official shared this insight but expressed concern about the relevance thereof where the work setting was not conducive to using the training and noted that,

...the training is good but if the office environment is such that it cannot help you to implement it then I do not know if training really helps (Official, Participant 27, 2015).

As indicated above, staff at the regional office attempted to learn from each other as they continue to carry out the DWS's mandate.

Irrespective of this fissure in their armour, the bureaucracy was at the helm of policy implementation and had no choice but to make sense of an ever-changing uncertain terrain. The bureaucrats continued to pursue policy objectives and devise strategies to address shortcomings in knowledge and skills:

...according to Brehm and Gates (1999) bureaucrats ‘work’ in accordance with policy objectives – rather than ‘shirk’ or ‘sabotage’ these objectives – not because they are controlled by superiors but because they individually share these objectives and because these values are shared and reinforced by their colleagues. Similarly, in a study on the delivery of social welfare programs Sandfort (2000) finds that front-line staff develops shared knowledge and collective beliefs from their day-to-day experiences, and that these schemas have important implications for how work is carried out (Winter, 2002: 7).

The voices of these stakeholders were revealing and informative but at the same time disquieting. It underscored the delays and frustration the uncertainty with the interpretation of the legislation and policy created. Clear guidance was not readily available and participants relied on their own experiences and knowledge and their wider network to resolve matters.

8.5 Frustration fulfilling the mandate

From the above exposition it was clear that the implementation framework was complex and implementers lacked the capacity to effectively execute their mandate. This indeterminate rapidly changing space where clear guidelines or guidance was not freely available, opened and created an environment for frustration and non-implementation.

The frustration of the rapidly changing environment was experienced by the CMA when the Minister withdrew the delegated authority to issue licences after a mere 150 days. It was withdrawn overnight, without warning and explanation. Staff regarded the reluctance to devolve authority as counter productive:

Staff at local level are needed to perform at this level. This will ensure that it is done more successfully than doing it via remote control. Service delivery is more effective if it is done by someone who is there where it is needed. It will be done better at local level (Leading Official, Participant 20, 2016)

The researcher had an interview appointment at the CMA offices on the morning when the news broke that the CMA's authority was withdrawn. Three senior officials discussed this and the implications thereof in the researcher's presence. It was evident that they were visibly dismayed about the withdrawal, the unexpectedness thereof and the lead time given to change their institutional arrangements. This was telling as they lamented their helplessness and seeming powerlessness in the face of the 'onslaught' by the Minister on their role and status in the whole scheme of business. They also realised that they were faced with the responsibility of going back to their constituents and informing them of this radical change and convincing the already disillusioned stakeholders that the CMA did have the ability and competence and knew its role and responsibilities to effectively carry out its mandate. Although the CMA continued to carry out its mandate, this situation could certainly not convince and instill confidence in the ability of the institution. This forced the CMA to rearrange its institutional operations and left officials at local level red-faced having to explain to applicants the reason for this changed process and inevitably prolonging the finalisation of applications.

The following response illustrated the uncertainty and confusion regarding national leadership and direction:

We had authorisation to issue licenses for 150 days and then it was withdrawn. We do not know why we were not consulted and were never told why. Now we must explain why the applications will not be ready on the date as we've promised. This is frustrating (Leading Official, Participant 20, 2016).

A senior manager expressed frustration at the rapidly changing implementation framework:

It stays a struggle. You come to know certain processes and then it changes again. It is a matter of adapting, and then renewed training and working with someone who understands how this type of thing works. Certain parts of the sector improve but other parts stay the same or are even worse due to these challenges (Leading Official, Participant 20, 2016).

These street-level bureaucrats are at the coalface and have intimate insights into the working of the implementation framework but their contributions into policy reviews, although requested, were perceived not to be valued by the DWS:

We had endless meetings on the policy review and gave comprehensive input. However, when the review process was gazetted it did not contain any of our inputs. I do not trust the process. It was a hoax. The changes were exactly what we said should not be, such as the WUAs (Senior Official, Participant 5, 2016).

This insight also alluded to the distrust between the institutions and affected the morale of staff. The official continued and said that,

If the top structures make it difficult for the official, the official can do one of two things – either decide to give up or just push on. It depends on the official and the circumstances at that moment (Senior Official, Participant 5, 2016)

A senior official at the BGCMA-level shared the frustration and misgiving:

You give the water user what is necessary for the licence application, as you think is right in terms of the policy. And the person applies accordingly. But because we are merely a conduit in the big process the next step may say no; no, you advised incorrectly. Go back to the water user (Leading Official, Participant 20, 2016).

This official noted her dissatisfaction with the lack of communication from Head Office which left applicants with the impression that staff at local level was incompetent.

It's very frustrating. The applicant looks to you and it's as if you're not doing your job? The applicant understands that because now he doesn't talk to me but talks to them directly to find out what is happening. I didn't know, because we were told that we may not contact the DG if there's a problem with the client. We must just wait (Official, Participant 19, 2015).

The lack of knowledge and record keeping and having to rely on others to fulfil the mandate contributed to the frustration:

If you do not know, you ask your colleagues. You just have to rely on them and their knowledge to get the application processed. There is no record keeping. This is frustrating (Official, Participant 19, 2015).

These professionals as street-level bureaucrats fulfilled their mandates applying and sharing skills and knowledge and did not merely fulfil their mandates mechanically. As street-level bureaucrats they contributed their professional skills but also their unique insights and experiences at the

coalface and this impacted on policy-making. These street-level bureaucrats became creative as they attempted to fulfil their job demands. This official was resourceful as he exercised his discretion in dealing with a water use authorisation application:

I had to choose one person there because it must go to one person not two people, although they're husband and wife. Then it counted in her favour because she's a black woman...it needs to redress the results of past racial and gender discrimination. Then my motivation was that the farm is a hundred percent black-owned, by the historically disadvantaged individual (Official, Participant 19, 2015).

Another official noted that before the DWS adopted the water management registration system, WARMS, uncertainty prevailed and they just proceeded with water allocation:

...it was a struggle because the water was not validated. People registered the water but it was a thumb suck. It could be 50% or 90% true...This was the only way one could work (Official, Participant 9, 2015).

These responses support Lipsky's theory that street-level bureaucrats interpret instructions and deal with overlapping and contradictory directives to deliver their mandate.

A Deputy Director was concerned that an already fragile environment was further weakened by staff job insecurity due to the changed institutional arrangements:

There's even more uncertainty because quite a few of us are going to join Berg-Olifants Proto-CMA and we don't actually have a choice' (Senior Official, Participant 8, 2016).

This uncertainty and frustration was felt at senior CMA level. This senior official expressed concern with the sudden, unexpected and unexplained withdrawal of water use authorisation by the Minister:

I do not know the reason for the decision. It was never communicated. The processes became slower and it brought uncertainty to the officials who work here. It brought even more uncertainty for the public...I am not comfortable with the situation but I must just continue with the new ways. I know that the board wrote a letter to enquire but to this day had not received any clarity (Leading Official, Participant 20, 2016).

The blurring of roles in the bureaucratic process contributed to the frustration felt by staff and it contributed to the delay in water allocation. This senior CMA official noted that,

The roles are not clarified and I think that the roles between the head office and the regional office should be clarified. The approval of the licence is operational and the regulations thereof mean the Department should check that the CMA had followed the right processes in the context of the policies. However, the Department sees the signing of the licence as regulation (Leading Official, Participant 20, 2016).

A Deputy Director confirmed that the Department has a regulatory role and agreed that the role confusion between the regional and head office was problematic and further delayed processes:

(the) ... function is split between regional and national office. But where my functions start and end is not clearly defined. There should be a work process flow and that should be for each and every function. They're duplicating work as well and they are doing work that they're not supposed to do. In the Department there are directors with split functions. They do not have the capacity and then do more than what they are supposed to do. The Department might have a problem because they don't have the capacity to do more and that's going to be a hiccup (Leading Official, Participant 12, 2016).

However, those who performed their function at CMA level held strong views regarding institutions and their roles and status. They justified the value the institution added at local level and argued that the CMA was closer to the level of service provision. Hence it impacted positively on service delivery:

The difference between the CMA and Water Affairs is the connection the CMA has with the stakeholders. The CMA knows what is going on in the area. There are no struggles with different people of different departments. Stakeholders know who to call in which area and the contact makes a huge difference (Senior Official, Participant 6, 2015).

This senior official defended their existence and was certain that the CMA and the Department clearly delineated mandates and there was no need for confrontation:

The CMAs are doing the work at local level but are regulated by the DWS. Their functions had been delegated by the Minister and the DWS does its own thing. They don't do water resource management in this area. It is only certain functions we perform and we are not taking over the functions of the DWS (Senior Official, Participant 6, 2015).

This conflict between the CMA and the Department found expression in the explanation by this senior CMA official:

The work is the same but our identity is different. Our end product is the same but the CMA has more resources. We are localised and we can do things faster. The intent of the legislation was not that we be in competition with the Department but that the functions of the Department are given to the CMA (Leading Official, Participant 20, 2016).

These officials also expressed their discontent with the influence of the DWS on the outcome of water use application as it unnecessarily protracted the process:

An application goes back and forth, three or four times after it had already been discussed extensively at the CMA. This can take about a year. Some of my licences are three years old due to this. To illustrate, one of applications eventually landed in Pretoria and then they asked a simple question about the BEE status as the application was so old. I went back to the applicant for the information and he told me to withdraw the application. This was a big BEE project and it was 50% BEE compliant. I do not know whether this applicant continued unlawfully or sold the farm (Senior Official, Participant 5, 2016).

I think at this stage the biggest problem is the time it takes for the licence application to go from Regional office to Head office and back. It must be signed off by the Director General at Head office who may not always be available. It can take at least three months to get it back (Senior Official, Participant 13, 2016).

The sentiments reflected the uncertainty of the CMA status. The same official expressed serious concern about the continued existence of the CMAs:

Everyone at the CMA would want it to stay. We promote the CMA and try to engage Pretoria and the Minister. However, we think that there is a big ongoing fight regarding CMAs. Whether it is one CMA under the auspices of the Department or nine CMAs with different boards we do not know what the outcome will be (Leading Official, Participant 20, 2016).

This affirmed the prevailing environment of institutional uncertainty and could not instill confidence and trust in effective governance. This instability directly contradicted good water governance which,

...requires predictability, participation, transparency, equity, accountability, coherence, responsiveness, and integrated and ethical decision-making (DWA, 2013b: 15).

However, the confusion of roles was not just perceived between the CMA and the Department but also within the institution. The following insight by a Deputy Director at the Department reflected this uncertainty and instability. This would certainly have a negative impact on the effectiveness of service delivery:

I can't give you an organogram because it changes every day... And then we have Directorates. We've got a Director...Every day it changes (Senior Official, Participant 8, 2016).

She lamented the revolving door of Ministers and Directors-General in the Department and the impact thereof on service delivery. The leadership instability in the Department and the change happened so often that she could not keep track of the current leadership. She realised that these regular changes of the guard were disastrous for implementation:

I've been here for six-and-a-half years. And in my time, I've had three Ministers. We've never had a DG for the full duration of office. The DG in Water and Sanitation/Water Affairs is a poisoned chalice (Senior Official, Participant 8, 2016).

Another official also referred to the continuous change in Minister as weakening the ability of the Department to provide stable direction and implement the legislative and policy framework effectively:

CMAs have not been established yet, because it is more complicated than they thought it would be. At one stage there was a Minister every year, all with different ideas. So this time around, she is very positive about CMAs (Senior Official, Participant 6, 2015).

This expert with more than thirty years' experience in the bureaucracy and as a consultant expressed concern with the quality of the leadership and the influence of politics on effective service delivery:

We do not have effective leadership. The DG is for operational leadership and this is a problem that we seem to be having in many government departments. The politics gets mixed up with the actual administration and it should guide what happens administratively. We need to have

not just DGs coming in. There's a whole lot of corruption and it clouds this whole performance issue. We need to become a performance-driven government (Consultant/Expert, Participant 23, 2016).

This expert cautioned that,

...the beauty of our legislation is that it allows people rights, but there are responsibilities to go with that. It's very integrated, it's very costly. But now, we need to have, not just DGs coming in but we need to become a performance-driven government (Consultant/Expert, Participant 23, 2016).

This instability had an impact on the morale of staff and during an informal conversation at a WRC workshop in February 2018 a senior official commented that, 'We need leadership who is competent, we can trust. We need certainty as the current situation impacts on implementation. We can't wait for the new Minister.' This unsolicited comment certainly speaks volumes of the frustration and morale of staff in this environment. However, at the same time this pointed to staff resilience and continued resolve to deliver the mandate of the job under extremely trying circumstances.

This uncertainty pertaining to the status of institutions at different levels, within the institutions and blurring of functions, could become very costly as proven in the case of Goede Wellington Boerdery (Pty) Ltd (Court Cases, 2011/2012). This case clearly illustrated this disconnect between the different roles of the institutions at the different levels and the consequences thereof. In 2006 the Regional Director of the Western Cape of the Department approved a water licence application by Goede Wellington Boerdery (Pty) Ltd. This application was reinforced by, amongst others, the Berg River Irrigation Board and the Department of Agriculture in the Western Cape Provincial Government. Two years later the national director of the DWAF rejected the licence application on the basis that it did not meet one of the S27 (1) criteria, namely "the need to redress the results of past racial and gender discrimination" (RSA, 1998b). The Supreme Court of Appeal⁵⁰ had to

⁵⁰ Court Case. 2012. Makhanya v Goede Wellington Boerdery (Pty) Ltd (230/12) [2012] ZASCA 205.

pronounce on the matter and found against the national director of the DWAF. This costly and unnecessary legal action could have been avoided if there was closer synergy between the different levels within the department.

This state of affairs certainly highlighted the delays and frustration this causes for all involved in the bureaucracy as they dealt with implementation. The problems cited resonated with Gilson (2015) who observed that,

Individual street-level bureaucrats are, therefore, not solely or even primarily to blame for the challenges the public experiences in accessing public services, as their behaviours are shaped by their broader work environment...Lipsky gave particular attention to resource constraints, workload pressures, policy ambiguities, bureaucratic efforts to exert greater control and relations with clients as structural influences over SLB behaviour. However, he also acknowledged a 'continuum of workplace experiences ranging from those that are deeply stressful and the processing of clients is under-resourced, to those that provide a reasonable balance between job requirements and successful practice (Lipsky, 2010: xviii, as cited by Gilson, 2015: 11).

It is clear that if the system did not work effectively it opened a space and created an environment for frustration and non-implementation. Ultimately the official would be forced to act and make choices between rules, situations and how to deal with these rules and situations (Hill, 2003). By implication these bureaucrats thus deviated from the intent of the legislation and policy as they carried out their mandate. This defeated the objective of transformation and the expectation of change, development and improvement for many farmers continued to be a struggle and elusive.

8.6 Contestation over Transformation

A key guiding principle of the NWA is equity in the protection, use, development, conservation, management and control of water resources and the Minister is charged with the achievement

thereof in accordance with the Constitutional mandate for water reform (RSA, 1998b: Chapter 2). The NWRS2 is unequivocal in its equity intent as it charged implementers,

...that special attention must be given to the needs of those that were historically denied access to water or to the economic benefits of water. Equity implies a concept of fairness, which allows for different practices in the management of water in response to different social, economic and environmental needs (DWAa, 2013: Chapter 3).

The DWA acknowledged that little substantive progress on the NWA pillar of equity was achieved since its promulgation, that is, the redress of race and gender water allocations for productive economic uses (DWAa, 2013: Chapter 6).

Why is it so difficult to achieve transformation? An expert with more than thirty years' experience in both the Department and the water sector working as a consultant in the region aptly noted that,

Water Affairs cannot do transformation. It's not them. It's not their sole job. You cannot do water allocation without land education (Consultant/Expert, Participant 29, 2016).

This senior official at the CMA acknowledged this interconnectness and linked the transformation of land to water. However, it is extremely concerning as this remark does not belong in a dispensation where the riparian water rights doctrine was abolished in favour of a public rights regime.

You cannot do water transformation without land transformation. You cannot do the one before the other. You need land to be able to use water. So it is automatic. If you apply successful land transformation, then water would be automatically on the land. It is not necessary to do water transformation (Leading Official, Participant 20, 2016).

The interconnectedness between land and water is undeniable but is it that simple? Bringing about transformation in a multi-layered complex implementation environment is no easy feat. It is more than just meeting equity targets. It is about the ability and power to influence decisions and be part of the decision-making. Stakeholder participation was meant to be the vehicle to bring about the substantive inclusive decision-making but,

the participation discourse draws attention away from the very real social and economic differences between people and the need for the redistribution of resources, entitlements, and opportunities (Wester *et al*, 2003: 798).

Consequently, this leads to participation being little more than token consultation, with no decision-making power in the hands of the people concerned (Wester and Bron, 1998). A senior official at local level referred to the transformation of IBs to WUAs. Water distribution takes place at this localised level and the board of a WUA should be representative of the diverse stakeholders to ensure agency of especially HDIs. He was very critical of how the Department managed this transition and effectively rendered the HDIs powerless:

There should have been money and a process to capacitate those new members of WUA. The decisions around water distribution were still made by those who have land and water. The Department would transform IBs, but they just changed the name. After one or two meetings, people don't have an interest in the water and would not come back. The Department should have made a plan but it just wanted to see the transformation immediately. It is not that easy to have so many changes at once. Instead, capacity building should be taken into account, giving people knowledge, skills to participate in the meetings (Senior Official, Participant 6, 2015).

This phenomenon was also observed at the GWUA. Although HDIs were part of the board they were 'absent' members. The chairperson related how he attended ward meetings of the town and how he eventually stayed away due to language barriers. Similarly, he realised that the GWUA meetings might not be inclusive to encourage participation. Initially he accepted that the mere presence of HDIs was sufficient to address participation but on deeper reflection questioned whether the meeting environment was conducive for HDIs to voice their concerns and be part of the substantive decision-making:

Yes, absolutely. They're not strong enough. I mean, you've raised a lot of issues in my mind now. I must perhaps dig into who these independent water users are and who these commercial BEE farmers' representatives are (GWUA Official, Participant 17, 2015).

Redress and what is meant by redress was further complicated by the lack of clear guidance as officials exercised their discretion when determining what is equitable. A senior official at the CMA observed that,

One cannot assume that every piece of land and every person's needs are the same. This makes licensing difficult. And I think that this is the reason why Water Affairs did not provide strict guidelines. A person cannot be told to be BEE⁵¹ level 4, 3 or 2. This is where our discretion lies. We have the country's guidelines as our objective. I can obviously not walk away from my responsibility (Senior Official, Participant 5, 2016).

The official's view also suggested that the discretion was tied to his professional obligation and not just the responsibility of the job. This speaks directly to the void in Lipsky's theory of the street-level bureaucrats and their self-imposed ethical ways as professionals when conducting themselves in their respective work environments.

Due to the complexity of interpretation, uncertainty prevailed:

There were lots of problems with transition. Difference of understanding of DWS officials on what transformation is and what they should look like. In our mind, we don't only consist of white farmers, but must encompass other stakeholders, emerging farmers, community and the municipality. Government didn't look further. If we have a WUA, how are we going to support the WUA, to make sure that all new members want to come to meetings and sit in board? (Senior Official, Participant 6, 2015).

This white official related his understanding and noted that a black official might have a different understanding given his or her personal background and different influences:

Equitable allocation to me means equal treatment between white and black but not equal treatment between rich and poor. I have to interpret what is meant by equal and to me it means that we must have the same chance. But the interpretation differs from official to official. If you have this same conversation with a black official, you will have a different answer. However, I believe that as long as we have different views and we can talk, transformation will not be a pipe dream (Senior Official, Participant 5, 2016).

⁵¹ Black Economic Empowerment (BEE) is a strategy to widen South Africa's economic base and fast-track growth, job creation and poverty eradication of black persons. The focus is on economic development and transformation of black persons generally.

A black Deputy Director at DWS was adamant that although transformation was not easy it was a high priority at the DWS. He was of the opinion that the equity schemes devised by commercial farmers were merely a ploy to acquire a bigger share of the water:

Equity's still a huge battle. Ten percent equity? Is that equity? No. A consultant, who previously worked for the Department, had a fight with me last week about his equity plan. I refused to accede to his equity proposal and he threatened to take us to the Minister. He claimed to give thirty percent of the land for equity purposes but he was trading thirty percent of land with water. I said I will be more than willing to take this matter to the Minister myself or to the DG. Don't use people as pawns! It's nothing more than slavery because when you want water, you use people to get to the water (Leading Official, Participant 12, 2016).

A senior white official similarly noted that,

One of the problems in the evaluation of applications is 'fronting'. Applications are submitted with Workers' Trusts. Big farmers want to expand and they think that the only way to acquire water is if they have a redress component. Then they 'front' and establish trusts and companies. It is so difficult to understand these Trusts in Companies that you give up and just recommend the water allocation (Senior Official, Participant 13, 2016).

It is clear that no uniform understanding of transformation exists in the street-level bureaucrat's interpretation of the concept:

Historically, they were disadvantaged of their lands and water rights even if now they have money and resources. It's everyone who's not white. The one applicant was a chartered accountant and some of my colleagues said, 'This one has money.' But we don't look at that, that he has money because he's a CA. He's still a historically disadvantaged individual. So it works with colour because, in the past you were historically disadvantaged. You might have things now but in the past you didn't have those things. When I presented this licence in Pretoria they saw the surname and asked, 'Is this a white person? I said, 'No, it's a black person.' Because, if it was a white person, they're not going to grant that licence because the area already is overly allocated. The only water that they can allocate, is only for the emerging farmers (Official, Participant 19, 2015).

This leading official was also concerned about clarity of interpretation of the understanding of transformation and lamented that this uncertainty contributed to non implementation.

If generally there is more certainty about everything it will just work so much better. There is no certainty. If we look at the High Court cases then redress is completely open to interpretation. This is my biggest frustration because officials cannot give certainty to water users (Leading Official, Participant 20, 2016).

The uncertainty and lack of clear guidance opened an opportunity for abuse to avoid any real transformation. This certainly did not bode well for implementation and transformation. This was an indictment on the department. Transformation does not happen because targets were set but by an urgency by all stakeholders, and especially the DWS, to make it a reality:

An application goes back and forth, three or four times after it had already been discussed extensively at the CMA. This can take about a year. Some of my licences are three years old due to this. To illustrate, one of the applications eventually landed in Pretoria and then they asked a simple question about the BEE status as the application was so old. I went back to the applicant for the information and he told me to withdraw the application. This was a big BEE project and it was 50% BEE compliant. I do not know whether this applicant continued unlawfully or sold the farm (Senior Official, Participant 5, 2016).

It endorsed the assertion in the Goede Wellington Boerdery (Pty) Ltd case (Court Cases, 2011/2012) that the DWS places undue emphasis on equity when licence applications were considered.

Resources should be made available to support any implementation. It was further reason for concern to note that during the course of this research, the Department was still grappling with these equity and redress issues and by implication the black emerging farmer was yet to experience the fulfilment of this equity intent.

8.7 Conclusion

From the above insights and understandings, it is clear that effective implementation fell short. Staff were greatly hampered in the execution of their mandates as they navigated the complex legislation and policy quagmire when dealing with the water allocation processes.

This chapter detailed the experiences of the bureaucrats navigating the implementation framework. The next chapter sketches the insights and experiences of black emerging farmers as they interfaced with the bureaucracy to access water use.

CHAPTER 9: MAPPING THE MAELSTROM - THE BLACK EMERGING FARMER: ENCOUNTERS WITH THE BUREAUCRACY IN CONTRAST TO COMMERCIAL FARMERS

9.1 Introduction

Mapping the maelstrom as experienced by the farmers is crucial to gaining a complete understanding of the lay of the water and hydro politics. This chapter maps the insights and encounters of especially the black emerging farmers as they interface with the bureaucracy to access water use. It is contrasted with the experiences of the commercial farmers.

9.2 Farmers' identities

The researcher first arrived in Pietercielieskloof in 2014 and over the next three years came to know the farmers, attended meetings and interviewed many of these farmers. They are hardworking farmers; some were born in the area, some moved into the area, some are young and others have been farming for many years, struggling to make a success of their farming. This is the story of one of the farmers:

The size of this farm is about 109 hectares and my husband and I bought it about 30 years ago. We bought the farm because it was a family farm and we wanted to have our own property. We bought a piece of land at an auction. This land belonged to his grandmother. There was no water on this farm and we had to drive water in from the town to build our house. Here was absolutely nothing and we had to remove the bushes to make it habitable. We built our own water supply source for domestic use. We received no help from any one. We started with sheep, cattle, wheat, oats and barley. The barley was for the brewer, the oats for the livestock and the wheat went to the mill in Bredasdorp. The livestock looks after our finances (Black farmer, Participant 3, 2016).

This next farmer has had a different journey:

The farm is about 104 hectares big and we produce sheep, pigs and grain. The grain is not for the market but mainly to feed the livestock. By growing our own feed we push up our profit margins as we do not have to buy it from anyone. I had never farmed before and had been farming since 2012. It has been four years now. I belonged to the PFC and the idea was that the state would give the black emerging farmers a hand to enable us to achieve commercial status. However, we had never received any funding from the state. I owned about 750 sheep but had

to scale down to 150 sheep as my farm could not handle such a large flock (Black farmer, Participant 16, 2016).

These farmers face many challenges and amongst these is the challenge to secure access to water use. This struggle, their tenacity and sense of community are captured in the experience of this emerging farmer:

I applied to the Department of Agriculture and they asked me about my water use. The process started with Agriculture department and they directed us to the Water department. I got into my car and went to Worcester. It was an expensive process. At the beginning it was lengthy and expensive to go there and find out about the processes. I did it on my own. At the time when I spoke to BOCMA there were others who were in the same position. I asked them to address the farmers. We pushed Agriculture to let BOCMA see the seriousness of this. BOCMA came and brought the forms and met with everyone. They came in less than six months in 2012 (BEF, Participant 22, 2016).

This narrative was typical of these black farmers' struggle to access the bureaucracy. The distance between Worcester and Pietercielieskloof is approximately 170km and takes about 2h30min by car. This battling emerging farmer (BEF, Participant 22, 2016) undertook this journey more than once. This was no easy feat taking him away from the farming activities for the better part of the day, on more than one occasion and at great expense. The process was not only long but also expensive and reflected the determination to make their farming a success. At the same time it captured the frustration of these farmers to find the bureaucracy, determine the correct procedures and eventually get the bureaucracy to respond and act.

Given that Pietercielieskloof is a small landholders' farming community with predominantly black farmers aiming to make a success of their farms, their identities are intimately woven with a sense of place. The history of Pietercielieskloof is poorly documented but listening to the farmers and other relevant stakeholders, revealed their strong attachment to the land. Pietercielieskloof farm 202 was subdivided into smaller farms and today these farms are occupied and cultivated by thirteen farmers who individually own or lease these farms. Three of the farmers are regarded as commercial farmers, implying that they have penetrated the profitable markets to market and sell their produce and generate income, elevating them to commercial status. Two of the commercial

farmers are white (having acquired land from the struggling black farmers) and one is black with the others being small to medium black farmers (or also referred to as emerging farmers); only three are female farmers. The main agricultural activities are livestock, grain, wheat, oats, vegetables, fynbos and rooibos tea.

The emerging farmers have strong generational ties to the land and thus land ownership of the farms in this area is mainly through inheritance or purchase from within the family. However, a number of owners come from outside of this close-knit history. Most farmers regard themselves as small to medium black farmers and these black farmers established and registered the Pietercielieskloof Farming Cooperative (PFC). The establishment of the PFC initially came about to facilitate access to public funding as a black farming entity (BEF, Participant 24, 2014). The objective of the PFC is to be a support structure for black farmers and offering services supporting different aspects of their farming. Some farmers are also members of the Spanjaardskloof Civic Association situated in the area. Membership of this association is open to all farmers, i.e. emerging black farmers and commercial farmers and it seeks to provide social and general support to all its members. The fynbos cooperative was established to provide a platform to the emerging farmers to market their fynbos flowers. However, the cooperative had not yet penetrated the market and these emerging farmers are still forced to gain entry to the market via the commercial farmers. On their own, they are not necessarily able to negotiate and sell their produce at the best possible prices. Thus, being dependent on the commercial farmer gives the commercial farmer considerable power to dictate prices.

The other study site is the farming community situated in the GWUA jurisdiction. Both these farming communities fall in the Overberg District Municipality, the first in Cape Agulhas Local Municipality and the GWUA community in the Theewaterkloof Local Municipality. The latter community is serviced by the GWUA within the catchment area of the Palmiet River. Thanks to the existence of the GWUA, these farmers do not necessarily have to deal with the CMA for the regular management of their water needs as the GWUA is tasked with the management of the raw water at local level.

The GWUA is situated in the catchment area of the Palmiet River, which runs through the town of Grabouw and the agricultural areas. It has a Mediterranean-type climate where the summers are usually hot and dry and the winters cold and wet. The top and middle parts of the catchment area are farmed with predominantly deciduous fruit and are also used for plantation forestry (Bosch, 2008: 1). The vast majority of farmers are long-standing successful white commercial farmers farming in the area for generations. They are generally well-resourced and organised to deal with the demands of farming. This is the story of one successful farmer:

I was born on the farm. My father started farming here in 1948. Many people came to the district after the war and my father was one of them and bought the farm in 1948 with the aid of an Old Mutual loan, and started farming and steadily built the farm up into what it is today. When I took it over in 1982, I bought it from him and continued to farm in my own name, and have since expanded the farm from 44 hectares into 250 hectares. We've gone from a small farmer, to a big farmer being part of the Kromco Packhouse group who handle all our packing and storing and marketing. And so we concentrate on producing fruit and not packing and marketing. We focus on apples and pears and we used to have plums. There used to be lots of peaches in this district, for export. The average size of farms in this district is between 60 and 100 hectares. We are more than that. It used to be a thousand tonnes and we're now eight thousand tonnes of fruit (White farmer, Participant 14, 2015).

The emerging farmers or 'Black Economic Empowerment' water users represent 8% of the registered water (GWUA, 2009). Users require water for irrigation, livestock and their own domestic use. The researcher first visited the area in 2015 and the manager⁵² of the GWUA was gracious to share his knowledge, experience and insights into the area and the water works. The researcher had interviewed key role players, attended meetings and relied on a research assistant for additional research data.

⁵² Mr Theo Lotter was the GWUA manager at the time in 2015 and had unfortunately passed away very suddenly during the same year. He introduced the researcher to other stakeholders in the area and generally assisted the researcher to access the business of the GWUA. The researcher is grateful and appreciates his willingness to assist the researcher with this research.

This chapter plots the perspective of the emerging and commercial farmers who find themselves outside of the bureaucracy, entering its realms as applicants or water users who engaged or interacted with the bureaucracy. It is themed as follows:

- The farmers' access to the process of water licencing.
- Users' interaction, experience and reality of the law.
- The procedural and substantive challenges and their impact.
- Transformation.

9.3 Farmers' access to the process of water use

Due to the absence of an established WUA to deal with water-related issues and challenges at local level, farmers located in the primary research site, i.e. Pietercielieskloof, are reliant on the CMA and the DWS to manage and regulate their water needs and requirements. Thus any changed or new water-related concerns would inevitably mean that these farmers would find themselves having to enter and interact with the water bureaucracy at these levels.

For many farmers the CMA was not initially part of their frame of reference and they discovered the existence and the role of the CMA via other institutions especially the Department of Agriculture. This was the route for many emerging farmers as they needed and applied for funding through the Department of Agriculture. This emerging farmer realised the importance of the Department of Agriculture and knew that he had to satisfy the bureaucratic process if he wanted to receive any benefits:

Our biggest role player is actually agriculture because that is where we get our funding from. Agriculture is a very big player and we must stay in their good books (BEF, Participant 24, 2014).

Although water might be crucial to the farming operation, farmers required other resources to complement and contribute to the success of the farm. This farmer also realised that all the functions of the various departments were interconnected and dependent on each other:

...well, if the farmer does not have water then the Department of Agriculture would not support you. All your legal things must be ready, right and finish before you apply to Agriculture for funding. Agriculture will not be interested or help you if you do not have a licence, title deeds or permits to plough (BEF, Participant 24, 2014).

Another farmer related that,

I applied to the Department of Agriculture and they asked me about my water use. The process started with Agriculture and they directed us to the water department. At the time when I spoke to BOCMA there were others who were in the same position (BEF, Participant 22, 2016).

This well-educated black emerging farmer whose ancestry is from Pietercielieskloof was in need of funding. He lodged a funding application to the Department of Agriculture and during the process discovered that he needed to contact the CMA regarding water use. At the time he was not aware what the CMA was called and it seemed as if he was not familiar with the legal requirements for water use:

In 2011 I realised that water was an issue. And then I dealt with someone who was from Breede River Water specialists (BEF, Participant 1, 2016).

Similarly, a white farmer, who had been in the area since 2009, had very limited knowledge of the CMA and no interaction with the CMA. This speaks volumes of the visibility of the CMA or the fulfilment of its mandate to all users irrespective of status:

BOCMA? The Bredasdorp...I might've heard it in Afrikaans at one of the meetings but don't ask me what it stands for (White farmer, Participant 11, 2016).

This commercial farmer who bought the family farm from her father, noted that,

I have no contact with the Department of Water. They do not keep the river clean and I maintain it myself. I know about BOCMA through the Spanjaardskloof Civic Association but that is all I know. I had never had dealings with them (White farmer, Participant 2, 2016).

The farmers came to know about the CMA thanks to the intervention of the Department of Agriculture but this farmer indicated that the presence was not sustained by the CMA:

BOCMA came into the area after the Pietercielieskloof co-op started to apply for funding resources via the Department of Agriculture. This forced the BOCMA to make contact with the farmers after it was requested by the Department of Agriculture. The BOCMA came and explained what was required and determined the water needs. However, this abruptly ended and BOCMA disappeared from the area again (BEF, Participant 28, 2016).

This emerging farmer had a better sense of the role of the CMA but was still uncertain about the workings of the bureaucracy:

Except BOCMA, is it DWA, no DWAF or was it now DWA but BOCMA is there to do our water applications. BOCMA must see that the application gets pushed through. They made funding available but now it is finished. They must assist with the application to register us for the water. We have a borehole and they came and registered this. But our biggest role player is actually agriculture, because that is where we get our funding from (BEF, Participant 24, 2014).

Although farmers eventually discovered more insight into the bureaucratic process to gain access to water, the process still started due to an initial application lodged at the Department of Agriculture. This emerging farmer reflected on the cumbersome process.

The structures work as follows: you first lodge an application. Then a CPAC⁵³ considers the applications. And they want to know exactly how much water the pigs will use over a period of time in a year. They then referred us to BOCMA to calculate exactly how much water a pig will use per day and we had to calculate it for the year (Black farmer, Participant 16, 2016).

This insight of the bureaucracy came about due to farmers' own needs as they tried to access funding and other resources through the Department of Agriculture. The knowledge of the CMA was not because of the institutions' own efforts to establish a presence or value within its own constituency.

⁵³ CPAC means the Community Project Allocation Committee.

9.4 Users' interaction, reality and perceptions of the law

The ignorance and uncertainty pertaining to the legislative requirements and demands for lawful water use were glaring for many users from commercial farmers to emerging farmers.

An emerging farmer related the experience with the water use application and confused the different types of water use, namely schedule 1 and general authorisations and referred to it as if the types are synonymous. These types are very distinct and this confusion persisted and the farmer was not any wiser when probed later during the interview:

According to the calculations it showed that it falls in schedule 1. It was a general authorisation. So we did not need a water licence or anything to provide water to the animals from a dam nearby (BEF, Participant 16, 2016).

Another emerging farmer shared her insight into the water use requirements but it was clear that she was ill-informed and unsure.

I spoke to BOCMA and they said that if you use only a certain quantity then there is no restriction in use. They call it categories (a), (b) and (c)...But you should register if you use 40 or 100 kilolitres from the river...But I do not know how much. We just use the water for livestock (BEF, Participant 3, 2016).

This emerging black farmer was also not aware of the legislative requirements for water and discovered this when he wanted to apply for funding through the Department of Agriculture:

In 2011 I was not aware that I needed a licence to use water. The previous owners did not inform me and they seem to have just continued unchecked. I applied for government assistance and part of the Department of Agriculture application asked about the water use. And that is where the process started (BEF, Participant 22, 2016).

This unfamiliarity with the law was not just a concern amongst black farmers. A white farmer with nine years' tertiary education did not fare any better. To the question where she heard of the registration and whether she knew what it entailed, she replied:

I can't remember. It is the sort of thing that neighbours talk about because I think it became new legislation a few years ago and people were saying, 'Oh, if you've got water, you should register it' (White farmer, Participant 11, 2016).

She took the initiative upon herself and went to the regional office of the Department of Water to enquire about processes. She complained that the forms were technical in nature:

When I got the forms I was a little bit boggled because I wanted to try get as much water rights as possible. When it came to litres and all that, I think it would've been better if it was a face-to-face sort of interview...but I did fill in forms and things like 'how big is your dam and how many litres is it?' I just thumb-sucked. I've got nine years of tertiary education – I should be able to measure the depth, width, height and length. And when I was filling them in, I was in town and didn't have a tape-measure with me there that I needed, so just thumb-sucked, you know. So if I struggled, can you imagine how all the others would have struggled? They were asking what kind of irrigation I have. I'm still not too sure (White farmer, Participant 10, 2016).

A successful black farmer did not fare any better. She seemed to be doing well with the farming operations and was seemingly successful:

I am not familiar with the legislation and how the water works here. All I know is that every farm has water rights allocated according to the size of the farm (Black farmer, Participant 7, 2015).

This emerging farmer seemed to have decided to turn a blind eye and not adhere to the legal prescripts.

I am a little afraid to talk about water because the department says that you may not use water from the river. There is a list of laws. You must put so many things in place and they just want money. I ignore it and distance myself from it (BEF, Participant 3, 2016).

A black emerging farmer expressed his frustration and anger. He viewed the legislation in a negative light seeing it as stifling growth and development of especially the historically disadvantaged:

The laws have been drawn up. The Act 'whatever' of 1998 is there. You can't build a dam of a certain size without permission. What if I now need that dam? It's going to take me two years to just get permission to build the dam. Then I ask them and they state the law. Now who's the power, who's the person in power to say that I'm not breaking the law? Here's my explanation that I'm not breaking the law. Now give me permission. You need certain laws, but certain laws need to be relaxed for the purposes of empowerment and equality (BEF, Participant 1, 2016).

This sentiment of the farmer speaks to the interpretation of the legislative and policy framework to reflect a purposive approach as illustrated above in Chapter 7. The NWRS-2 mandates that,

Equity implies a concept of fairness, which allows for different practices in the management of water in response to different social, economic and environmental needs (DWEA, 2013b: 45).

This black farmer was clearly not happy experiencing the law in action and although the legislative intent is about transformation, farmers' realities seemed to be unchanged.

On the other hand, farmers understood that there were processes to be followed and requirements to be met. At the same time, it alluded to the complexity of the processes to access the whole spectrum of support to successfully pursue farming:

...if the farmer does not have water then they won't support you. All your legal things must be ready, right and finished before you apply for funding... the Department of Agriculture will not be interested (BEF, Participant 24, 2014).

A commercial farmer with more than thirty years' farming experience felt that the new water dispensation brought certainty and impacted positively on the business:

I think that it has improved the way we're doing business, in that everybody knows exactly how much water they have and therefore, how many hectares they can plant. I don't have a problem with it (White farmer, Participant 14, 2015).

However, the same farmer partook in the verification and validation process and lamented that the processes to be outdated. He wanted technology to be embraced and institutions to move into the technological era. He submitted all his relevant forms and was at a loss to the unfolding and finalisation of the process. He questioned,

Where is the paperwork right now? What has become of it? I should be able to go on the internet, type the number in and see my paperwork is so far and...that's the system. Everybody else does it (White farmer, Participant 14, 2015).

As if on cue, the DWS went online with licence applications and introduced the Electronic Water Use Licence Application and Authorisation System (E-Wulaas). The E-Wulaas offers an

alternative way of lodging a water use application and this technology might present an alternative for all other water applications and processes. It has the potential to address the backlog and licence application challenges but it has to be responsive and capable of accommodating the needs of the black emerging farmer if any real redress was to be achieved.

This uncertainty with interpretation of the legislation and policy was very concerning and certainly impacted the resource and the management as it influenced the accuracy of data on the quantity of water. Clear guidance was not readily available and participants, in an attempt to do the right thing, relied on their gut feelings, their own experiences and knowledge to resolve matters. In applying the discretion in water allocations, relevant authorities should take into account i.a., the need to redress the results of past racial and gender discrimination (Section 27(1) of the NWA: RSA, 1998b) and do so in a purposive manner. Since stakeholders implement the legislative and policy provisions without the existence of clear guidance and confidence, it was obvious that the officials would not be able to exercise their discretion in a purposive manner to give expression to the intent of the NWA, namely transformation. From the above insights it was clear that there were as many interpretations as there were interpreters.

A white commercial farmer was more pragmatic about the changed legislation and saw improvement from the previous dispensation and offered less resistance for the inevitable to be woven into the farming operation:

...it has brought certainty to our business. So I don't have a problem with it. As long as no-one tries to say that, 'no, but this year we need water for Cape Town' (White farmer, Participant 14, 2015).

Although this farmer welcomed the certainty of the quantum of water use impacting on the planning process, he also expressed concerns regarding future growth and whether he would be able to get more water to cultivate the land:

What worries me is that in ten years' time, you know, if we go and plant more hectares which, in theory, weren't registered, but we have land which we can plant. So, where exactly do we stand as far as water registration is concerned? (White farmer, Participant 14, 2015).

Since the farmers have their own planning cycles, it was essential for these stakeholders to have clarity:

Where to next? What are the future plans? Share this with us to enable us to make future plans ourselves (White farmer, Participant 14, 2015).

This farmer indicated:

There's a lot of merit in the registration process, because now we have registered our water. There's nothing wrong with that. It's just perhaps where's it all leading to at the end of the day? Is there going to be a cut-off point and they say, 'no more water'? (White farmer, Participant 14, 2015).

He articulated his and many white commercial farmers' frustration and fears with the DWS's inability to carry out and finalise the verification and validation process and their insecurity regarding the Existing Lawful Use (ELU) these farmers continue enjoying since the promulgation of the NWA.

The above perception of incompetence was scathingly supported by an expert with extensive experience in agriculture:

If a person has to follow a process, then you need trained people who are very good at map reading, who knows what it is about, who knows their discipline, who knows their Water Act 100%, and who has sympathy with those who do not know. Show me where those people are in the Department (Senior Official, Participant 30, 2015).

The lack of capacity was of great concern, as was evident in how this was expressed in various ways by various stakeholders:

I think the Department of Water Affairs is castrated. Nothing is happening there. There are no more skills, and the skills did not keep abreast of applications (Senior Official, Participant 30, 2015).

This farmer, with nine years' post high school education, was visited by an official and was required to complete several forms. He was not sure whether that was part of the validation and verification process:

There was a nice aerial photograph and I scribbled on them and I said that was used as irrigation in 2001. To be honest, I didn't really know and I guessed. There was a lot of water then, but I had no idea (White farmer, Participant 10, 2016).

The water environment is technically complex and the farmer's experience highlighted this. This farmer never received any feedback regarding the process or its finalisation and this points to the lack of transparency in these institutions and does nothing to dispel the notion of an ineffective bureaucracy.

The DWS did not offer clarity and peace of mind to the way forward as it reviews policy and changes the direction of policy without giving the implementation process an opportunity to unfold fully and to completely and constructively inform the review process. Interestingly, experts in the sector did not regard the legislation as problematic but rather focused on the shortcomings in the system perceived to be responsible for the lack of implementation. This participant who has almost thirty years of experience, unequivocally stated that the legislation was not the issue, but attitudes to enforcement and the lack of monitoring:

Why do we have this sick idea in this country that a law is a solution? Whether the law is better or worse does not matter because officials cannot apply it. The big thing in South Africa is that no one cares about any law. So if I want to take water, then I'll take it (Senior Official, Participant 30, 2015).

Another participant reinforced this view and blamed the bureaucrats for the state of non-implementation:

We change the legislation because we're too lazy to implement it. Nothing happens because you wrote it. It happens because you have to do it after you write it. So that's what needs to happen and that's what's not happening. You can have the best document written in the world, no matter how simple. You've got lazy people or people who don't want to (implement). But you need to make it work, or it is worth nothing (Consultant/Expert, Participant 23, 2016).

However, what was concerning was the uncertainty pertaining to policy expressions and follow-through. This state of affairs exacerbated an environment where implementation guidance and leadership were sorely needed. The policy on water allocation reform was enthusiastically launched in 2006 and revised in 2008. However, no performance indicators were published and it

leaves one wondering whether it achieved the objectives. Another illustration of the policy uncertainty was the 2013 National Policy Review with the mandate to determine any oversight in the current policies and to provide amendments if needed. This policy review was never formalised with a White Paper and to date the policy has not been finalised⁵⁴. The experts also warned against wanting to implement everything:

Just go out, pick one thing you need to do and do it. We get too caught up in trying to do everything and you find you do nothing. The trouble with us is that we want to do everything perfectly (Consultant/Expert, Participant 23, 2016).

South Africa was lauded for its ground-breaking legislation but appear unable to execute it. This was how an expert summed it up:

We're brilliant at formulating policies. We've got the best policies in the world. We've got the best laws in the world; including our constitution. You can have the best document written in the world, no matter how simple. You've got lazy people or people who don't want to (implement). Nothing happens because you wrote it. It happens because you have to do it after you write it. And in that, it actually tells you what you need to do. So that's what needs to happen and that's what's not happening (Consultant/Expert, Participant 23, 2016).

9.5 Procedural and substantive challenges and their impact

Users and applicants felt that the CMA and the Department were absent institutions. Communication with stakeholders was lacking and the Department seemingly did nothing for them or to safeguard the water. A very experienced commercial farmer related:

I don't know if anybody's helping. They're all hindering... to a certain extent. I think BOCMA, as the over-arching body, should be making sure that water is correctly applied. It's all very well, you know, having an organisation which controls water, but what is the Department of Water Affairs actually giving back to make sure that water is being correctly utilised? They're

⁵⁴ At a BGCMA/DWS workshop attended by this researcher on 03/04 July 2018 in George, the issue of the restructuring of WUAs and IBs as proposed in the 2013 DWS policy review, was on the agenda and it was clear that uncertainty remains regarding the transformation of IBs and the effectiveness of the continued existence of WUAs in their current form.

not doing it. We don't see them. We don't see BOCMA for love or money...or Water Affairs. No, they are missing completely (White farmer, Participant 14, 2015).

This sentiment of indifference was shared by a black emerging farmer who noted that,

BOCMA was at my house many times. If they say do this. Then I say I'll do it exactly as they say to keep them happy. Because I know they will never come back to check (BEF, Participant 3, 2016).

The commercial farmer expressed his frustration with the quality of service:

They want us to re-register and to do all this paperwork, but they are in chaos. If they really are worried about water and there's all this noise about water being scarce, they're not seen. Well, they should definitely become more involved, if that really is the problem. Because how do they know how much water everybody's using? They haven't a clue (White farmer, Participant 14, 2015).

A farmer heard about the CMA during conversations with neighbours and via the community meetings, was not sure what their role was and never had any dealings with the institution (as noted earlier in this chapter). He took the registration of his water upon himself after he came to know about it via these informal means. He went to the regional office of the DWS and was not encouraged by the experience:

I heard somewhere that you have to go register your water rights, so I went in to Bellville and I said, 'I want to register my water rights.' Some woman said, 'you haven't registered your water rights? That is very bad. You're going to be in trouble!' She was very strange. I think she must've been inexperienced. I came back feeling a bit like a criminal somehow. I was only trying to do the right thing (White farmer, Participant 10, 2016).

The above experience reinforced the Lipsky thinking that street-level bureaucrats categorise people to enable them to cope with the demands of the job. Adami (2010), reviewing Lipsky's work, pondered that,

Through stereotyping, screening, and rubberstamping, they make access difficult, require clients to wait for services and withhold information, all intended to decrease demand for services and make their jobs manageable (Adami, 2010:1).

The above did not encourage or instill confidence in the ability of the authorising institutions to implement and implement effectively.

It seemed as if urgency of processes did not enjoy priority. A farm manager related how an application to merely raise a dam wall took nine years for final approval to be granted:

It took nine years from the application to have a dam wall lifted, to when it was approved. People do not do their work at Water Affairs. It is absolutely unacceptable (Farm Manager, Participant 21, 2015).

In fairness to the process, the application for dam approval is technically more stringent and the researcher was not privy to the formal application process. However, it does not warrant a nine-year process. The water use licence application process contained no prescribed timelines and the assessment process could take two years or more⁵⁵ to finalise. The researcher analysed a water use application by a black emerging farmer, who obtained ownership of the farm in 2006 and lodged a first enquiry to the BGCMA for water use authorisation in 2012. In February 2013 a first general authorisation for 3 000 litres per day was granted by the BGCMA. That was valid until 31 March 2013 and a second general authorisation followed in October 2013. Due to the inadequate borehole yield as granted in terms of the general authorization, a licence application for 12 500cubic m/a of river water was lodged by the farmer in December 2013. On 31 March 2014 the regional office of the DWS requested the national office to determine the reserve and the BGCMA recommended on 07 April 2014 that the licence be granted. The reserve determination was finalised on 16 February 2015 and at that stage a period of two years had already elapsed. Although the actual cost for the licence application was only R114 the emerging farmer also required to carry related costs for drip irrigation (R350 000), electricity (R78 000), design plans (R158 000) and labour (not specified). That does not reflect the hidden cost and the delay impacted directly on the farmer's ability to become economically viable. The NWA (RSA, 1998b) specifies in S41 that the information the responsible authority requires from the applicant to accompany the application. The information

⁵⁵ Schreiner (2013: 240) stated that in some instances licence applications had been with the Department for up to eight years without being finalised.

required is very technical in nature and includes an assessment and review by a competent person of the quality of water and an assessment in terms of Section 26 of the Environment Conservation Act 73 of 1989 (RSA, 1998b: Section 41(2), (3)). All this would be time consuming, ignoring the probable urgency of access to water for these farmers to maximise use of their land. Additionally, this information was to be sourced and submitted at the applicant's costs. In 2017 the application was finally approved. Although a host of other agricultural elements contribute to successful farming, access to water use is a critical enabler and should the purposive approach of redress and development be upper-most, the bureaucratic process should reflect urgency to attain these legislative and policy objectives. This further illustrated the period that an application could be in bureaucratic limbo and consequently the inability to bring relief to the black emerging farmer.

On the other hand, those commercial farmers who had their water managed by a WUA generally received more effective service and were generally more positive. Most, if not all, of the farmers in the GWUA are commercial farmers and existing lawful users. Their water requirements were to a large degree taken care of and thus they did not have to enter the foray of the bureaucracy to farm and continue therewith. While on site at various times at the WUA, farmers seem to have free access to the WUA via telephone or visiting the offices. During the researcher's site visit with the manager of the GWUA, she observed that members phoned the manager intermittently and he dealt with their queries immediately. He and his assistant arranged 24/7 shifts and were on call to deal with any water-related issues or emergencies immediately. This arrangement ensured that their infrastructure was in impeccable condition and breakdowns were minimal. These members approached the WUA with their immediate water challenges or queries and their water needs were attended to swiftly. One farmer observed that,

I just communicate with the manager, we agree what we want and if it is within the rules of the scheme. We function, oh yes. They're very effective (White farmer, Participant 14, 2015).

The farming did not seem to be negatively impacted due to bureaucratic delays and these farmers did not have to deal with any other institution but their local WUA for their water needs. However, this farm manager bemoaned the fact that membership is paid to the GWUA but he perceived neither the WUA nor the CMA playing an active role in their access to water or use:

We pay membership fees to GWUA because it is compulsory. We do not get our water from GWUA. They do nothing for us and we have nothing to do with it. And we also do not have any dealings with BOCMA (Farm Manager, Participant 21, 2015).

Generally, users seemed satisfied with the service by the WUA. It seemed that as long as farmers received water and their concerns were addressed with the least interruption to the farming activities, they were satisfied.

9.6 Transformation

Targets were set to bring South Africa closer to meeting the transformation mandate as per the Constitution, the NWA and the NWRS. However, the experience on the ground dispels the notion of transformation and the perception was that not much changed since South Africa became a democracy in 1994. Black emerging farmers are at the centre of transformation and it is necessary to hear their voices.

A black commercial farmer with years of agricultural experience had the perception that white farmers received the injection of generations of privilege and were able to build on that history to become and remain successful:

The advantage that they have is that they are already settled due to the benefits that they already had. And they help each other. If they have financial difficulty they can sell some of their assets and continue farming with their quality livestock. We do not have bundles of money (Black farmer, Participant 3, 2016).

This black successful commercial farmer shared this cynicism of the transformation agenda generally and reiterated the previous farmer's insights. He expressed anger of the continued white privilege:

We got the political power. But the economic power is still with them. What has happened in 20 years? Who became richer and who became poorer (Black farmer, Participant 7, 2015)?

She went further and asserted that her son was on the board of the WUA but did not have a voice:

All organisations must have colour even if they do not add value. The black person is there but must keep quiet (Black farmer, Participant 7, 2015).

This state of affairs did not promote substantive stakeholder participation and merely created token consultation (Wester and Bron, 1998).

A black emerging farmer perceived the poor response and assistance from the CMA to be racially biased:

It seems as if it was about the type of person with whom they were dealing. In our case it was brown farmers and it seems as if this was the reason for the no-care attitude. If it was a white farmer, they would have taken him by the hand and ensured that the processes were in place for him to have water rights. The white people who worked here then just did not bother (BEF, Participant 22, 2016).

This farmer's perception speaks to Adami's assessment of street-level bureaucrats who use "stereotyping, screening, and rubberstamping" and "make access to resources difficult to make their jobs manageable" (Adami, 2010: 1). This approach did not foster trust in the institutions' ability to bring about change. The Pietercielieskloof farmers rallied and established the Pietercielieskloof Cooperative. Membership was exclusively for black emerging farmers with the objective of promoting the collective interests of these black emerging farmers. It was seemingly also to counter the perception of unfair treatment and the institutions' inability to implement the transformation agenda. Unfortunately, the Cooperative was not very successful as it did not secure funding and the experiences did not help to dispel the perception of race-based treatment.

9.7 Conclusion

This chapter mapped the insights and encounters of farmers, commercial farmers and the black emerging farmers as they interfaced with the bureaucracy to access water use. These insights confirmed that users have to navigate a bureaucratic maelstrom obstructing effective and seamless access to water use. The black emerging farmers faced an even greater obstacle as the disillusionment with the changed transformation trajectory set in and they experience the process to be more debilitating than empowering as they continue to struggle to access the bureaucratic process for water use. The next chapter considers the power dynamics and relations within and

amongst the water management and other relevant institutions as the process of water allocation unfolds in addition to the dynamics of the power relations amongst local stakeholders.

CHAPTER 10: DYNAMICS OF POWER AND STAKEHOLDER INTERACTIONS

10.1 Introduction

This chapter analyses the power dynamics between all those who contribute to the process of water allocation. It assesses the power relations within and amongst the water management and other relevant institutions as well as the dynamics of the power relations amongst local stakeholders. This case study is exploratory and it allowed the researcher to generalise and determine whether and how the existing power relations influenced the unsatisfactory progress in granting water use access to the black emerging farmers. It also allowed for a scrutiny of the effects of the power relations on this access process. This chapter sheds light on how power is articulated in the implementing institutions at the different levels, ultimately impacting on the recipients of the water allocation processes.

10.2 Power relations: Water management and relevant institutions

As was expounded earlier, the legislative and policy framework requires a deep understanding and insight to appreciate its full extent. From the above discussion in Chapter 8, the bureaucracy responsible for implementation thereof does not possess the entire essential armoury to deal with its prescripts and demands. The bureaucracy struggles to implement the complex legislation and policy in a rapidly changing uncertain environment (see Chapter 8). By implication, redress to the historically disadvantaged individuals, i.e. the black emerging farmers, suffered and no substantive achievement of the equity targets as determined by the Department (DWAF, 2008c: 4-5) could be reported.

Swyngedouw (2006: 63) argued that the power one commands influence the water one acquires and therefore if control of water was obtained, one's power was further cemented. Swyngedouw (2006:15) postulated that the ownership or control of water is a great means of social power and it could not be disputed that water flows to power. Hence the significance of the role of power relations in deliberations dealing with water concerns. The dynamics pertaining to water management and water use are determined by a variety of stakeholders and are exerted by these stakeholders as they interact with the processes. An understanding of power and its manifestations

within the bureaucracy is vital when considering its role in water reform and the subsequent impact on the emerging farmers' ability to access water.

Power is considered an expression of one controlling another and it generally determines relationships between persons (Hudson and Lowe, 2009: 12). In the context of institutions, policies and policy-making, Gaventa (2003) explained power as follows:

By power we mean the ability to make decisions and put them into practice – to be in control. Power is the vital ingredient needed to make policies and institutions work. Of course power in the wrong hands, or badly used, is the reason why some policies and institutions don't work and why others cause increased poverty and inequality. Tools are needed to put power in the right hands – in those best placed to improve the lives of poor people (Gaventa, 2003: 17).

The implementation of the South African water policy occurs in different centres of power, with a multiplicity of actors having different interests. Power is therefore significant in accessing and retaining the water resource and adds to the complexity of application. In the allocation of water, outcomes are generally influenced at various levels, and in particular *in casu* by the Catchment Management Agency (CMA), and the regional and national offices of the Department of Water and Sanitation (DWS). In the secondary site of the Groenland Water User Association (GWUA), this water user association plays a role in water management at this localised level whereas in the primary site, i.e. Pietercielieskloof, the Breede Gouritz Catchment Management Agency (BGCMA) and the regional office of the DWS are responsible for the management of water. Gaventa (2003: 17) argued that,

Power to influence policies or institutions stems from the control of decisions with positive or negative effects. Stakeholder power can be understood as the extent to which stakeholders are able to persuade or coerce others into making decisions, and following certain courses of action. Power may derive from the nature of a stakeholder's organisation, or their position in relation to other stakeholders (for example, line ministries which control budgets and other departments). Other forms of power may be more informal (for example, personal connections to ruling politicians) (Gaventa, 2003:17).

As discussed in Chapter 4, South Africa is struggling to establish the CMAs and to transform the Irrigation Boards (IBs) to Water User Associations (WUAs). Additionally, the transformation of

IBs and the formation of WUAs did not happen at the pace intended. By implication, subsidiarity to encourage stakeholder participation did not unfold as proposed. Uncertainty around institutional arrangements continued and the complexity of interpretation contributed to frustration as stakeholders competed for resources and officials and staff struggled. Despite these officials, they continued to implement policy in an environment of uncertainty and rapid change. To gain a complete understanding of the gap between the legislative and policy framework and its implementation, it was necessary to gain an insight into the power relations within and amongst institutions to determine whether and how they influenced the institutional mandates.

10.2.1 Department of Water and Sanitation (DWS)

The DWS, as the trustee of South Africa's water, is mandated to fulfil the purpose of the National Water Act (NWA) with sustainability and equity as the central guiding principles for the management of water resources. Regional offices across the country facilitate the implementation closer to the resource and stakeholder environment. However, the DWS at the different levels were not always coordinated or working collaboratively and roles were not clearly defined and this exacerbated an already difficult situation. Movik *et al* (2016: 469) posited that the power relations and tensions between the national and regional offices contributed to the complexity of processes. This tension was reflected in the long drawn-out water allocation processes before any finality was reached. The Supreme of Appeal Court case (Court Case, 2012) of Makhanya v Goede Wellington Boerdery (Pty) Ltd (230/12) [2012] ZASCA 205 corroborated this predicament of the stand-off between the regional and national offices and was eventually adjudicated by the courts. Power was certainly exerted by the national office, albeit at the expense of the users and certainly at a high cost to the DWS. This stand-off was felt on the ground as officials strove to carry out the mandate at regional level. This insight by a senior official with years of experience speaks volumes:

Head office should actually not form part of our regional processes. I think that this is one of the complications as we should decide internally on our own water. We must defend our decisions at head office but they should actually just accept the regional decision. Because it is really us who know the water, the circumstances and what goes on here. But then we must go and defend it there. It feels to me as if we are useless and have no role (Senior Official, Participant 13, 2016).

He explained that the process changed slightly and that currently water use applications were deliberated at regional level with head office's personnel present and contributing at this level. However, their input was regarded as superficial as they did not possess the intimate knowledge of the peculiar nature of the regional conditions:

...then head office's people are also present and then they can have their say. They focus on how many spelling mistakes were made, whether it is in an essay or table format, whether the right headings were there or whether the numbers were next to or under each other. No technical aspects are discussed. No questions about the water. It is just not important (Senior Official, Participant 13, 2016).

This suggests that the DWS did not trust that staff at regional level have the necessary competence and capacity to effectively carry out the mandate. More importantly, the intent to hold on to the ability to sway water authorisation outcomes and by implication, retaining power to dictate the agenda, was evident. The national office's participation was no more than token consultation but the national office certainly dictated the outcomes, having the upper hand or power as the final decision is taken by the Director General (DG). At the same time, it was well known that the final outcome or decision from the DG's office prolongs the process, as once again confirmed by a senior official after the DWS inexplicably and unexpectedly withdrew the CMA's authority to issue licences:

The regional office must recommend licences. However, there may be problems as different people are involved. Then it is sent back. If, at the end of the day, it is passed by the regional office, the application must still go to the Director-General in Pretoria for final approval (Leading Official, Participant 20, 2016).

10.2.2 Catchment Management Agencies (CMAs)

This distrust was also found in the perceived threat to domain and the consequent protection of the power that an institution sways. An official defended and justified their existence and was confident that the CMA and the DWS had clearly delineated mandates and felt that there was no need for confrontation or feeling threatened:

The idea is that the CMA does the work at local level, but is being regulated by the DWS. The functions that we perform have been delegated by the Minister and the DWS does its own functions. They do not do water resource management in this area but licensing and other delegations and we are not taking over what DWS is doing. We are just doing water resource management (Senior Official, Participant 6, 2015).

A BGCMA board member stated that from its inception the CMA made a deliberate attempt to assist the regional office of the DWS with the licence applications backlog in the region:

One of the first things we did was to help Water Affairs work their backlog away. I think to a great extent it instilled confidence in the CMA. And to this day one of our strategic goals is, as speedily as possible, without compromising the processes and applications to the CMA, to finalise and give feedback to the applicant. So the perception that we cannot deliver is broken down. There is confidence in the institution. There are people who had struggled with licence applications for 35 years and that application was finalised (Black farmer, Participant 18, 2016).

He argued that this approach established the CMA's credibility in the region after many stakeholders had doubts about another water management institution at regional level. However, water users and potential users perceived the CMA (or regional office of the DWS) to be unapproachable (see Chapter 9); substantive stakeholder participation seemed to be unfulfilled.

This leading official blamed this perception on the seemingly reluctance by the Minister to delegate the authority to issue water use licences to the CMA.

There is a break in the chain of delegation from CMA level if you link it to licenses. It is about advising people and we cannot *guarantee* that it will be approved as we do not always know if it correct. It is frustrating as it break down the credibility of the CMA (Leading officail, Participant 20, 2016).

This clearly did not cement the CMA as a playmaker and this accentuated the CMA's continuous struggle to retain its position and power. Even though its existence and role was central to the concept of decentralisation and stakeholder participation, this institution still had to justify and contest its relevance at local level as policy-makers at top level conceived of a mega CMA.

The conflict regarding CMAs and their establishment, concern the centre of power. A senior official blamed the tension on the intent not to have various centres of power but only one centre of power at national level:

I think that this may be why CMAs cannot move forward. There is a fight about where it should be. Asked differently, where should the centre of power be? Should it be in one place or in nine places? I think that the centre of power and the pressure is that it should be at one place (Leading Official, Participant 20, 2016).

This flies in the face of the integrated water resource management (IWRM) approach and the concept of subsidiarity. This senior official maintained that this struggle to attain and retain power, impacted negatively on service delivery. In his view, in order to improve service delivery, authority has to be devolved to where the functions were to be executed:

Staff at local level is needed to perform at this level. This will ensure that it is done more successfully than doing it via remote control. Service delivery is more effective if it is done by someone who is there where the service is needed. It will be done better at local level (Leading Official, Participant 20, 2016).

However, cognisance should be taken that this view came from a person who has a vested interest, i.e. job security, in the continued existence of the CMA. Hence his belief that the CMA's role and status has to remain relevant and consequently the power base of CMAs at local level should be ensured:

...some people who have powers now would, if the CMAs were established, have less power because the CMAs would then have the power. So there could be a number of reasons why it stopped. If you want to speed up service delivery of the state, I'll say bring back the powers to where the function has to be carried out (Leading Official, Participant 20, 2016).

Swyngedouw's (2006: 63) warning about the role of power relations in the deliberations dealing with water concerns, is pertinent here.

The Minister has yet to delegate the licensing authority to the two operationalised CMAs and hence this authority to issue licences still vests with the Minister. By implication, all permissible water

use still has to go to national level to be authorised and twenty years after promulgation, South Africa has not fulfilled the intention of the NWA of,

...integrated management of all aspects of water resources and...the delegation of management functions to regional and catchment level so as to enable everyone to participate (RSA, 1998b).

Despite the resounding inability of the national office to finalise water use applications, the required devolution of authority to the lowest level to enable the complete decentralisation, was not realised. This reluctance might be attributed to a multiplicity of factors but certainly the power to finally decide who should be granted authorisation for water use vests with the Minister. This was an extremely powerful position to be in and it could persuasively be argued that this reluctance to delegate powers was about structural power (Brisbois and de Loe, 2016). They proposed that this was about,

...decision-making power residing with, or being with, or being retained by the state; Governments initiating tokenistic processes that exist to generate legitimacy instead of to influence decisions (2016: 205).

Distrust permeates the different levels of water governance. Although the national government might not have the capacity and processes were prolonged, the DWS insisted on retaining authority. An experienced official shared his perceptions of this counter-productive conflict between regional and national offices:

The decisions about water are taken in Pretoria by the National Department. The Western Cape has no jurisdiction to take any decision on water. They can only make recommendations. The problem is that the person who must sign at national level is too scared to put his head on a block. Because he does not trust his subordinates as there is a lack of trained personnel to support him. And there may be problems with the applications as different people interpret differently and then they may send it back. If it is eventually back in Pretoria it has to go to the Director-General for signature (Leading Official, Participant 20, 2016).

This distrust is a manifestation of the power relations at play in the process of water allocation. The reluctance to devolve authority contributes greatly to the licencing backlog and consequently impacts on transformation. Despite this, the national department still did not want to relinquish power.

This retention or strengthening of power by the national office of the DWS was visible in the silence on pertinent issues, suppressing the voices of those who were better placed to resolve and deal with the water challenges:

When we received the delegations we were all happy about it. Then it was taken away again. What the reasons were for the decisions, I cannot tell you, but the CO also does not know. The board also does not know. And everyone in the department do also does not know. I have not seen any reasons why this had happened (Leading Official, Participant 20, 2016).

This silence by the DWS left the CMA to fend for itself and in a weaker position, having to explain to its stakeholders the status of applications without any form of clarification or support from the DWS after the authorisation to issue water use licenses were withdrawn after 150 days.

The general uncertainty that existed regarding the issues as illustrated above contributed to an environment of distrust among stakeholders. This, together with capacity challenges, weakened the standing and power of institutions as they sought to implement their mandate. The uncertainty kept stakeholders guessing and that was a way of holding onto power. The above refers to the concepts of “non-decision” or “hidden power” (Hudson and Lowe, 2009). It suggests that certain topics are kept off the public agenda, which is controlled by those influencing the debate. The powerful therefore manipulate the debate to further their own interests and thus exclude weaker role players. This implies that the ultimate power to determine outcomes vests with and will remain with the national office of the DWS. This state of affairs does not bode well for implementation; it prolongs processes and flies in the face of the goals of the NWA of decentralisation, stakeholder participation and subsidiarity. However, this expert blamed the CMA for the predicament and maintained that,

CMA's have not delivered on what their role is within the water management framework and merely reproduce the function of the regional office of being a regulator instead of being an agent. It needs to determine for itself what is meant by agency and establish an identity that will fulfil its role as intended by the legislature. The CEOs can be extremely dynamic if they are prepared to break from the chains of the regional office. (Expert, Participant 15, 2016).

He maintained that the CMA struggled to fulfil its role as agent as the position of CEO is political and thus the CMA remained connected to the identity of the DWS. A further concern articulated

was that a select group of officials were the power players and dictated outcomes. This power by the few was derived from their years of experience in the sector, their knowledge of the DWS and catchment management area, their technical expertise and their close network at localised level. Consultants were also regarded as experts and “if any research or tough issues are dealt with the same ‘experts’ are called in to resolve them” (Expert, Participant 15, 2016). Thus, the power remained among a few and no new direction was provided from the existing power players to put the CMA on a new continuum to fulfil the role as intended by the legislature.

10.3 Dynamics of power relations among local stakeholders

As institutional power struggles continued, water users and potential water users relied on social networks and relations as they competed for access to resources. These water users identified the power that key stakeholders hold, recognised the value of certain relationships and forged and fostered these to promote their own interests. This ‘power with’ might enable these stakeholders to participate more meaningfully in water governance. Should they develop a sharper ‘power within’ and work with those who had the same or different interests to theirs, it could bring about the change they desired (Whaley and Weatherhead, 2014). The dynamics of the relationships forged were influential as stakeholders navigated the space to facilitate promoting their interests as they attempted to access or retain water and related resources.

10.3.1 ‘Power with’ and ‘power within’

The process to gain or maintain access was not without challenges for many stakeholders. Consequently, black emerging farmers devised strategies to deal with challenges, perceived or real, and overcome the frustrations brought about by the institutions’ inability to implement the transformation agenda. A strategy to acquire a desired outcome was to dance to the tune of those who purportedly sway the power to bring about the desired result. Those who might hold power might be the bureaucracy or any other person who might have the resources to promote the farming operation. These farmers came to realise that although water is key to farming, the Department of Agriculture provided the funding needed to acquire farming implements and products:

Agriculture is a big role player otherwise we have no door to get in. (BEF, Participant 24, 2014).

These stakeholders identified key players and appeased these role players to achieve certain outcomes:

I know how to speak to them at BOCMA. I am just nice. If they say do this. Then I *say* I'll do it exactly as you say to keep them happy (BEF, Participant 3, 2016).

I just want to say a sensitive thing about these white farmers. When you speak or deal with these farmers they have an attitude of being the best and I put them on a pedestal (BEF, Participant 24, 2014).

The latter was the sanction power (Bues and Theesfeld, 2012) that the white farmer imposed on the black farmer, influencing the bargaining position of the black farmer rendering him weaker.

Farmers used their 'power with' (Whaley and Weatherhead, 2014) in relation to those who had the same or different interests to theirs to enable more meaningful participation in water governance and this strategy brought about the desired change:

At the time when I spoke to BOCMA there were others who were in the same position. I asked them to address the farmers. We put pressure on Agriculture to let BOCMA see the seriousness of this. BOCMA came and brought the forms and met with everyone. They came in less than six months in 2012 (BEF, Participant 22, 2016).

The 'power with' led to these black farmers collaborating and forming the Pietercielieskloof Cooperative. Membership was exclusively for black emerging farmers with the objective of promoting the collective interests of these black emerging farmers. The majority of the black emerging farmers joined the Pietercielieskloof Cooperative but struggled to promote its interests. The Cooperative was not very successful as the state seemingly changed its policy for collective funding from collective to individual funding applications. However, the failure might also be ascribed to the lack power they sway as a small black entity. These farmers came to realise that the real power was with white farmers and their markets, their ability to access these markets, funding sources and closer collaboration with these places of power:

...we only received funding because we had some white farmers who belonged to the association. When we said that they could not still benefit and they left and then everything stopped. That is about five years ago (BEF, Participant 24, 2014).

These farmers recognised the spaces of power and used these “opportunities, moments or channels” whereby identified persons might do something to impact decisions which might affect their realities (Gaventa, 2006:26).

Swyngedouw (2006:15) argued that those with enough social, political or economic power always had water for themselves or for agriculture. This found expression in this insight by a seasoned agricultural official:

The big thing is there is a lot of water that you cannot divide fairly because water has a monetary value. Then you cannot divide it fairly because the person with the most money, the sharpest lawyer or advocate gets the water. It just works like that and that cannot be fair and just. The guy who has the money, the advocate and the knowledge will get the water (Senior Official, Participant 30, 2015).

10.3.2 Closed, invited and claimed spaces: Infiltration of power bases

The notion that water flows to power (Swyngedouw, 2006) rang true in this case study area, with the private ownership of the Eikenhof Dam. The dam, in the GWUA, is owned by the previous Groenland Irrigation Board (GIB) members. They are members of the GWUA and have the largest single constituent, namely five, on the GWUA board. This puts them in a powerful position to command decisions and decision-making. The Eikenhof Dam supplies water to many key stakeholders (see Chapter 7) putting these white owners in a very powerful position. During Cape Town’s drought they very kindly ‘bestowed’ water to the people of Cape Town. They ‘saved’ Cape Town and this was widely celebrated (see Chapter 1). The power they derive from ‘their’ water further entrenched their positions of power.

However, despite the difficulties, individuals managed to infiltrate the power bases and acquired enough power to eventually know who to contact and how to access the structures to have water for themselves and their agricultural interests. These black farmers worked relentlessly to become familiar with the available resources and with those who were in a position to help them access these resources. One black emerging farmer was ‘tuned in’ via technology and served as a member on a national working committee of the Department of Rural Development and Land Reform (DRDLR), was nominated for and won various agricultural awards and granted overseas

opportunities. The farmer managed to identify and infiltrate a network ensuring that he stayed abreast with any agricultural developments and opportunities that might arise. More importantly, it brought about the power to promote and develop, both personally and the farming operation.

Another farmer used the ‘power with’ by collaborating with research institutions placing the water issues on agendas and platforms in the water management regional network. The farmer was very active in and knowledgeable about Pietercielieskloof farming community and was actively involved in collaborations between the local university, the BGCMA and other relevant stakeholders. He was familiar with the agricultural network and its importance and adeptly used it to promote individual interests to access resources thereby taking a strategic position to promote individual interests.

A black farmer recognised and used these spaces of power to progress. He played to the rules of the dominant actors and appeased them. He advanced and successfully competed in the league of commercial farmers:

Then you had to ‘yes boss and no boss’ to get something. That is just what it was. I was so lucky to have built a market under very difficult circumstances. I built a business and had won many favours with farmers in the area. Farmers started to like me and they started to give me credit and I could grow bigger. Now I am a share-holder at Kromco. I am the second biggest shareholder at Kromco being worth about R800 million. I pack all my export fruit through Kromco (Black farmer, Participant 7, 2015).

Through hard work and effort, the farmer attained this status of success and having infiltrated the existing and relevant power bases contributed to his achievement. However, the farmer was also shrewd enough to recognise the spaces of power and ‘worked’ to infiltrate those spaces.

These power spaces were either closed spaces, invited spaces or claimed spaces. Gaventa suggested (2006: 27) that these spaces were fluid as they interacted with each other and any meaningful change strategy should have the three dimensions happen simultaneously. For this commercial farmer the spaces changed as he acquired more power and his journey illustrated this transition and power dynamics from a closed space, to an invited one, to a space claimed as the

farmer himself acquired power. However, the black farmer realised early on that the rules were not written by him but he was prepared to play by the dominant rules to achieve his goals:

I must perform. If there are papers and things lying in the road at my farm then they'll say, 'Another black farm'. No, it is easy for me because I am on their territory. No I had earned my respect with what I do and achieve. In other words, in this area I made them proud, I'm at their standard. Now everyone wants to do business with me. Everyone wants me to sit on their boards and things. I can only give them what I had experienced (Black farmer, Participant 7, 2015).

This transition from a person who sold fruit on the side of the road to a very big player in the agricultural industry was brought about by the spaces he managed to infiltrate and the power he consequently held. Although the dominant space was infiltrated by this farmer it still required him to play by rules determined by the dominant white farmers. He still regarded himself as an outsider as he referenced the divide as 'their' and 'them' implying that the space was still dictated to by the white farmers who still swayed the power. Although successful and seemingly a 'transformation success story' this black commercial farmer was still tied to the sanction power (Bues and Theesfeld, 2012) imposed by the white farmer community.

10.3.3 Composition of institutional boards: Invited spaces

Another space where power did dictate outcomes was the composition of institutional boards where water management decisions are made. These are invited spaces into which persons were requested to join and these spaces were established to promote participatory governance (Gaventa, 2006). The composition of the boards of CMAs and WUAs is prescribed by legislation and as expounded in Chapter 6 the BGCMA and GWUA boards invited black and women members. It begs the question: Was the invitation extended to merely comply with the legislative prescript or to bring about fundamental transformation enabling agency for this constituent? Additionally, does this 'new' diverse constituency sway substantive power to give effect to stakeholder participation in water management as they find themselves in these invited spaces?

A black CMA board member, who is also a successful commercial farmer and who served on the CMA board since the inception of the BGCMA, observed that,

We have a reasonably strong intellectual black component inside the board. And then a smaller component of people who had to learn a lot about the process and who were silent. We could put them in a specific area where they could give their opinion or we could ask whether they understood. The white people are reasonably open-minded and the election of the chairperson was done after the minister cleared all persons to be capable of serving on the board (Black farmer, Participant 18, 2016).

Interestingly, this black board member seemed to distance herself from the black identity and seemed to associate more fully with and regarded herself as the board. The positional power (Bues and Theesfeld, 2012) that this black board member holds was undeniable. The black board member noted that some of the black board members were to be ‘trained’ into the environment while the white counter-parts were open-minded and seemingly tolerated the ‘training’ into a space that was new to everyone. This scenario raises several questions. Firstly, is this ‘participation’ giving integrity to the powerful and de-politicising the struggle over water resources and preserving the political economy? (Laube, 2009) Secondly, is this the new ‘tyranny’ as the historically excluded population is bound ‘more tightly to structures of power that they are not then able to question’ (Goldin, 2010)? The political shift happened in South Africa but the economic power remained largely white and hence the bargaining power, skills and access to power remained. Thus, the white control of and access to water continues. The spaces on the BGCMA board were invited spaces and the power one swayed in these spaces depended on the power one held and consequently determined one’s ability to contest access to water.

If one scrutinised the GWUA board membership, most members continued to be white and male having all the associated power it swayed pertaining to water within its jurisdiction. This placed the white commercial farmers in a powerful position to continue to protect their own interests and being the gatekeepers to any other development or growth. This put the question of transformation firmly on the agenda. Or did this mean that transformation was kept *off* the agenda? The chairperson of the board explained the composition of the board, noting that,

They were not part of the Irrigation Board, the previously disadvantaged farmers, as a group. Although they’re not active on our thing. There is a member there, who’s supposed to be there. He’s on the Users’ Association. It wasn’t in the Irrigation Board. And so, the Irrigation Board is now represented by a thing called Sub-district One, which is the old Irrigation Board. And

they have seven members out of the thirteen. So they do have nominal control of that because they were putting in all the assets of the Users' Association which came from the old Irrigation Board. And, if you think of that composition, as it is now, do they really represent the interests of those that they should be representing? If they all came, they would. Except they don't come...they're not represented (GWUA Official, Participant 17, 2015).

The divide between the white constituents and the black constituents was clearly visible and real in the reference to 'us' and 'them'. The positional power and network power (Bues and Theesfeld, 2012) that these white board members sway allows, in this invited space, these powerful actors to dictate actions along 'us' and 'them' lines. It is worth a reminder that the National Water Act (NWA) mandates the WUAs,

...(to) operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit (RSA, 1998b: Chapter 8).

And although new and diverse constituents joined as WUA members, the prevailing power continued as it existed under the previous dispensation. WUAs should 'belong' to *all* who have any water-related activities in the area of jurisdiction of the WUA but it was significant how the chairperson (who is white) referred to the WUA as 'our thing' and claim ownership of the WUA space. Power was clearly in the hands of the whites.

The NWA provides that Irrigation Boards, as the GWUA previously was, were required to transform and be inclusive. It seemed as if this power as expressed in the 'our thing' was derived from the economic power these former irrigation board members still have and they continued to dictate outcomes. Although invited into this legislatively prescribed space, the black members stepped into a space where the rules were already determined by the dominant white constituency. This meant that they went in with a deficit and still found themselves outside of power. A commercial farmer who had been farming in the area for many years found the presence of certain board members curious and could not see the value they added. These members did not claim or exerted the power that came with these invited spaces and it might be assigned to the alienation of the space itself. This observation questions the efforts made by all stakeholders to be inclusive to effectively bring about stakeholder participation:

What I find strange...you have all sorts of people who sit on the Council who have no clue about water, you know? You have disadvantaged people and you have women...and you have seats for all these people and they're all meant to come to the meetings. But water's not actually relevant to them as far as their personal economy is concerned. Why do you have black people and women on board? I'm not quite sure. Transparency. This famous word. But, when the push comes to the shove, the economy of this District is driven by the farmers, who need water for their economy. And everybody in the District is reliant on the farmers for their lifeblood. So, there's no other industry in this District. So, although they're entitled to be involved, I suppose, in what's going on, the District is reliant on...the dam and what the dam is applied for, which is fruit growing. They're there but it's a strange way, Boards are constructed these days. I find people who sit on boards and have no input. Why do they go and waste their time sitting there? You have a board of ten people or twenty people and only five of them are there to actually make the decisions. The other fifteen are just there to keep the politics right. So what are they sitting here for? Nothing! (GWUA Official, Participant 17, 2015)

The 'absence' of members was to their detriment as their voices were silent and decisions made were made without them, for them and thus would not necessarily be in their best interest. However, the nature and the composition of the invited spaces have to be questioned as it alienated and contributed to the absence and silencing of the invitees. The chairperson noted that meetings were generally conducted in English but members would be invited to speak in Afrikaans⁵⁶ should they so wished. He viewed this as creating an environment conducive to voice concerns and views. However, having a voice was more than just the language spoken in the space a person was invited into. It is about the power the person holds. It is about dictating the space and choosing the language of preference and consequently the ability to influence outcomes. Power resources such as capacity to take risk, time preference, exit costs, positional power, network power, sanction power and information and knowledge could be used as bargaining tools but only within specific socio-economic or biophysical contexts (Bues and Theesfeld, 2012). In the WUA space the white commercial farmer has the resources to dictate the space and access to the water and consequently the power dynamic, as 'water flows to power' (Swyngedouw, 2006).

⁵⁶ South Africa has eleven official languages as provided for and protected in Section 6 of the Constitution (RSA, 1996).

A consultant with extensive experience in the sector confirmed that transformation could not happen if these power resources were not factored in:

At the moment there's a transformation agenda on Water User Associations – they must be fifty percent women, fifty percent black. But there are no black farmers. Oh, that's easy. You just put an emerging farmer there, you put the foreman of one of the white farmers on the board, and you get a few ladies to sit on the board. It actually looks nice. And then, after four meetings, the black person said, 'no, this is actually very interesting but for eighty percent of the meeting you were just talking about the upgrading of the canals and where you were going to get the money from and how much it will cost. But what's in it for me? You know I had to take off half a day from my boss and my boss is very good, he's not going to take it from my salary but you know, actually the only thing it means is that tomorrow I must work harder to do the work that I should've done today.' So the fifth meeting, he's not attending anymore (Consultant/Expert, Participant 29, 2015).

This superficiality of the transformation agenda institutionalises inequality as personal and social factors defining the context are ignored (Warner *et al*, 2008). They added that in a multi-stakeholder participation context the inclination was to involve and focus on only current powerful role players and this leads to decision-making being influenced by the 'powers that be' only. A black farmer had no doubt that being invited to spaces did not imply that agency was guaranteed or that one had the power to influence decisions:

In all organisations if there is colour, it is good. So colour is always the one that is there even though it cannot add value. Colour is always important in every origination. Just be quiet. We are not there. We have the political power. But the economic power is still with them. What had happened in 20 years? Who became richer? Who became poorer? Yes, but he just sits there to make the colour full and has no influence (Black farmer, Participant 7, 2015).

He further stated that the white farmers realised that the area needed black farmers and this might give credibility to the efforts to transform. Their existing 'participation' gave credibility to the control of the powerful interest and de-politicised the conflict over water resources and perpetuates the political economy (Laube, 2009).

If I am not here, then the whole area would be white. In other words, the black emerging farmer in the Grabouw area would always have a vote. There would always be a level where they are well off. Because they are established and the white farmers see that the guys want to and the

majority of them are good natured and the big commercial farmers want to help. We must just approach them (Black farmer, Participant 7, 2015).

It begs a few questions. Firstly, why did black farmers not recognise that they had power and use it as a bargaining tool to influence their personal situations? Secondly, were they disenfranchised to such an extent that they did not recognise, understand or were able to exercise the power they held?

10.4 Conclusion

This chapter analysed the power dynamics in the water allocation process as these are manifested in the different institutions and amongst local stakeholders. The chapter discussed the implications of the key theoretical aspects of ‘power with’, ‘power within’, water flowing to power, the infiltration of power bases, closed, invited and claimed spaces. The analysis showed that the BGCMA and WUA spaces were not transformed sufficiently to give black members a voice in this specific context. Their agency was silenced, implying that alternative views and visions were also not heard to bring about real transformation. The agenda continued to be controlled and manipulated by the powerful, furthering their own needs and interests, consequently impacting negatively and intensifying black emerging farmers’ struggles to access water use. The next chapter depicts the end results of the implementation concerns and shares the strategies as water users or applicants navigate and struggle to survive the bureaucratic maelstrom.

CHAPTER 11: THE END RESULT: WATER USE IMPLEMENTATION

11.1 Introduction

The experiences and voices of staff and stakeholders, when confronted with difficulties or uncertainty in dealing with water use applications, provided valuable insight into policy implementation and the role of street-level bureaucrats on this implementation. Executing the water use application business processes in a complex implementing framework with questionable capacity and resources, combined with the influence of existing power relations, flummoxed the bureaucracy. Consequently, implementation suffered, leaving water users and potential users churning in a rapidly changing and uncertain water use environment. Irrespective of their challenges, bureaucrats developed strategies and continued to carry out the policy mandate. Similarly, water users or applicants tried to navigate the bureaucratic maelstrom and devised their own strategies to keep heads above water in the bureaucratic whirlpool. These strategies determined future outcomes.

The end results on water use implementation were:

- Policy churning
- Street-level bureaucrats – power and transformation
- Unintended outcomes and unfulfilled intentions
- Continued privileges and frustration

11.2 Policy churning

The main finding of this research is that there were constant and rapid policy changes in the sector but these merely added to the confusion, fatigue and instability. From my assessment and to the best of my knowledge since 2012, over a period of five years, the Department proposed six fundamental policy changes. However, these proposals and policy reinventions were not fully executed or finalised placing the sector in greater vulnerability for slow or non implementation. Following the National Water Act (NWA) in 1998 various policies were published by the DWS to provide details to implement the legislation. Some of these, such as the National Water Resource Strategy (NWRS) were required by the NWA while others such as the Water Use Authorisation

Registration and Management System (WARMS) and the regulations pertaining the procedural requirements for water use licence applications and appeals were conceived to make the business application processes easier. Although policy reviews were legislatively required, the Department was out of sync with the provisions of the NWA and with the realities of street-level bureaucrats and users. The Department did not adhere to the time frames provided by the NWA to review the NWRS within a period of not longer than a five-year cycle. The second review of the NWRS was published in 2013, later than the legislated five years (RSA, 1998b: S5 (4)(b)). In 2019, at the time of writing, the third review had started but not finalised. This, like other portions of the legislation or policies i.a., the establishment and operationalising of Catchment Management Agencies (CMAs), the establishment of Water User Associations (WUAs) or the transformation of Irrigation Boards (IBs) to WUAs was delayed or did not happen and inevitably impacted on transformation and by implication, on the black emerging farmers.

While the Department did not implement as provided by legislation, it continued to introduce new policies, seemingly without the insights of, consultation with, contributions or value-adding by street-level bureaucrats or water users which might produce more effective policy outcomes. These stakeholders were not offered sufficient opportunity to understand and become familiar with existing policy and as stakeholders were about to comprehend and be familiar with the landscape, new policy changes were announced.

This official recognised the need for policy to percolate to afford officials time to become familiar with the workings of it.

If policy come out and we can test drive it for a while and review it again or change it if something is not right, it will be brilliant. The current thing is not working. If the new policy spells out what we are supposed to do and gives clear guidance in a direct way it will work (Official, Participant 27, 2015).

Officials were constantly required to change their *modus operandi* and this placed them in a precarious position as they tried to stay abreast with fast-changing policy while trying to serve water users' needs and meet institutional directives. This approach merely contributed and intensified uncertainty and 'chaos':

It is not that easy to have so many changes at once. Instead, capacity building should be taken into account, giving people knowledge, skills to participate in the meetings. Some WUAs had the numbers, but had to wait for years to get a response (Senior Official, Participant 6, 2015).

The Minister's mischievous decision-making had far-reaching consequences for both the bureaucracy tasked with implementation and the user. The Minister exercised unfettered power and in 2016, after 150 days withdrew the CMA's water use authority without warning and explanation. The Minister did not take the CMA into her trust and provided no reasons for the withdrawal. The repercussion was that CMAs were left conjecturing, midcourse realigning systems, allaying frustration by staff and users alike and confused and embarrassed as they scrambled to adjust their operational processes and advise water users of the unexplained changed water use application process. This Ministerial decision had a domino impact as the DWS at national and provincial level was forced to readjust its systems and processes leaving staff and users with a sense of no confidence and frustration. This could be interpreted as a show of power by the Minister, impeding the institutions' ability to implement water management at local level. These CMAs were not given enough time or afforded an opportunity to apply itself as this unexplained rapid Ministerial decision frustrated all stakeholders and consequently contributed to the failure of policy implementation.

The implementation vests in the domain of the bureaucracy, i.e. the Department and the new CMAs and WUAs. The National Water Act (NWA) clearly delineates the roles of the different water management institutions. Section 3 provides that as the public trustee, the Minister and by extension the DWS,

Without limiting subsection (1), the Minister is ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values. The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic (RSA, 1998b: S3).

CMAs are provided for in Chapter 7 of the NWA for,

The purpose of establishing these agencies is to delegate water resource management to the regional or catchment level and to involve local communities, within the framework of the national water resource strategy established in terms of Chapter 2 (RSA, 1998b).

Chapter 8 stipulates that for WUAs,

...their primary purpose, unlike catchment management agencies, is not water management. They operate at a restricted localised level, and are in effect co-operative associations of individual water users who wish to undertake water-related activities for their mutual benefit. A water users' association may exercise management powers and duties only if and to the extent these have been assigned or delegated to it (RSA, 1998b: Chapter 8).

From the above it is clear that each institution has very distinct functions at the different levels where they operate and contribute to carrying out the mandate as legislatively required.

However, although these institutional roles are clear, the Department managed to leave officials speculating what their roles were in the implementing process:

The Department regulates water use and checks that the CMA is doing their function and issues the right directives. We do have regular interaction and we provide support. But the problem is internally as there is a split between the regional office and national office. That function is split between regional and national office and I wonder where my functions start and end. It's not clearly defined. They're duplicating work as well. Even in the Department, there are directors with split functions (Leading Official, Participant 12, 2016).

This instability pertaining to the status and roles of institutions weakened the bureaucracy and its ability to fulfil assigned mandates and contributed to weaker or failed implementation. The challenges with the implementation of the provisions of the Act impacted on the institutions as much as they had an effect on stakeholders:

The same board is still the board. They were supposed to get another board in 2 years, but it had not happened. They do not know when the board is going to change and we had been waiting for 3 or 4 years to see changes. If a board member wants to quit, he just quits and no replacement is appointed (Senior Official, Participant 6, 2015).

As implementation problems continued, policy was reviewed and changes occurred. The policy changes happened prematurely at national level, seemingly without a full appreciation of the implementation challenges at regional and local levels. This frustrated the officials' ability to carry out the mandate:

It stays a struggle. You come to know certain processes and then they change again. It is a matter of adapting. And then, renewed training and working with someone who understands how this type of thing works. Certain parts of the sector improve but other parts stay the same or are even worse due to these challenges (Leading Official, Participant 20, 2016).

Policy changes occurred without conferring with the street-level bureaucrats, or acknowledging their contributions, insights and understanding of the uniqueness of the environment:

I think that this is one of the complications as we should decide internally on our own water. We must defend our decisions at head office but they should actually just accept the regional decision. Because it is really us who know the water, the circumstances and what goes on here. But then we must go and defend it there. It feels to me as if we are useless and have no role (Senior Official, Participant 13, 2016).

We had endless meetings on the policy review and gave comprehensive inputs. However, when the review process was gazetted, it did not contain any of our inputs. I do not trust the process. It was a hoax. The changes were exactly what we said should not be, such as the WUAs (Senior Official, Participant 5, 2016).

This insight also alluded to the distrust between the institutions and affected the morale of staff. The fast moving policy churning added to bureaucrats' uncertainty and capacity challenges. The draft regulations were not yet finalised and staff used them in the absence of anything else⁵⁷ as they promised certainty and clarity:

Although the regulations are in draft form, we try and make sense thereof and use it. There is nothing else to use (Senior Official, Participant 13, 2016).⁵⁸

The DWS should carry the blame for the unfamiliarity with the changed legislative and policy regime as the DWS's lack of insight and appreciation of its stakeholders, the identity of the

⁵⁷ During an interview with a DWS official who has approximately 30 years' service with the Department, asked whether she could use this researcher's summary and interpretation of the draft regulations. It seems as if the researcher's document presented ease of reading and use and was sorely needed.

⁵⁸ At the time of the interview in 2016, the regulations were still in draft form and were subsequently promulgated on 24 May 2017.

stakeholders and the uniqueness of character and needs of each community greatly contributed to implementation difficulties. It seemed to regard a ‘one size fits all’ approach to be effective, irrespective of the unique stakeholders they engage with, their typical needs and the distinctive environments these stakeholders found themselves in. According to a senior official,

This is the responsibility of the Department of Water Affairs. Every community has its own unique methods and ways of working. If you do not take this into consideration then nothing would happen (Senior Official, Participant 30, 2015).

The processing of licences and ultimately the final decision to issue licences and attach conditions to these licences are the responsibilities of the bureaucracy but the policy churning left the envisaged bureaucracy in limbo. The new institutions were neither established as transformed institutions nor established as institutions capable of functioning and delivering effectively at a pace required of a state institution, twenty years after the promulgation of the National Water Act (NWA). At the time of writing only two CMAs were operational and many Irrigation Boards were still operating untransformed. The jurisdiction and responsibilities of new CMA’s such as the BGCMA were increased and these new CMAs were expected to meet even greater diverse needs and demanding transformation challenges in a much larger and more difficult environment without the previously identified implementation problems resolved. Consequently, the non-implementation of the key objectives of the NWA such as transformation, IWRM and subsidiarity remained unfulfilled. This non-implementation seemed to spur the Minister on to churn out further policy. South Africa is currently contemplating the reduction of the CMAs into one mega structure nationally and a review of WUAs and their continued existence is under consideration.

This researcher believes that all processes, especially those pertaining to policy and implementation strategies, ought to be transparent within the Department, relevant institutions and the general public. These should neither be politically motivated nor influenced by change in leadership at any level within the implementation process. Where the interests of potential or existing water users might be affected, it should not be left to the discretion of officials, but institutional existing practice and precedent should inform the decision-making. These institutional records of processes and decision-making should be readily available and accessible to all staff to ensure consistency, reliability and fairness. It would be prudent for the DWS to

identify key issues and concerns, prioritise those and design and provide decisive strategies to operationalise and implement those priorities. The DWS should invest in, direct its resources to and focus on achieving the identified issues as it strives to overcome the concerns. Competing interests to the identified issues and concerns should be secondary until the priority objectives are achieved. The DWS should exercise restraint in wanting to implement everything simultaneously at the expense of not achieving anything.

The researcher's input above endorses Monios' (2017) assessment of factors triggering policy churning (refer to Table 3 earlier in this thesis). The National Government, as the custodian and public trustee of the country's water resources, (RSA, 1998b: S3) saw it fit to adopt several new policies, without exercising due diligence in this regard. Factors that have been disregarded, include: review of the underlying reasons for the proposed policy changes; sufficient resources available for the implementation; politicians' level of expertise and unbiased positioning; politicians' consultation with street-level bureaucrats and acknowledgement of the latter's intimate understanding of and impact on policy and policy implementation.

11.3 Street-level bureaucrats: Power and transformation

Existing scholarship does not sufficiently appreciate the power of local bureaucrats who are at the coalface as they respond to the business application process of water use. Combined with prevailing power relations, policy implementation and policy direction are greatly influenced and steered onto a different, but unintended trajectory, making transformation challenging to achieve.

The water use business application process is subjected to a bureaucracy-laden route, starting at the CMA or regional level and eventually landing at national level in Pretoria on the desk of the Director-General (DG) for final consideration. Throughout the entire water use business application process, the bureaucracy has to interpret and apply the legislation and policy according to the purposive approach, as expounded above. This whole authorisation process, albeit at the level of first enquiry or ultimately at DG level, rests with a person who is often fallible. Officials have been found to struggle to make sense of the legislative and policy framework and the lack of clear guidance and leadership further frustrated their attempts to carry out the legislative and policy

mandates. The interpretation and the final decision require a purposive approach and the DG, in applying his/her mind to the process at hand, should take into account the history and all relevant contexts to give a correct interpretation to the legislation and policy.

Since the street-level bureaucrats are central to executing policy, they exercise discretion and determine outcomes, navigating the water use business process. However, they struggled to stay abreast and were challenged by the complexity and lack of clear guidance and decisive leadership compounded by the irresolute institutional arrangements. This created a space for greater policy deviation as these street-level bureaucrats devised strategies to cope with the situation. Hill (2003) reasoned that it was important to understand from whom and how street-level bureaucrats gain their understanding into policy. Irrespective of the lack of clear guidance and guidelines and capacity challenges street-level bureaucrats have no choice but to implement policy. To deal with these inadequacies staff consulted widely within and outside the organisation.

Street-level bureaucrats use outside resources amongst others consultants, to help them make sense of policy. Many of these consultants come from the very same civil service they were now contracted to. Due to consultants' in-depth knowledge of the sector, their insights into the workings of the implementing institutions and catchment management areas, their technical proficiency and their tight network at localised level were regarded as experts and turned to when complex matters were needed to be resolved. Consultants take on these projects for financial gain, with no accountability and might not necessary be true to the spirit of the Act. These consultants sway considerable power and with impunity direct policy implementation and outcomes. By implication and of great concern, these consultants have indirectly become policy-makers. Policy was left to those who have a vested interest in the bureaucracy staying dependent on them and remaining in a situation of incapacity and uncertainty.

They also depended on their own and colleagues' experience and knowledge to resolve matters and to confirm the understandings of the policy:

If you do not know...just have to rely on colleagues and their knowledge to get the application processed. There is no record keeping. (Official, Participant 19, 2015).

They made up their own rules to cope with the rapid policy churning and deal with the complexity and uncertainty as they exercised their discretion in fulfilling the legislative and policy mandates:

This is my interpretation. Some parts must be evaluated but the Act does not inform us of the process to follow to evaluate the licence. Thus we do what we want (Senior Official, Participant 13, 2016).

As theorised by Lipsky (1980), street-level bureaucrats, at the coalface, dictate policy direction and by implication inadvertently became 'policy-makers'. They are in a unique space as they experience, struggle and use their discretion to implement the legislative and policy framework and ultimately determine whether, how and when initiatives and processes happen. Some of these street-level bureaucrats were also knowledgeable and skilful professionals and bring these to bear when fulfilling their mandates. These street-level bureaucrats became creative as they attempted to fulfil their job demands. Street-level bureaucrats' insights and knowledge of the strengths and weaknesses of the system and their unique skills set and knowledge influence policy-making and are crucial if and when any review of the policy is undertaken. Similarly, any strategy adopted had to be devised in collaboration with all stakeholders at local level due to their intimate knowledge of the water management area and being best placed to find the most viable way forward to address implementation challenges. Hence, it would be judicious for the DWS to solicit especially street-level bureaucrats' insights and understandings during the policy-making process. Their contribution should be valued and perceived to be valued. An official noted that,

I still maintain that as the policy is being revised and we gave our input and the revised policy came out it should make it easier for us to administer. It will be better and everyone will be on same page (Official, Participant 27, 2015).

An acknowledgement of their contribution in the policy review process might engender amongst officials and lower level staff a mindset of 'ownership' of the water allocation framework and could facilitate a more effective implementation process. This approach would bring the DWS closer to policy design that responds to and addresses actual needs and the reality in a South African context.

Transformation is a constitutional imperative and is a key NWA objective. The NWA recognised,

...the equitable allocation of water for beneficial use, the redistribution of water (and) 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 so as to enable everyone to participate (RSA, 1998b).

It further specified the purpose to be,

...promoting equitable access to water; redressing the results of past racial and gender discrimination... (and)...to establish suitable institutions and to ensure that they have appropriate community, racial and gender representation (RSA, 1998b).

Transformation and subsidiarity with authority devolved to the lowest level to enable stakeholder participation at all levels are therefore central principles of the NWA. As the DWS was churning policy in response to the non-implementation, uncertainty and complexity persisted and consequently transformation suffered and remained elusive in the water sector. Transformation of institutions and water use through equity targets to redress South Africa's brutal past, remains a challenge.

Transformation of the institutions was difficult to achieve and by implication the full intent and effect of the internationally lauded National Water Act remains unimplemented. Twenty years after promulgation, the Department established only two fully operational CMAs. This remained so even after the DWS changed its own policy from the original nineteen CMAs to nine only. The CMAs were meant to give effect to the IWRM approach but South Africa is failing on this front as the power to ultimately decide on water use remains at the national office of the DWS. The policy churning continues as the DWS is currently contemplating to further reduce the nine CMAs to one only. This scenario begs the question: Is this indicative of the DWS's inability to effectively manage South Africa's water or is it truly the most effective way to bring about the intent of transformation? Similarly, WUAs were meant to give further credence to the IWRM approach. These institutions were neither established, nor where established, did the WUAs fully embrace the intent of representivity and inclusivity of the diverse users. These stakeholders and especially black emerging farmers at local level were excluded from the decision-making about crucial issues impacting them. Hence, existing power bases continued to be exerted and past privileges for white commercial farmers were further cemented while black emerging farmers continued to be

alienated and struggle to access water use. Unchanged Irrigation Boards from the previous regime remained untransformed and by implication continued to hold onto power to decide water use at localised level.

A further contributing concern for transformation is the influence of existing and prevailing culture which further eroded the opportunities to change paths to implement the changed water dispensation. Schreiner (2013) observed that decision-making on water access remained,

...primarily in the hands of a group of people who did not necessarily share the political vision of government or the departmental leadership. For example, in discussing water allocation reform some years ago, one of the old-guard white officials in the department articulated clearly that taking water away from white commercial farmers to give to small-scale black farmers was inappropriate in a water-scarce country – the transformational requirements of building a racially inclusive economy being seen as secondary to the perceived superior farming capabilities of commercial white farmers (Schreiner, 2013: 241).

The legislative and policy imperative introduced changed institutional arrangements. Although the Department underwent various name changes over the years, the institution itself struggled with substantive changes to implement the changed legislative and policy intent. The staff from the previous regime stayed on while newly appointed staff stepped into an existing culture which did not necessarily change to tackle the drastically different legislative and policy imperative. A black Deputy Director at DWS regional office acknowledged the resistance from some old order white staff to accept the new and changed direction:

You get people who had been here for years. They've only worked in their office and they had skilled themselves. They stayed and do the work but those people are very difficult to change. They're not impossible to change but they continue to resist (Leading Official, Participant 12, 2016).

This Deputy Director shared his own experience when he was newly appointed and the resistance felt as his ability to perform his mandate competently was questioned:

It wasn't easy for me because I had to prove myself on each and every aspect. I felt that I'm being tested and at the end I was being tested. When I started there as a junior, they were already

seniors. Now I'm more senior than them. Especially the white people. And I would've probably felt the same way if I was in their shoes (Leading Official, Participant 12, 2016).

Consequently, he devised approaches to deal with the old order's resistance to change:

I never took the importance of them away from them. During the first few months I put a lot of emphasis on gaining their trust, not just their trust, but the whole team's trust. I made sure I knew what I was saying and I made sure that I was one step ahead. Even those that resigned and who became consultants and who are now being employed by applicants want to force their views but I am confident to disagree with them (Leading Official, Participant 12, 2016).

He had some success but he had to continuously work at proving and justifying his appointment and competence. However, it further reinforced the view that being black equates to incompetence. This view was supported by a white official at the same regional office. This official noted the stifling impact of racial tension and inexperience on effective work performance:

People are also very embarrassed to ask for help and advice. The young staff would struggle with a licence application while there is support. My perception is that there is a type of resistance between black and white in the department. The whites are the ones with the knowledge. I have twenty years of experience and obviously will have the knowledge and have experienced the resistance between the different races. They think not to ask another person even though that person might have the answer. Some of those applications must be redone because this young staff member had it wrong (Senior Official, Participant 13, 2016).

This racial tension is clothed as knowledge and skills deficit but it speaks to the power struggles as officials deal with their own challenges and uncertainties as they attempt to perform their functions.

This retained previous order culture and the political nature of appointments permeated throughout the new institutions at lower levels and stifled institutional identity and the new role these institutions are meant to fulfil:

Staff of DWS find employment with the CMA and bring the bureaucratic culture and attitude of the DWS with them. The CMA is not fulfilling its role of agent and being the catalyst between the regulator and the stakeholders. Part of the challenge is to appoint the 'right' person to be the CEO and thus the question: 'what qualifies a person to be the right person?' The position is

very much political and those appointed are merely delivery persons for the regional office of DWS (Expert, Participant 15, 2017).

It unfortunately contributed to the blurring of lines and the confusion and uncertainty pertaining to institutional mandates in the equitable and effective management of water resources. It contributed to the delayed institutional change that was needed to implement and fuel substantive policy implementation. This is an indictment on the bureaucracy who is mandated to bring about transformation.

The Department admitted that the equity targets were not achieved and that the prospect of change, development and improvement for many farmers continues to be a struggle and doubtful. Since the promulgation and implementation of the NWA equity has not received the desired attention resulting in the perpetuation of inequitable water allocation. Little substantive progress on the NWA pillar of equity was achieved since its promulgation, that is, the redress of race and gender water allocations for productive economic uses (DWA, 2013b: 45).

This transformation mandate requires the exercise of discretion and the interpretation by officials to achieve the intended equity outcomes. Hence, the street-level bureaucrat at the coalface of the transformation agenda sways considerable influence in dictating equity outcomes. However, one should bear in mind that equity is not the only criterion when allocating water, but is one in a suite of factors as indicated and decided in the *Goede Wellington Boerdery (Pty) Ltd v Makhanya NO* case (see Chapter 3). Thus a purposive approach to interpretation when applying discretion in allocating water. The Supreme Court of Appeal found that as legislation did not provide that a specific factor should enjoy preference, the only inference to be drawn was that all factors should be weighed together when a decision to allocate water use licences is made.

An expert was brutal in the assessment of the lack of progress on transformation and implementation and unequivocally stated that,

Transformation doesn't happen because people have said transformation must happen. People need to get off their butts, roll up their sleeves and do some work for a change (Consultant/Expert, Participant 23, 2016).

In some instances, an attempt was made to give expression to the meaning of transformation in the context of the country's history but generally the bureaucracy was failing:

DWS wanted to see the transformation immediately, so 50% women, 50% black farmers. It is not that easy to have so many changes at once. Instead, capacity building should be taken into account, giving people knowledge, skills to participate in the meetings. Some WUAs had the numbers, but had to wait for years to get a response (Senior Official, Participant 6, 2015).

The above situation placed officials and by implication street-level bureaucrats at the helm of implementation and thus also placing transformation in a precarious position. As shown in Chapter 8 above, the bureaucracy struggled with the understanding of equity and the DWS did not provide leadership as street-level bureaucrats continued to make sense of transformation. If it claims to be serious about transformation, the DWS should direct its resources to this objective. A well-devised strategic plan in conjunction with local stakeholders should guide and inform this and competing interests should be secondary until the stated objectives are achieved.

11.5 Continued privileges and frustration

The commercial farmers, predominantly white farmers, continued to enjoy privileges and existing lawful water use. These farmers, in the secondary site, operated in the jurisdiction of a functional WUA and relied on it to manage and protect their water needs. The WUA is well-resourced and staffed with employees who deliver to meet the objectives of the WUA and thereby protecting the interest of all stakeholders. These stakeholders were aware of the role and value of the GWUA in their farming and some of them were actively involved in the business of the GWUA. They contributed financially to benefit from the services rendered by the WUA and depended on the WUA and not the broader water bureaucracy for their water requirements. Thus they were not unnecessarily drawn into the quagmire of the bureaucratic red tape when issues of the water use arose. Meetings of the GWUA presented opportunities to be updated on any developments or changes to the business or operations of the GWUA and this created a space to share information affecting the farming community. These commercial farmers ensured that they attended these meetings and were generally informed of any developments affecting their farming operations. The WUA is regarded by the CMA and the Department as effective and capable of managing the

water matters and hence interference by these institutions was minimal or non-existent. These farmers invested in consultants and were able to challenge or meet legislative requirements to effectively run their farming operations. Within this commercial farming collaboration of water users, these farmers were affected minimally or not at all by the bureaucracy and were able to manage the water for their exclusive benefit.

However, it seemed as if the stakeholders in the area of jurisdiction of GWUA regarded the CMA as a hindrance and the researcher's impression was that these farmers did not have confidence that the CMA could deliver and deliver correctly and effectively. Their encounter with the CMA and other water management institutions might have come about due to an increase in water needs and they were forced to deal with the bureaucracy during the verification and validation process as was initiated by the CMA in terms of Section 35⁵⁹ of the NWA. This meant that existing lawful water use needed to be registered at the appropriate Regional Office of the Department to be verified and validated and was driven by the CMA. Although the NWA meant that these farmers needed to register or register their water use, one farmer observed that, '... it improved how I do business as it brought certainty to how I do business' (White farmer, Participant 14, 2015). The verification and validation process proved to be technically and administratively challenging and due to insufficient knowledge and infrastructure, it was complex and cumbersome and generally frustrated all stakeholders. A commercial farmer noted that he was able to download the many forms via the internet but needed to use a consultant to complete the forms. Another commercial farmer indicated that,

I think that farmers did not want to fill it in. It happened at the same time as the draft policy bill and people were nervous as hell. It was badly timed (White farmer, Participant 14, 2015).

⁵⁹ The verification and validation determines what water is used and how much is being used from the different water resources. Thus an existing water use requires any person claiming an entitlement to that water use to apply for a verification and validation of that use.

The GWUA informed the farmers of the process but generally farmers stated that the communication of the stages of the process was not well executed. However, feedback on the process after submission was lacking:

I did not get any feedback. I do not know whether it is registered. No formal piece of paper to say the water is registered (White farmer, Participant 14, 2015).

He further expressed his lack of confidence in the bureaucracy to complete the task saying that,

I gather it is in Worcester in the passage way, waiting on someone to work through it. An official just said, 'yes, we'll handle it' and I haven't heard anything (White farmer, Participant 14, 2015).

For white commercial farmers, the changed water dispensation did not impact negatively as they continued undisturbed and confidently continued using water allocated to them pre-NWA. A DWS official, working extensively with EFs, observed that,

If you had it before you are fine and can just you go ahead. If you did not have land and water rights before you are going to struggle forever. These commercial farmers have had land and rights and V&V just set them back a little. But they just adapt and make it work as they have the necessary infrastructure and knowledge they acquired over all the years and they'll never go backwards (Official, Participant 27, 2015).

In this researcher's view, these commercial farmers were able to continue enjoying their privileges due to a combination of the perceived inability of the bureaucracy to manage the water portfolio and these farmers' appreciation of the value of their existing water use and investing all kinds of resources to protect their historical vested interests.

11.6 Conclusion

Although it was difficult, bureaucrats and users alike understood that they had no choice but to deal with and navigate the complex, uncertain and continuously changing water use environment. In the process, equipped with questionable capacity and resources and further eroded by existing power relations, these stakeholders devised strategies dictating the outcomes of these processes. The end results as depicted in this chapter, were policy churning; the great influence that street-level bureaucrats sway as they are at the coalface of policy implementation and direction;

unintended outcomes and unfulfilled intentions; and continued privileges and frustration. The final chapter presents the summary of the findings and recommendations.

CHAPTER 12: CONCLUSION

12.1 Introduction

South Africa's cruel history of racial discrimination left the majority of the population, i.e. black people, dispossessed of land and excluded from land ownership. This pre-1994 era was characterised by the riparian approach, linking the right to water to land ownership. This meant that access to water during the apartheid regime was racially skewed, favouring the white minority. Chapter 2 sketched this brutal divisive history and how power was exerted and retained to exclude the black majority population from benefitting and sharing in South Africa's vast resources. The determination by Government to shake off the shackles of apartheid brought about a vigour and motivation to produce and promulgate legislation expeditiously. The outcome, namely the National Water Act (NWA) was lauded by the international community as innovative and trailblazing. But twenty years after the promulgation of the Act, South Africa is still struggling to bring about the intended transformation and all the other noble objectives remain elusive. Land and water are intimately linked and the fact that land rights supercedes water rights in some ways offers some explanation for the continued privileges of white commercial farmers. The weaknesses of the post-apartheid legislative and negotiated policy framework and the workings of the bureaucracy further dictate the power relations and how power plays out and influences outcomes.

The broad aim of this qualitative study was to determine the role of bureaucracy, law and power in the slow implementation of equity policies in the water sector. The research was not only concerned with the physical and technical aspects of access but explored how the different role players interacted, navigated, shaped, framed and managed challenges to gain access to and control of water for productive use. The actual experiences and understandings of the stakeholders in their own contexts when engaging with the access to water, were crucial to gain a comprehensive understanding and insight into the influence of bureaucracy and power relations as stakeholders access water use. This study examined the legal and institutional difficulties experienced by black emerging farmers (BEFs) accessing water use for productive purposes, specifically the case of black emerging farmers in the Breede Gouritz Catchment Management Agency (BGCMA) area between 2005 and 2017 juxtaposed against the experiences of white commercial farmers. This

study set out to answer a central question, namely: What legal and institutional difficulties do BEFs experience in accessing water use for productive purposes as opposed to ‘successful’ white farmers? Several sub-questions were posed to further unpack and stimulate answering the central research question. Unlike other studies (see Schreiner, 2013; Schreiner *et al*, 2009), which focused mostly on water allocations for emerging farmers in *communal* areas, this study looked at emerging farmers who have individual ownership of their farms. In addition, this study differentiated the experience of black emerging farmers from white commercial farmers.

The study ‘maps’ the confusions and capacities and shows that even though the South African laws are based on the best international frameworks, they fail, as they do not sufficiently address the unique environment and landscape.

12.2 Summary of findings

The study’s main finding is that there have been constant and rapid legislative and policy changes which simply added to the confusion and instability. Bureaucrats struggled to stay abreast with the changes and were challenged by the complexity and lack of clear guidance compounded by the irresolute institutional arrangements. Despite these implementation challenges and failures, the Department of Water and Sanitation (DWS) continued to churn policy and strategies. Policy was not granted time to percolate and implementers were not given sufficient chance to familiarise themselves with the complexities of these policies. No opportunity was afforded to monitor successes or failures and the constant amendments and changes frustrated stakeholders, both the bureaucracy and users. The repeated policy churning did not promote confidence and added to a previously complex and uncertain environment and widened the discontinuity between policy and implementation. This research laid bare the exasperation of stakeholders – potential or existing users and bureaucrats – as they attempted to negotiate access to water in this uncertain environment of policy churning. Bureaucrats operated in a policy churning quagmire as institutions constantly underwent changes and institutional mandates and identities shifted accordingly. Policy changes occurred without the contributions and insights of those directly affected, namely the water users and those implementing at the coalface, namely the street-level bureaucrats. It did not address the concerns of the implementers, which included clear guidelines or unbundling complexities of

processes to enable complete implementation. Often bureaucrats needed to adjust their *modus operandi* and were placed at a disadvantage as they tried to stay abreast with ever-changing policies while trying to attend to water users' needs and meeting institutional directives. This left the bureaucracy as well as water users frustrated as goal posts constantly shifted and changed. The National Government, as the custodian and public trustee of the country's water resources, continued to churn policy without the benefit of rigorous analysis of the fundamental causes for the policy implementation weaknesses. These causes include, (i) insufficient resources allocated to improve implementation; (ii) politicians influence policy processes without having the necessary expertise or knowledge; and (iii) the inputs and insights of street-level bureaucrats who implement policy at the coalface and who have an intimate understanding of and impact on policy and policy implementation, are not solicited. All the above ratifies Monios's (2017) study of factors triggering policy churning and the incapacitating effect on policy implementation.

The disjointedness between the legislative framework and implementation within the institutions was underlined by the experiences and voices of bureaucrats, specifically the street-level bureaucrats, as they fulfilled their mandate. This research has added to the body of knowledge as it unearthed the central role of street-level bureaucrats in the process of policy implementation in the water sector. This research showed that the street-level bureaucrat is significant in this implementation endeavour. At the coalface of implementation, bureaucrats make up their own rules to cope with rapid policy churning. Street-level bureaucrats were placed at the centre of policy implementation and thereby presented a unique discernment into the reality of policy implementation of access to water use. Policy is shaped and made in the space where street-level bureaucrats find themselves as they go about making sense of and implementing legislation and policy interacting and engaging with the general public at the coalface (Lipsky, 1980). At the stage of delivery, policy is still in the process of being developed (Hudson and Lowe: 2009) and policy outcomes are not necessarily as the policy intended. This was apparent as South Africa attempted to meet equity targets and did not have sufficient insights into local organisational conditions and environments. These street-level bureaucrats have considerable power as they operate at the coalface of bureaucracy-laden water use processes, exercising discretion when they interpret and apply policy. They deliver the mandate and use their discretion in the face of ongoing public

demands for their services. Coupled with resource restrictions, contradictory policy directives and policy churning, these street-level bureaucrats are forced to be creative to meet demands and fill policy gaps (Gilson, 2015).

Street-level bureaucrats moreover have no choice but to continue implementing policy under testing circumstances brought about by rapid policy churning, lack of clear guidance and guidelines, uncertainty and resultant capacity challenges. Hudson and Lowe (2009) pointed out that at this stage of delivery, policy is still under development and policy outcomes are inevitably not as envisioned. Hill (2003) argued that it was necessary to appreciate from whom and how street-level bureaucrats gain their insights into policy as they continue to deal with the general public. These street-level bureaucrats turned to external sources amongst other consultants to make sense of policy and to cope with inadequacies in their own armour. Many of these consultants worked for and gained their comprehensive knowledge, experience, technical understanding and networks from the very same bureaucracy they are now contracted to. They are considered experts and turned to, at considerable cost, when intricate issues were needed to be resolved. But for their contractual obligations these consultants were not accountable to the Department and executed projects for financial gain without necessarily being true to the spirit of the Act or solving the complex challenges. They have significant power and with impunity dictate policy implementation and outcomes. This does not serve the interests of stakeholders as effective and efficient policy implementation is in the hands of those who have a vested interest in the bureaucracy remaining in a state of incapacity and inability and reliant on external sources to fulfil mandates.

Throughout the entire water use application process in this case study, from Catchment Management Agency (CMA) or regional level to national level for final consideration, the bureaucracy had to interpret and apply the legislation and policy according to the purposive approach. This proved to be difficult as officials struggled to balance efficiency, equity, and environmental sustainability, making sense of and applying the legislative and policy framework using a purposive approach. Records of precedents were not readily available and staff relied on each other to determine a course of action. These street-level bureaucrats were in the untenable situation where they had no choice but to deal with matters for which they were not necessarily trained. Many of them also delivered the mandate, straddling the conflicting demands of their

professions and the dictates of the bureaucracy. These professionals and their managers were from the same professional pool and as shown in this research, had characteristics of both higher-level public managers and street-level bureaucrats as they carried out their mandates. As these street-level bureaucrats attempted to fulfil their mandates in an environment of uncertainty, frustration, poor leadership aggravated by capacity challenges, they dictated and directed policy outcomes. The street-level bureaucrats devised strategies to deal with the complexity and uncertainty and as they exercised their discretion in fulfilling the legislative and policy mandate, inadvertently determined policy direction. This left water users generally and black farmers specifically confused and frustrated as goal posts shifted and changed in the policy implementation quagmire.

The implementation concerns were evident and even more glaring if one perused the Department's own statistics on various critical areas and issues. The Department failed to establish all implementing institutions such as CMAs even after it had changed its own proposal of nineteen CMAs, as initially mooted, to nine CMAs in 2014. It was anticipated that all CMAs were to be fully functional by 2016, operating with approved Catchment Management Strategies (DWAF, 2004: 119). Where CMAs were established, they did not fully carry out their role within the water management framework. They merely reproduced the function of the regional office of being a regulator instead of being an agent and did not function as the intended catalyst between the regulator and the stakeholders. Strong and dynamic institutional leadership was required for these CMAs to break from the chains of the regional office of the DWS and fulfil the role of agent to fully operate as intended by the legislature. If all CMAs were established and fulfilled the distinct functions at regional level, it would enable the Department to play the regulatory role and bring South Africa closer to full implementation. This had not happened. Furthermore, Irrigation Boards (IBs) continued to operate and exist untransformed and Water User Associations (WUAs) were not established at a pace to make any real impact for water users at localised level. Even where these IBs were re-established as WUAs or new WUAs registered, these institutions remained domains of existing white power and the voices of the black emerging farmers (BEFs) persistently remained silent. These institutions are crucial but only if real and substantial power shifts occur, might South Africa achieve the goal of subsidiarity and be closer to implementing the National Water Act (NWA) to its fullest extent. Furthermore, the first National Water Resource Strategy

(NWRS) was only published in 2004, six years after the NWA was promulgated. Although the Act clearly dictates that the review of the NWRS should take place within a five-year cycle, the second NWRS was published nine years after the first NWRS. The fact that the DWS did not adhere to the legislative prescribe of review of the NWRS points directly to the fitness of the DWS to carry out its mandate. The delay in providing detail and guidance on the implementation of the NWA created uncertainty and more importantly, frustrated the objective of the NWA.

It was significant that in 2013 the NWRS2 (DWA, 2013b) still emphasised the unachieved equity objective. This is a further admission by the DWS that it failed to implement the NWA. In 2017 the DWS reported (DWS, 2017a) that of the 2 355 water use authorisations granted to agriculture from 1998 to 2016 only 644 (27.3%) were issued to HDIs and an overwhelming 1 711 (72.6%) to non-HDIs. This is an indictment on the trustee of South Africa's water who is answerable to South Africa and should be held accountable for this state of affairs. The DWS struggled to strike a balance between efficiency, equity, and environmental sustainability while making sense of and applying the legislative and policy framework. White commercial farmers continued to benefit from old privileges, and despite the equity imperative in new laws, economic considerations appeared to trump equity. The reluctance to allocate water use to South Africa's previously disenfranchised majority is indicative of the failure by the trustee to give expression to the legislative imperative of transformation within South Africa's historical context. Consequently, the shift to deal with the imbalances of previous access to water meant that the prospect of change, development and improvement for many black farmers continued to be a struggle and doubtful.

The legislative and policy imperative introduced transformed institutional arrangements and over the years the DWS had undergone various name changes. However, the institution struggled with substantive changes to implement the changed legislative and policy intent and the influence of existing and prevailing institutional culture further eroded opportunities to change paths to implement the changed water dispensation. The staff from the previous regime stayed on while newly appointed staff stepped into an existing unchanged culture which did not necessarily reflect an altered trajectory to tackle the drastically different legislative and policy imperative of transformation. This retained culture from the previous dispensation did not just affect the DWS environment but also permeated throughout the new institutions at lower levels. This unfortunately

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contributed to the blurring of lines and intensified the confusion and uncertainty of the transformative roles of these institutions. This instability pertaining to the status and roles of institutions weakened the bureaucracy and its ability to fulfil assigned mandates and contributed to weaker or failed implementation.

Another finding to implementation failure was the political influence and lack of leadership. During the nine years preceding 2013, the Department had three Directors-General and two acting Directors-General. The country also had three Ministers during this period and as recently as 2018 the country saw another change of Minister. The instability of the top structure of the DWS with the revolving door of Ministers and Directors-General contributes to the chaos as the changes are politically motivated and bring with it political grand-standing that adds to policy uncertainty. A case in point was the Minister's unexpected, sudden and unexplained withdrawal of the delegated authority added to this prevailing sense of uncertainty and had far-reaching consequences for both the bureaucracy and the user. The Minister did not take the CMA into her trust and left the CMA to fend for itself after this show of power. Systems had to be readjusted and the CMA was forced to manage the angst of staff and users alike in this untenable environment. The uncertainty, lack of guidance and leadership and incapacity contributed to the bureaucracy failing to deliver full implementation of the legislative and policy framework. This strengthened the position of those already in power and generally failed the black emerging farmers.

The ownership and control of water is a great means of social power and it could not be disputed that water flows to power. This research painted a picture of how the bureaucracy interfaces with the legislative framework and the effect of power relations on access to water use. The dynamics of power played a central role as stakeholders contested resources in these spaces of water resource management. The legislative and policy shift was meant to give greater and preferential access of water use to black people. But stakeholders were not in an equal power milieu. The dynamics of power were present in the various water institutions and amongst stakeholders as they influenced, accessed or attempted to access water. It was balanced with the experiences and the insights of emerging black farmers as opposed to white commercial farmers who are at the receiving end of the workings of the bureaucracy. All stakeholders interacted and negotiated across the different levels and spaces in this complex network of water governance and it was clear that there were

power imbalances as they negotiated access thereto. These power imbalances are founded on historic, economic, political and social factors and influences. The power they held at these different levels and spaces influenced their access to water as it determined how the processes unfolded. These levels and spaces of power changed negligibly for a few and accordingly those who enjoyed historic privileges generally and in the water domain specifically, continue to do so today. Stakeholders devised discursive strategies to effectively traverse the minefield. Unfortunately, the changed paradigm did not represent a real shift in power as spaces for real participation and agency did not open for especially black farmers, whose voices were not heard to influence processes and outcomes to promote their interests. This changed water paradigm seems to have merely re-legitimated the *status quo* and not substantially contributed to transforming patterns of exclusion and social injustice or challenged existing power relationships. Thus policy implementation and policy direction is greatly influenced and steered onto unintended different trajectories making transformation challenging to achieve.

11.4 Unintended outcomes and perceptions

The lack of guidance, certainty and leadership pertaining to the understanding of legislation and policy in the sector, led to unintended and diverse results and inevitably to a questioning of the correctness of decisions:

There was this application I received. I told them there is no need for authorisation as they were not extracting it. A consultant insisted that a licence was needed. In other regions authorisation was given. We are not doing the same thing. The person in Mpumalanga interpreted it in a different way. I asked them to send me the authorisation they received from Mpumalanga and the authorisation did not make sense at all (Official, Participant 19, 2015).

Another unintended result due to the uncertainty of processes led to potential unlawful use of water and users were left with the assumption that their water use was lawful:

A new application was lodged but the applicant was already using the water. They were caught and put pressure on us to issue a licence. There was uncertainty as to whether it is illegal. The directive was from the Department and the Department deals with illegal water. The applicant presented it as someone who is using new water but lied as he was already using the water (Official, Participant 19, 2015).

At the same time the Department's monitoring capacity was spread thin. A Deputy Director reflected,

So that placed a burden on us getting to sites. I only have two enforcement officers for the entire province. I try to help out, personally, with my private car, to go to nearby areas where I live (Senior Official, Participant 8, 2016).

The monitoring challenges were substantiated by other stakeholders:

With the monitoring part, that's where we lack. It's supposed to be someone monitoring the licence. We have the mandate for licencing, meaning we will be able to audit the licence, to audit the conditions to see that the conditions are adhered to. But the Department doesn't follow up. That's from my own perspective. (Official, Participant 19, 2015).

They are missing completely. They want us to re-register and to do all this paperwork, but they are not seen. If they really are worried about water and there's all this nonsense about water being scarce, they're not seen. Because how do they know how much water everybody's using? They haven't a clue (White farmer, Participant 14, 2015).

BOCMA said that we should transfer the water right to our name but we did not. That was about three years ago and to this day we had not done so (BEF, Participant 3, 2016).

The neglect of monitoring by lower level water institutions and lack of accountability left those in charge of important constituents to continue unchecked. This comment by the chairperson of the GWUA board supported this notion:

They look to BOCMA and to DWAF for assistance but it doesn't come from them really. They sit in their little hierarchy there – in their ivory towers and they've got all the reasons why you can't do anything... We're trying to fix a dam that used to be there for three, four years. And all we do is we knock our heads against the wall all the time. But it's such an essential thing. Don't tell me what I can't do. Tell me what I can do. And try to help drive this thing. So, in the end, we just actually pushed a bull-dozer in and we just moved a whole lot of stuff. And he came back and he said, 'Oh, you're not allowed to do that!' So I said, Well, it's done' (GWUA Official, Participant 17, 2015).

It seemed as if the monitoring was merely to satisfy the bureaucratic process and not really to determine the status of the water impacting and informing critical future strategies:

They do not really come to monitor. They come for a site visit but it is really for you just to sign the form and they leave (Black farmer, Participant 16, 2016).

This left the Department vulnerable as a complete and accurate record of the quantity of water is central to redress, to enable allocation or reallocation to the HDIs and did not instill confidence that policy would be effective and constructively implemented.

Participants were very critical of the implementing authorities and blamed it squarely on the perception of laziness. This was how an expert with 30 years' vast experience, being part of the bureaucracy at various levels and later working as a consultant, viewed the incapacity of the bureaucracy:

A lot of the guys are also too lazy – I've got the post; I'm getting the money. Why do I have to work? You can't get hold of officials, they don't answer phones. It's an attitude thing, that entitlement mentality...It's a question of personal values (Consultant/Expert, Participant 23, 2016).

This perception of general bureaucratic apathy resonated with this emerging farmer who also lamented that a response was received purely due to pressure exerted from higher in the bureaucratic system:

We don't really get their support and all he does is earn his salary. But ask him where our forms are and all you hear is that they were handed in (BEF, Participant 24, 2014).

An expert acknowledged that,

...not all civil servants are lazy; there are a lot of people that really make the effort. I've seen that because I've guided and mentored a lot of youngsters in the Department (Consultant/Expert, Participant 23, 2016).

However, he felt that the work ethic of officials left much to be desired:

It's a combination of laziness and a lack of effort and this is a powerful combination. I'm going to say eighty percent of the officials are lazy! So they're quite happy, they just get the money. Okay, I need to spend my budget, I'll give it to the consultants. I've worked in Government. I've worked as a consultant. I've seen lazy officials and I've worked with these officials. I used

to draw up their submissions to their principals because I knew the system. They were just too lazy to learn or do it themselves (Consultant/Expert, Participant 23, 2016).

This farm manager related how an application to raise a dam wall took nine years to be approved and was of the opinion that,

They don't do their work. It cannot take nine years to get a licence. I mean this is absolutely ridiculous (Farm Manager, Participant 21, 2015).

The DWS also came under sharp criticism from Members of Parliament and alluded to laziness that might exist:

Was there any willingness in the Department to implement the policies of Parliament, because it seems as if it was not willing to do what Parliament said? It had been almost 19 years, and the transformation of irrigation boards was failing. The Department could not brag about the transformation of 99 irrigation boards after 19 years of having the policy in place. Was there general laziness, or did the Department not want to do this? It seemed it did not know its functions (DWS, 2017b: 4).

The farmers' reality was that the DWS did not identify the needs of communities and users in order to effectively respond to their specific needs. The DWS did not meet them where these users and communities found themselves. Consequently, these stakeholders perceived the implementing institutions to be incompetent and incapable of executing the mandate. Farmers accessing the bureaucracy to acquire or to maintain their water use found the process confusing and the bureaucracy did not necessarily help to demystify the process. Frustration was running high and feedback or further communication after the process started was non-existent or slow. The impression was that institutions did not make an effort to explain the application processes nor the progress and the extent thereof to applicants. Farmers accessed the bureaucracy without understanding the process and no clarification, detail or need for the process was offered:

I was sent from one department to another department. Their understanding of what is required constantly changed and there was no clarity. I was frustrated and confused and wanted to know what my rights are and when things were required (White farmer, Participant 10, 2016).

A black emerging farmer stated:

That is just the first step, nothing on paper yet. They are still busy, I don't know what they must still do, and they know we need it now (BEF, Participant 24, 2014).

A black emerging farmer had a dim view of the ability of the bureaucracy to effectively fulfil its mandate to the emerging farmer:

Many of the officials, who sit there, sit there only for the salary. They do not care or they have nothing to do with the emerging farmer on the outside. An emerging farmer will approach them and say, 'but I want to apply for funding'. The application process has to start and write the business plan, get all the financial information and hand it in. Then from the time you've handed the documents in then they must continue with the process. But if you phone maybe a week or a month later then you find that they still had done nothing or the documents had just gotten lost. So the person who sits there does not necessarily have the expertise to help the emerging farmer. And they merely say they do not know what had happened with it (Black farmer, Participant 16, 2016).

This farmer also said that he was never provided with any feedback and was not sure what the status of his application was:

It was a good thing we applied for water use as soon as we did and then we never heard from her again (White farmer, Participant 10, 2016).

However, he used and continue to use water ever since buying the farm in 2009 and never experienced any problems or follow up or monitoring by the authorising institutions. The farmer just assumed that the water use was lawful:

When we wrote the Act, everybody was involved. Kader Asmal was the Minister and he was a very, very committed person to the principles of the Act. He was a lawyer and understood the whole subsidiarity approach. We were on our way to establish these things. Then a new Minister came in who was not part of the policy development. That Minister was fired and another Minister came in. This Minister then wanted to know why nineteen CMAs were necessary. The question I was asked – why must I have four hundred institutions reporting to me? How can I do that? How can you expect that from me? But how did it work in the past? (Consultant/Expert, Participant 23, 2016).

The above opinion found expression in several ways and the expert went further, stating that top management who should provide leadership was not knowledgeable enough to provide sound guidance:

The Department failed because the top management does not know what's going on. Not one of them grew up through the ranks. They do not understand the principles of the Act. And I say that because I was there. I was Acting Chief Director and I sat in those meetings talking to the Minister and I was ashamed of them not knowing what they do (Consultant/Expert, Participant 23, 2016).

The lack of or poor implementation was also blamed on weak leadership but also the absence of insight and understanding of the intricacies of the legislative and policy agenda:

You have people in positions of authority that do not have insights into the business. Unfortunately, that's a reality (Consultant/Expert, Participant 23, 2016).

The CMAs were still the nineteen and we established the two. We had meetings, discussed all the delegations, it was all written up for publication. Then one stupid person said, 'no you cannot put that delegation there. I want that delegation'. And consequently only a third of the delegations were given to the CMA (Consultant/Expert, Participant 29, 2015).

The implementation challenges were further compounded by the perceived exodus of knowledge and skills from the public sector that were not replaced or transferred after 1994. An added layer to this already dire situation was that staff seemingly did not pull into the same direction due to, amongst other reasons, the racial divisions amongst staff:

We often brag about the best Water Act in the world! What happened? The brains that developed all of that, and I was part of that process, moved and there was none of the skills transfer, knowledge transfer. It was still the legacy of Apartheid – and I'll call it that – and I've seen it in the Department – you had a black caucus and you had a white caucus. Amongst the black caucus, there were also different factions. But, if you had good leadership, it could have diluted some of those impacts (Consultant/Expert, Participant 23, 2016).

Added to the above challenges was the impact of the political interference as it shifted priorities and thereby delaying outcomes. This expert blamed the implementation problems not just on leadership but on the blurring of lines between politics and administration:

That's operational leadership. This is a problem that we seem to be having in many government departments where the politics gets mixed up with the actual administration. The politics needs to guide what happens administratively. Funnily enough, inasmuch as we fought against apartheid, they never questioned the apartheid policy. They just implemented it. That's why it was command and control. We need to have not just DGs coming in; there's a whole lot of corruption. I think that had clouded this whole performance issue. We need to have a performance-driven government (Consultant/Expert, Participant 23, 2016).

This senior official with many years of experience in the bureaucracy noted that,

...the legislation is actually tied to the politicians. They must decide the priorities of whatever parts of the legislation so it can be that you go into a certain direction due to a certain politician saying so. But then you get another person who is now the political head and this person indicates that something else is the most important to implement. And the shifting priorities make the whole implementation of the legislation in its totality to be delayed (Leading Official, Participant 20, 2016).

The lack of quality leadership, the lack of understanding and appreciating the underlying principles and the intent of the water legislation as well as political influence pointed to the continued uncertainty and paralysis to implement legislation and policy. This continued lack of clear leadership and guidance coupled with the deficiency in knowledge of those in leadership positions further exacerbated the execution of the legislative and policy framework. If not addressed, this would weaken the bureaucracy even further and reinforce the power relations which in turn contribute to delays in the finalisation of water use applications and thus transformation. The type and quality of leadership set the level at which bureaucracy operates and if decisive leadership existed within the bureaucracy, it would dispel poor bureaucracy. Indeed, access was granted but for many stakeholders the process was challenging and some of them were still caught up in the complex, lengthy bureaucratic process and the effects on the farming could not be disputed.

However, although the negative side of red tape of the bureaucracy was glaring, the positive results when the process eventually worked and came to fruition could not be ignored. The following expressions by stakeholders attest to how the bureaucracy might have a positive impact if it works. A farmer who had difficulty calculating the quantum of water use, illustrated how the bureaucracy could work if enough pressure was put on it to work effectively:

When we went to BOCMA, they helped us to calculate exactly how much water we'll use within a year and in what schedule it will fall. And according to the calculations it showed that it falls in schedule 1. It was a general authorisation and we did not need a water licence or anything to provide water to the animals from a dam nearby. It took approximately two days to sort out. We communicated with them via emails and did not have to drive to them physically. It was immediate, yes. It was as if pressure was put on them to deal with it as soon as possible because the project was already moving back and forth for almost a year due to certain things with which they did not agree (Black farmer, Participant 16, 2016).

Another emerging farmer also shared a positive experience with the bureaucracy and thanks to their collaboration and putting enough pressure on the institution, the group of farmers received attention and a response from the CMA within a reasonably short time:

At the time when I spoke to BOCMA there were others who were in the same position. I asked them to address the farmers. We put pressure on the Department of Agriculture to let BOCMA see the seriousness of this. BOCMA came and brought the forms and met with everyone. They came in fewer than six months in 2012 (BEF, Participant 22, 2016).

Although frustrated this official also saw the value the bureaucracy can add.

The joy in the job is meeting, engaging and assisting farmers. We have not given money to them but we had helped many of them. Be it talking to other departments, writing proposals, help with business plans or fill in applications. An application requires a lot of sophisticated information and that is how we assist farmers (Official, participant 27, 2015).

Gathering from the views of these stakeholders, they came to realise and understand that the bureaucracy was crucial to their ability to gain or maintain access to water use. However, their interaction and experience with the bureaucracy left much to be desired. Nevertheless, the bureaucratic encounter had the potential of being rewarding if processes worked and an effort was made to explain and implement the processes.

12.3 Recommendations

In light of the above findings to start addressing the discontinuity between the legislative framework and implementation it is firstly recommended that legislation and policy should be given opportunity to mature to its full extent before policy changes are effected. Premature reviews

without the full benefit of identifying policy gaps contributes to further uncertainty and ‘chaos’ and leads to policy churning which merely aggravates the policy quagmire. Policy churning negatively influences effective and efficient implementation and staff morale, yet the DWS seemed oblivious to this viced policy. To avoid mechanical policy churning and for policy change to translate into meaningful and improved policy and policy implementation in a very complex and multi-layered environment an extensive empirical assessment of current policy implementation challenges should be conducted from the bottom up. The empirical assessment should evaluate factors such as review of the underlying reasons for the proposed policy changes; availability of sufficient resources for implementation; politicians’ level of expertise and unbiased positioning; politicians’ consultation with street-level bureaucrats and acknowledgement of the latter’s intimate understanding of and impact on policy and policy implementation. The DWS did not appreciate that successful implementation of the mandate is built on stability which is forged on decisive leadership, instilling trust, bureaucratic capacity and competence.

The Department should invest in conducting a complete audit and analysis of its implementation strategy to determine what the gaps are, how to overcome these gaps, devise the tools to close the gaps, delineate timelines and monitor progression for future improvement. The audit and analysis should engage and value all stakeholders in the chain of implementation and ‘drill down’ to determine and understand the strengths and weaknesses in implementation and strengthen existing practices. The DWS should prioritise key issues and invest in and focus on achieving these identified issues. Transformation is a constitutional imperative and is a key NWA objective but had remained elusive in the water sector. Officials are expected to fulfil the transformation mandate but this should be done in tandem with farmers as part of part of a co-governing approach. If transformation is the key identified priority, the DWS should direct its resources to this objective and with a well-devised strategic plan, all competing interests should be secondary until the key identified objectives are achieved. Restraint should be exercised in wanting to implement everything simultaneously at the expense of not achieving anything.

Officials at lower level, i.e. street-level bureaucrats, are central to the execution and implementation of policy. They have dual roles as professionals and bureaucrats and thus when fulfilling their mandates they should not go about it mechanically but engage with knowledge and

skills. As these street-level bureaucrats navigate and implement the legislation and policy, they interpret and exercise their discretion, exert power and employ strategies to execute their mandate. In the political process so produced, they direct policy thereby reinventing and making policy. Consequently, it is crucial that the street-level bureaucrat who is central to policy-making be heard and included during the policy-making process. Soliciting their contribution should instill a mindset of ‘co-ownership’ of the water allocation framework and facilitate a more effective implementation process. This would go a long way to enable South Africans to close the gap between policy-making and implementation.

The Minister, as trustee of the country’s water, should accept responsibility for the implementation status and be accountable to South Africa for implementation failures. Tools should be developed and enforced to ensure accountability by all in the chain of implementation. The DWS should accept and appreciate that the water allocation process is complex. Detailed and clear directives are necessary to deal with the complex water allocation process and the wide bureaucratic discretion in the authorisation chain. The promulgation of the Regulations on 24 May 2017 (DWS, 2017e) might address the concerns raised against the wide discretion given to officials in the authorisation chain when interpreting S27 of the NWA which it is argued contributes to indecision and prolonging the outcome of the water use application. These Regulations would only be effective if all stakeholders, officials and users alike, are familiar with the provisions and procedures. These should neither be politically motivated nor influenced by change in leadership at any level within the implementation process.

Institutional records of processes and decision-making should be readily available and accessible to all staff to ensure consistency, reliability, fairness. Hence, precedents and records should be created and updated regularly to create certainty of process and policy implementation. A greater coherence of system by rationalising and streamlining institutional and functional overlap would create an environment of certainty, facilitating better implementation. Where interests of potential or existing water users might be affected, it should not be left to the discretion of officials only. Policies and strategies should be drafted in such a way that implementation processes are clear, specific and uncomplicated. The Regulations were indeed a step in the right direction offering detailed procedure to finalise a licence application. The Department should revise these processes

on a regular basis and amendments should be informed by regular audits and comprehensive reviews and analysis of the relevant issues. This would provide an insight and understanding of the strengths and weaknesses in implementation and present an opportunity to strengthen existing practices and further confidence in the leadership.

Resources should be made available to capacitate all in the implementation chain. A comprehensive appraisal of existing and essential skills, knowledge and expertise should be conducted following which the Department should invest in its current staff complement to start the process of capacity building. All processes, especially those pertaining to policy and implementation strategies should be transparent within the Department, relevant institutions and the general public. And staff should be fully competent to implement said strategies. To this end, the DWS should develop and offer appropriate training specifically tailored to meet the capacity needs creating an enabling environment for staff to enhance and effectively apply the critical skills and knowledge. Existing resources such as experienced staff should contribute to training development and training. Users should be educated regarding the water use processes and the DWS should invest resources in disseminating this information broadly.

The DWS should dedicate resources to assess water quantity and monitor it. It is imperative that the DWS continue to monitor water use *after* allocation. Only if the DWS is certain what its water capacity is, would it be able to allocate and reallocate water to address existing and future needs of users effectively and efficiently. Authorising institutions in collaboration with *all* stakeholders, particularly at local level should create opportunities to devise strategy to devise shared ways to find water or new water for allocation or reallocation.

The above recommendations would require a concerted and collective effort by all stakeholders but need the DWS to take initiative and ownership to enable implementation thereof. This might put South Africa on the intended legislative and policy trajectory and specifically lead to improved transformation imperatives.

12.4 Conclusions

The insights and understandings by various role players as explicated in Chapters 8, 9 and 10 shed light on the workings of the implementing authorities. It was clear that staff wanted to execute their mandates but empirical evidence suggested that the legislative framework was too complex, and constantly being changed. The limitations in their own armoury operating in an uncertain environment where clear leadership was lacking meant that the bureaucracy floundered. The uncertainty of the role and status of institutions and the legislative and policy framework proved to be too much in a complex environment where very little or no guidance was in place to instill confidence and ensure that decision-making was always about promoting efficient and equitable access to water. Local stakeholders' understanding and experience of the legal and policy framework undoubtedly showed that the process is intricate and stakeholders generally struggle to access the process. However, the DWS's policy churning fuelled the implementation concerns, contributed to the chaos and further muddied the implementation quagmire. The street-level bureaucrats are central to implementation and by acknowledging this centrality in policy processes, South Africa might experience improved implementation.

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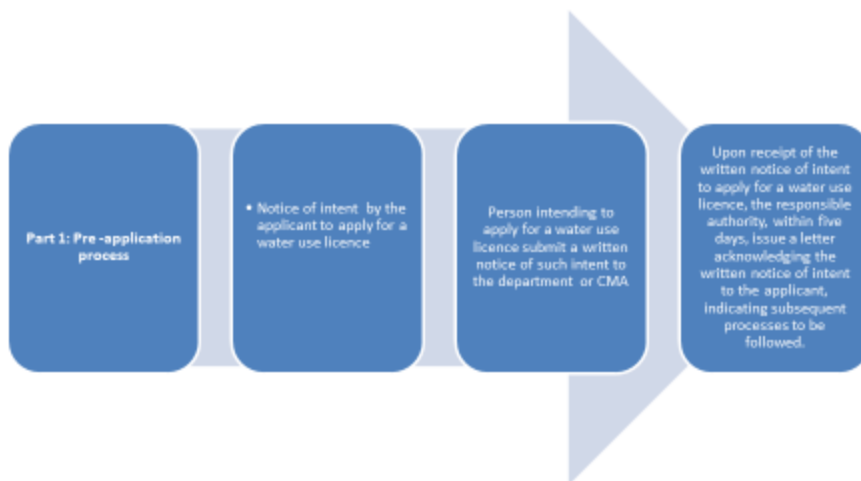
LIST OF ANNEXURES

ANNEXURE A

ANNEXURE A

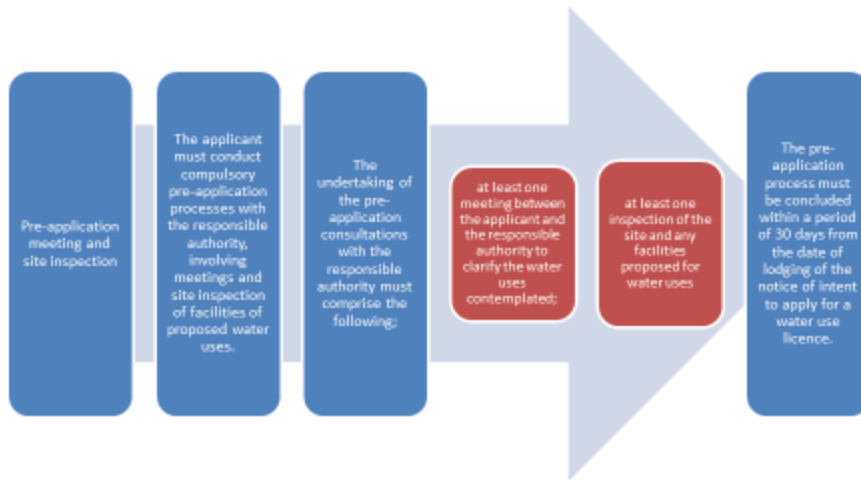
Detailed Water Use Licence Application Process

THE PROCEDURAL REQUIREMENTS FOR LICENCE APPLICATIONS IN TERMS OF S 26(1) (k) OF THE NWA 36 OF 1998 REGULATIONS



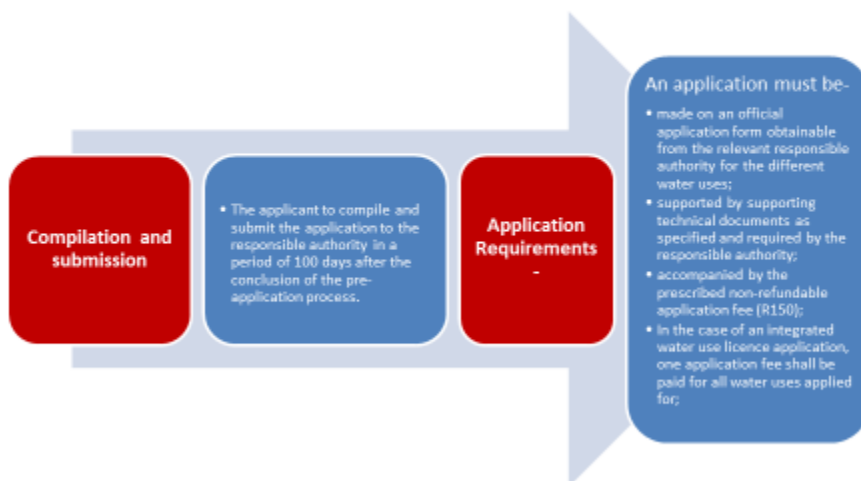
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Part 1: Pre -application process



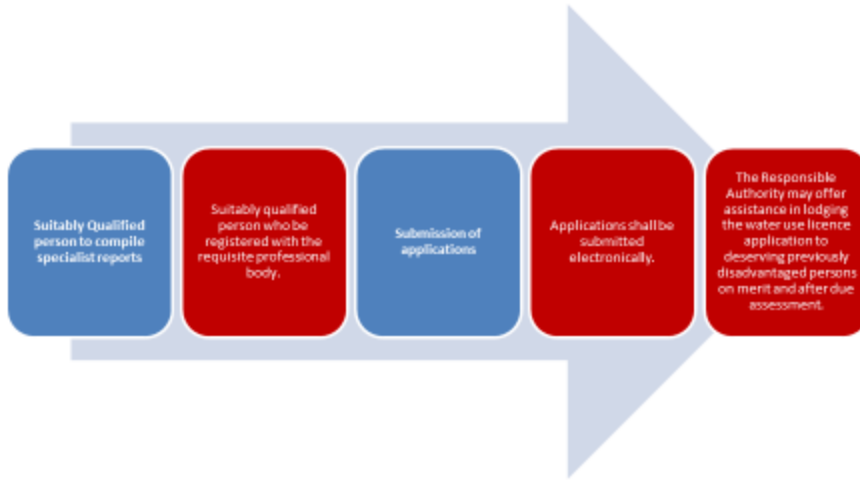
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Part 2: Application compilation and submission



Government Gazette General Notice 126 of 2015:Notice no 38465

Part 2: Application compilation and submission



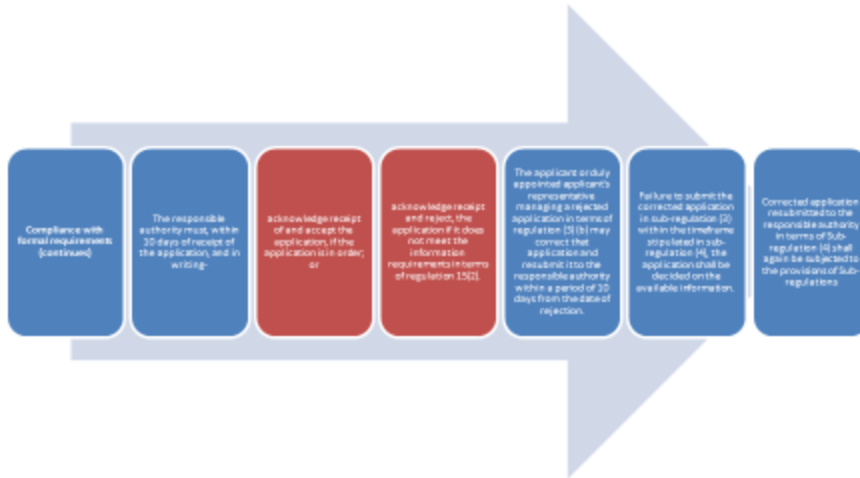
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Part 2: Application compilation and submission



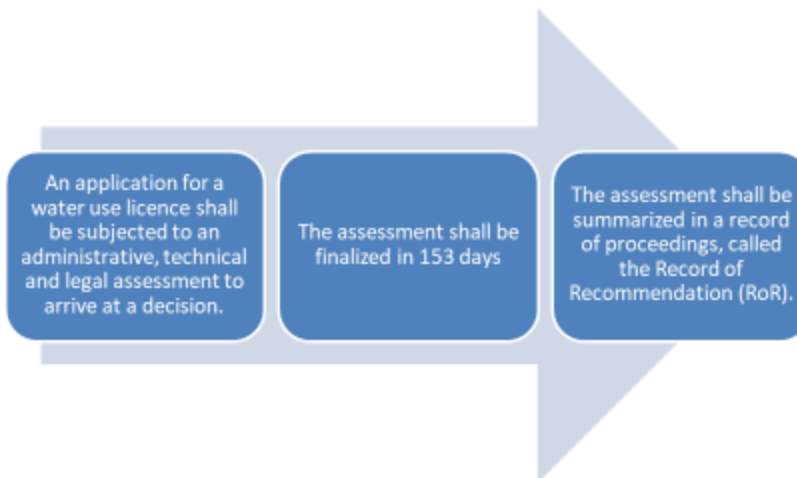
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Part 2: Application compilation and submission



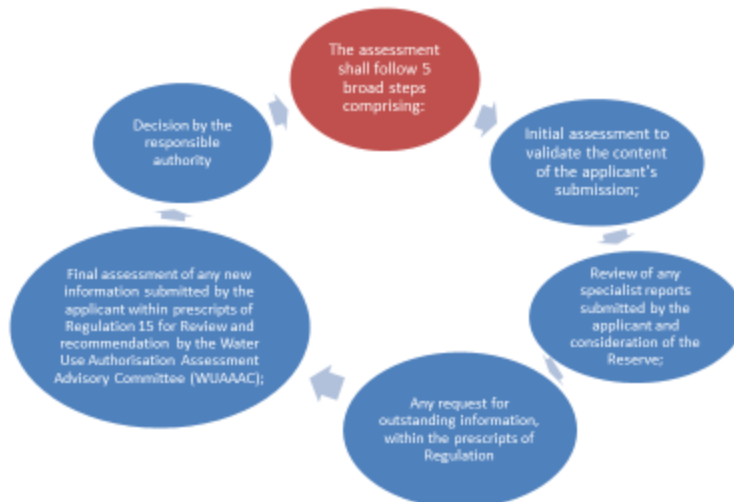
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Assessment of a water use licence application



Government Gazette General Notice 126 of 2015: Notice no 38465

Assessment of a water use licence application



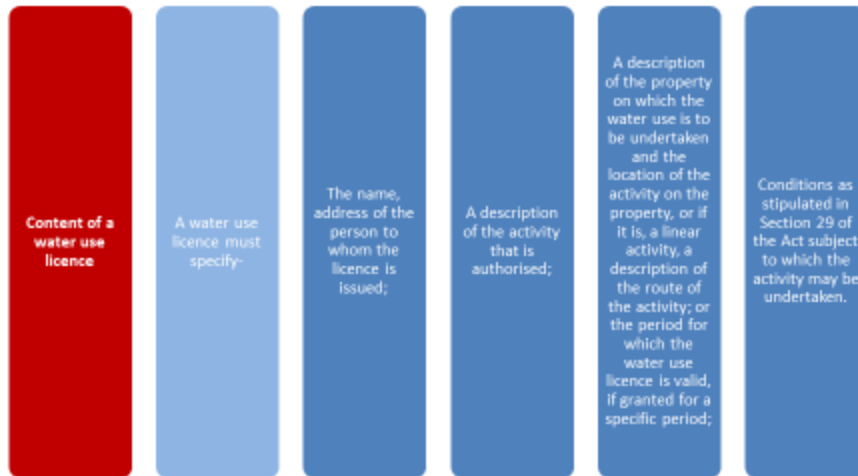
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Assessment of a water use licence application



Government Gazette General Notice 126 of 2015:Notice no 38465

Part 3: Water Use Licence



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ANNEXURE B-1

INTERVIEW GUIDES⁶⁰ FOR RESEARCH

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Interview Schedule No 2: Open-ended questions for in-depth semi-structured interviews with key informants present within the study site:

CONSULTANTS

Questions

Background and understanding of concepts

- What do you do (since when? and before) and what does it entail?
- Who are your clients and How often do you work for them (describe types of projects? (BGCMA /DWS)?

BGCMA

- Do you think that the board and its members are representative of race, gender and are they capable of representing the interest of all stakeholders?
- Do you think they are qualified to be board members i.e do they have a voice to drive or initiate further developments?
- Is there any other agricultural fora for emerging and commercial farmers and are they included in business of BGCMA?
- Do you think BGCMA is accessible to all stakeholders?
- How are decisions made? Voting system – how does it work? How is information disseminated to members?
- What does transformation/redress mean?
- Is this definition used/applied by all role players in dealing with the process of access/transformation?

⁶⁰ King and Horrocks (2010: 35) regard the interview schedule with specific questions in a set order used for quantitative research the wrong tool for qualitative research. They think that an interview guide offers flexibility. Only the important topics are outlined and the order and phrasing of questions are flexible and this gives the interviewer space to respond to and explore issues as they arise during the interview.

- Do you think transformation is necessary/needed? Is it implemented? How is this measured, by whom?
- Do you think it (transformation, the way transformation is undertaken) is effective/sustainable? If not, why not?
- Who determines the agenda i.e. what are the issues, challenges, who decides?
- Who voice them? What language is used?
- How does the institution ensure that board members can identify water related challenges and to effectively deal with it? Are they proactive – does it dictate agenda to eg BGCMA/DWS?
- Does WUAs have a role to play and how is it determined/monitored?
- Do you think BGCMA is relevant and effective in carrying out its mandate in the water scheme –should BGCMA be sole manager?

Meaning of emerging farmer

- What does the term emerging farmer mean to you?
- How does legislation/WUA/BGCMA define EF?
- Is this the acceptable term? Practiced/used? By whom?
- Are you aware of any other concepts used?
- Is any criteria/ tool is used to determine whether farmer fits definition?
- How important is this definition and application in the criteria to determine access to water for EF's?
- How important are these distinctions to carry out the transformation agenda of BGCMA?
- Do you know whether (if yes, what) EFs experience difficulties accessing water use for productive purposes?

Water allocation

- Do you think that the new water allocation process had improved i.e. more efficient, sustainable?
- Does precise data exist on current water/m use and allocation within the area?
- What are your thoughts on the verification and validation strategy? Registration?
- Do you think that a V&V process was correctly carried out?
- How was it done, by whom?
- What was your experience with these farmers? Did you notice any common problems?
- When you were working for the department, did you have a different way of looking at the registration/V&V process than as a consultant? Does your history at the department influence your role as a consultant in a way other than the knowledge it brings?
- Do you think water is allocated fairly and equitably?
- Is the right tool to determine the quantity and actual use, how will this information help water allocation?
- What role should BGCMA/DWAS play in V&V process?
- When is it necessary to use consultants (why not BGCMA or DWS) and How often are consultants used to assist with water management challenges?

- Do you think BGCMA/DWS are doing enough to guide/familiarise stakeholders with processes of allocation and other water related matters? If no, what is the impact of this?
- Besides BGCMA, which other role players influence process and outcome of process i.e. commercial farmers, Agriculture, consultants? And how does this create enabling process?
- What is your/BGCMA's perception of difficulties/challenges for EF's in the process?
- Who is accountable during the process and what are the consequences for not achieving outcomes?
- What institutional support (or lack thereof) do BEFs receive from the interest groups enabling them to effectively navigate the legal and institutional framework?
- What is the outcome of such support (or lack thereof)?
- What interrelational departmental coordination exists to streamline the process of accessing water for productive purposes by BEFs?
- Does this promote or hamper the process of access?
- What are the procedural challenges (do staff know where to start, which forms, how to complete, who responsible, are resources available?) experienced by frontline staff (who and how is it defined?) in dealing with access for EF's?
- How do the above challenges impact on the process?
- What are the substantive challenges (do they know which the legislative/policy are applicable and do they understand relevant requirements?) experienced by frontline staff in dealing with access for EF's?
- How do the above challenges impact on the process?
- Is BGCMA/DWS capacitated/enough resources to handle the demands of the DWA and other policies?
- What is done by BOCMA to address above identified challenges?

Way forward

- How do you think the water should be differently managed?
- How do you think the policy should be improved?
- What do you think should be done to improve the water management in the area, CMA?
- How do you think the process for the water management can be improved?

ANNEXURE B-2

INTERVIEW GUIDES FOR RESEARCH

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Interview Schedule No 2: Open-ended questions for in-depth semi-structured interviews with key informants present within the study site:

CEO AND MANAGEMENT OF BOCMA/OTHER RELEVANT INSTITUTIONS

Questions

Background and understanding of concepts

- What is your position (since when?) and what does your job entail?
- How many farmers (commercial and Emerging) are within the area of jurisdiction of BGCMA?
- Who are your partners (stakeholders) and how do they impact on your job and access to water? How did you identify them?
- How closely do you work with them?

Meaning of emerging farmer

- What does the term emerging farmer mean to you?
- How does BGCMA define EF? Is it in terms of policy, which?
- Is this the acceptable term? Practiced/used? By whom?
- Are you aware of any other concepts used?
- Is any criteria/ tool is used to determine whether farmer fits definition?
- Is this definition used/applied by all role players in dealing with the process of access?
- How important is this definition and application in the criteria to determine access to water for EF's?

Legal and institutional framework within which BEFs operate to access water for productive use

- Which BOCMA policy documents guide the process of access for EF's?
- Who/what determined the above? Legislation, national policy, institutional/internal practice/policy/environment,
- What processes/requirements are to be met for successful application for water access/use?
- Is the process made available/shared/disseminated to all interest groups/individuals/role players?
- Besides BOCMA, which other role players influence process and outcome of process?
- Who makes provisional, final determination on application access?

The legal and institutional difficulties are experienced by black emerging farmers (BEF) accessing water use for productive purposes

- Do you know whether (if yes, what) EFs experience difficulties accessing water use for productive purposes?
- What institutional support (or lack thereof) do EFs receive from the BOCMA enabling them to effectively navigate the legal and institutional framework
- What is the outcome of such support (or lack thereof)?
- Who deals/interacts with the process of water access? From before application to ultimate outcome (including appeal)?
- What type of training did above identified persons receive to interact with public and equip them to deal with the process and public?
- Do you know whether resources are available to facilitate successful access to water use?
- How do the above challenges impact on the process?
- What is done by BOCMA (support/lack?) to address above identified challenges?
- What is BOCMA's perception of difficulties/challenges for EF's in the process?

The interest groups interacting with the process of water access for BEFs: their understanding, reconstruction and application of the legal and institutional framework and the impact on the implementation process

- What is done to ensure that every role player during process is familiar/ competent in ensuring that policy is?
- What institutional policy exists tracking the application process (checks and balances)?
- Who is accountable during the process and what are the consequences for not achieving outcomes?
- Do you think that the policy can be improved?
- What institutional support (or lack thereof) do BEFs receive from the interest groups enabling them to effectively navigate the legal and institutional framework?
- What is the contribution of the other interest groups to create an enabling process?
- What is the outcome of such support (or lack thereof)?
- What interrelational departmental coordination exists to streamline the process of accessing water for productive purposes by BEFs?
- Which other departments influence the process and outcome of access for EF's/
- What role do these identified departments play and what is the impact on the process of access (for BOCMA and EF's)?
- Does this promote or hamper the process of access?
- What policies and interaction (amongst staff?) are in place to facilitate the coordination to streamline the process of access?
- How is this monitored to ensure that the EF's are not detrimentally effected
- What is the end result of this interrelational departmental coordination for BEFs in accessing water for productive use?
- Do you think that BGCMA is doing enough to facilitate smooth access?

The procedural and substantive challenges experienced by BEFs and frontline staff enabling access to water for productive use and what is the impact of these challenges on water access for BEFs

- What are the procedural challenges (do staff know where to start, which forms, how to complete, who responsible, are resources available?) experienced by frontline staff (who and how is it defined?) in dealing with access for EF's?
- How do the above challenges impact on the process?
- What are the substantive challenges (do they know which the legislative/policy are applicable and do they understand relevant requirements?) experienced by frontline staff in dealing with access for EF's?
- How do the above challenges impact on the process?
- What is done by BGCMA to address above identified challenges?
- Do you think that staff is capable of implementing the policy as intended?

General and way forward

- Has anything changed for the commercial farmer re access to water?
- What do you think should be done to improve processes for ease of access?

ANNEXURE B-3

ONDERHOUDS-SKEDULE VIR NAVORSING

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Onderhouds-skedule No 2: Ope vrae vir die in diepte semi-gestruktureerde onderhoud met sleutel informante teenwoordig binne die studie area:

CEO EN BESTUUR VAN BGCMA/ANDER RELEVANTE INSTELLINGS

Vrae

Agtergrond: deelnemer and GWUA

- Wat is u posisie (sedert wanneer?), watter rol speel u en wat behels dit?
- Watter kwalifikasies/vaardighede/bekwaamhede benodig die posisie en watter tipe ervaring word benodig?
- Hoe nou werk jy met die ander rol spelers i.e. BBGCMA, Provinsiale en nasionale dept, plaasboere, gemeenskap, munisipaliteit as dit by water vir besproeiing kom?
- In u opinie wat is die stand (kwantiteit) van water vir die area en hoe beïnvloed dit water toekenning?

Meaning of emerging farmer

- Hoeveel boere – kommersieel en opkomend binne die area?
- In u opinie/kennis wat beteken die term opkomende en kommersiele boer?
- Hoe definieer Groenland en BGCMA dit? Het Groenland dit amptelik gedefinieer?
- Is die aanvaarbaar? Word dit in die algemeen gebruik? Deur wie?
- Is daar enige bestaande kriteria om te bepaal of die boer kommersieel of opkomend is?
- Hoe belangrik is die definisie en toepassing van die kriteria om water toekenning te bepaal?
- Is die definisie belangrik om die transformasie doelstelling van die GWUA besigheid plan van 2009 uit te voer?

Groenland Water User Association

- Hoe word die raad saam gestel en wie kwalifiseer as lede?
- Hoeveel keer ontmoet die raad en waar en watter tyd word vergaderings gehou?
- Hoe word besluite geneem deur die raad geneem? Stem stelsel – hoe werk dit?
- Wie bepaal die agendasvirheidie vergaderings?
- Hoe en wanneer word inligting onder lede en rolspelers versprei?

- Hoe verseker Groenland dat alle raadslede/lede/ rolspelers vertrouwd is met die identifisering van die water verwante probleme/ en hoe om dit effektiewelik te hanteer.
- Was jy betrokke by die vorige Besproeiings Raad (RB)? Hoe is die Groenland verigtinge verskillend/dieselfde as die IBRIs Kan jy verduidelik? Is dit beter?
- Met wie word dit benodig vir Groenland om saam mee te werk (publiek of privaat) sodat die probleme and take suksesvol voltooi kan word? Wie bepaal of verder kundigheid benodig word en hoe dit gebruik word?
- Gebruik Groenland konsultante en watter rol speel hulle in besluit neming?
- Met wie word dit benodig vir Groenland om saam mee te werk (publiek of privaat) sodat die probleme and take suksesvol voltooi kan word? Wie bepaal of verder kundigheid benodig word en hoe dit gebruik word?

Water allocation

- Hoe is die water toekenning proses anders in die nuwe dispensasie? Is dit beter of nie?
- Het Groenland presiese data gaande huidige water/gebruik en allokasie? Hoe word rekord gehou? En is dit beskikbaar aan enig een wat dit benodig?
- Hoe nou werk julle met BGCMA/DWAS om die water toekenning te betuur?
- Hoe word verseker dat jy en jou personeel die boere effektiewelik kan bystaan met hulle institutional vrae en probleme?
- Volg Groenland (hou rekord) van enige navrae/aansoeke wat na BGCMA/DWAS deur die boere of enige ander rolspelers gerig is? Om hulle verder te adviseer?
- Wie is verantwoordelik/of is veronder stel om te wees?
- Gebruik Groenland konsultante (wie) en hoe gereeld om te help met water bestuur probleme/? Hoekom? Hoeveel? Is dit nodig?

Legal and institutional framework within which BEFs operate to access water for productive use

- Watter BGCMA beleids dokumente/wetgewing bepaal die prosesse om water toe te ken?
- Wie en wat bepaal bogenoemde? Legislation, national policy, institutional/internal practice/policy/environment,
- Watter prosesse/vereistes moet vervul word om suksesvol te wees met die aansoek?
- Word die proses beskikbaar gestel/gedeel/versprei onder al die rolspelers?
- Behalwe BGCMA, watter ander rolspelers beïnvloed die prosesen die finale besluit oor water toekenning?
- Wie maak de voorlopige/tydelike, finale bepaling oor die aansoek?
- Watter ondersteuning kry Groenland van BGCMA/Dept wat water allokasies (hoeveel, wat) betref? Indien nie, wat is die gevolg hiervan?
- Wat is die algemene probleme wat die boere/rolselers ervaar wanneer water toegeken moet word? Met in area, Groenland, BGCMA, Depart
- Wat doen BGCMA/Dept om probleme aan te spreek?

Die toekoms?

Dink u dat die beleid kan verbeter word?

- Hoe kan die proses verbeter word?
- Watter institusionele hulp (of die gebrek daarvan) word benodig om suksesvol te wees met die prosesse?
- Hoe kan ander rolspelers (BGCMA/dept) help om te verbeter?

ANNEXURE B-4

INTERVIEW GUIDES FOR RESEARCH

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Interview schedule No 3: open-ended questions for in-depth semi-structured interviews with key informants present within the study site:

FRONTLINE STAFF

Questions

Back ground and understanding of concepts

- What is your position (since when?) and what does your job entail?
- How many farmers (commercial and Emerging) are within the area?
- Who are your partners and How closely do you work with them (BGCAM /DWS)?

Meaning of emerging farmer

- What does the term emerging farmer mean to you?
- Is this the acceptable term? Practiced/used? By whom?
- Are you aware of any other concepts used?
- How does DWS define EF? Commercial farmer?

- Is any criteria/ tool is used to determine whether farmer fits definition?
- Is this definition used/applied by all role players in dealing with the process of access?
- How important is this definition and application in the criteria to determine access to water for EF's?
- Where and how does race/gender fit into definition? How is it applied when accessing water?

Legal and institutional framework within which BEFs operate to access water for productive use

- Which DWS policy documents guide the process of access for EF's?
- Are you familiar with these? When dealing with application?
- Who/what determined the above? Legislation, national policy, institutional/internal practice/policy/environment,
- What processes/requirements are to be met for successful application for water access/use?

- Is the process made available/shared/disseminated to all interest groups/individuals/role players?
- Besides DWS, which other role players influence process and outcome of process? Are these necessary and how does it impact on application?
- Who makes provisional, final determination on application access?

The legal and institutional difficulties are experienced by black emerging farmers (BEF) accessing water use for productive purposes

- Do you know whether (if yes, what) EFs experience difficulties accessing water use for productive purposes?
- What institutional support (or lack thereof) do EFs receive from the DWS enabling them to effectively navigate the legal and institutional framework
- What is the outcome of such support (or lack thereof)?
- Who deals/interacts with the process of water access? From before application to ultimate outcome (including appeal)?
- What type of training did above identified persons receive to interact with public and equip them to deal with the process and public?
- Do you know whether resources are available to facilitate successful access to water use?
- How do the above challenges impact on the process?
- What is done by DWS (support/lack?) to address above identified challenges?
- What is DWS's perception of difficulties/challenges for EF's in the process?

The interest groups interacting with the process of water access for BEFs: their understanding, reconstruction and application of the legal and institutional framework and the impact on the implementation process

- What is done to ensure that every role player during process is familiar/ competent in ensuring that policy is?
- What institutional policy exists tracking the application process (checks and balances)?
- Who is accountable during the process and what are the consequences for not achieving outcomes?
- Do you think that the policy can be improved?
- What institutional support (or lack thereof) do BEFs receive from the interest groups enabling them to effectively navigate the legal and institutional framework?
- What is the contribution of the other interest groups to create an enabling process?
- What is the outcome of such support (or lack thereof)?
- What interrelational departmental coordination exists to streamline the process of accessing water for productive purposes by BEFs?
- Which other departments influence the process and outcome of access for EF's/
- What role do these identified departments play and what is the impact on the process of access (for DWS and EF's)?
- Does this promote or hamper the process of access?

- What policies and interaction (amongst staff?) are in place to facilitate the coordination to streamline the process of access?
- How is this monitored to ensure that the EF's are not detrimentally effected
- What is the result of this interrelational departmental coordination for BEFs in accessing water for productive use?
- Do commercial farmers experience the same/similar challenges

The procedural and substantive challenges experienced by BEFs and frontline staff enabling access to water for productive use and what is the impact of these challenges on water access for BEFs

- What are the procedural challenges (do staff know where to start, which forms, how to complete, who responsible, are resources available?) experienced by frontline staff (who and how is it defined?) in dealing with access for EF's?
- How do the above challenges impact on the process?
- What are the substantive challenges (do they know which the legislative/policy are applicable and do they understand relevant requirements?) experienced by frontline staff in dealing with access for EF's?
- How do the above challenges impact on the process?
- What is done by DWS to address above identified challenges?

The way forward:

- What do you think should change to improve the process for all, especially EFs
Is this possible?

ANNEXURE B-5

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Interview schedule: Open-ended questions for in-depth semi-structured interviews with experts in water management and related constituencies/disciplines:

Questions

Personal Background

- What is your position (since when?) and what does it entail?
- How does your position intersect with water management or water-related interests?

Inter-governmental relations and its impact

- The translation of IWRM into the South African context and, in particular, the integration of institutions related to land and water are integral to effective implementation. What in your opinion are the underlying reasons why governmental departments struggle to operate in an integrated manner for the stakeholders to benefit fully?
- Do you think that the leadership of the relevant departments fully comprehend the concept of IWRM and what is required to start to implement it across departments for stakeholders to enjoy the benefit of the intent of IWRM?
- Are the various Departments equipped (capacitated) to deal with an integrated approach to give full meaning to the concept of IWRM?
- What in your opinion are the challenges and obstacles for the tendency of governmental departments to work in silos?
- Is political interference a factor in whether and how departments are able to work together or not?

Integrated Water Resource Management

- Empirical material suggests that there are inconsistencies between a progressive IWRM-influenced policy and the actual realities as experienced by stakeholders, especially the user. What in your opinion can be attributed to this disjointedness?
- What is the impact of this disjointedness on policy implementation and intended transformation?
- This discrepancy implies that stakeholder participation at local level does not occur as intended. Would more effective implementation of the policy have brought about greater stakeholder participation impacting positively on the users's ability to access water more successfully? Please elaborate.

Legislation and policy:

- In your opinion does the NWA of 1998 and the related policy make provision for South Africa's complex history impacting users today still as they struggle to navigate the maze of laws and regulations?
- Does policy recognise existing inequalities in knowledge and power and do you think this influences stakeholders' ability to access water and related resources effortlessly and seamlessly.
- Is it necessary for South Africa to change or amend the legal framework to improve implementation or are other factors influencing poor implementation? Please elaborate?
- Do you think transformation is a pipedream as emerging farmers are not regarded as contributing economically (as opposed commercial farmers) and navigate the water use system from a power deficit?
- What do you think is the biggest challenge for emerging farmers as they attempt to access water? What should change to address and improve this?

Power struggles

- It seems as if implementation issues can be attributed to internal power struggles brought about by a range of factors. What do you think are those factors and how do they contribute to the crippling delays in the establishment of institutional implementation vehicles?
- Could these internal power struggles add to the Department's inability to interpret the water use authorisation system to bring about the intended transformation? Please explain.
- Challenges with institutional realignment and lack of coordination impact implementation greatly. Is this a consequence of internal power struggles and/or a combination of related factors? What should change to improve the situation?

ONDERHOUDS-SKEDULE VIR NAVORSING

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Onderhouds-skedule No 4: Ope vrae vir die in diepte semi-gestruktureerde onderhoud met sleutel informante teenwoordig binne die studie area:

OPKOMENDE BOERE

Vrae

Agtergrond en geskiedenis van plass/boer

- Gee u om agtergrond/geskiedenis van u en u plaas te deel? (Hoe lank is u al in die boerdery bedryf en wat word oorwegend hiermee geboer?)
- Is dit a familie plaas en hoekom in hierdie area? Is u die titel houer?
- Word u beskryf as opkomende boer en wat beteken dit (en vir u boerdery?)
- In u opinie, maak u ras a verskil in die toeganklikheid van bronne i.e. water, finansies, grond, u sukses? Is dit beter of slegter?
- Is u bewus van enige ander opkomende/kommersiele boere in die area? Wat beteken die konsep kommersiele vir u?
- Wat is die impak van hulle teenwoordigheid in die area?

Water toekenning

- Hoe was/word u water toekenning bepaal, deur wie en is dit genoeg vir u doeleindes?
- Moes u aansoek doen vir die water toekenning? Waar? Department?
- Hoe het u die proses/interaksie ervaar? Was dit maklik? Was u enige hulp aan gebied?
- Weet u of BOCMA/DWS beleids dokumente/gids het wat die proses van water toekenning?
- Is die BOCMA/DWS deursigtig (transparent) met hulle proses?
- Hoe word die proses beskikbaar /gedeel /versprei onder belangstellendes /individue/rolspelers?
- Behalwe BOCMA/DWS, wie anders rolspelers beïnvloed die proses en die finale uitslag van proses?
- Het enigiets verander vir u en die plaas vanaf die nuwe water bedeling geïmplementeer is? Dink u dis beter of moeiliker?
- Weet u wie om te kontak en waar om te begin indien u aansoek moet rig vir water gebruik?
- Wie hanteer die proses van water toegang? Van die voor die aansoek tot die uindelijke uitslag (ingesluit appel)?
- Weet u watter vorms, hoe om dit te voltooi en die tylyne om finaal toestemming te kry?
- Bestaan daar voldoende ondersteuning om die stelsel te gebruik?

- Hoe dink u moet dit meer verbruiker vriendelik wees?

The legal and institutional challenges for accessing water use for productive purposes

- Dink u BOCMA/DWS doen genoeg om te help?
- Maak BOCMA/DWS verskil/bydrae in die gebruik/of beskikbaarheid van water op die plaas?
- Hoe werk die Spanjaardskloof vereniging en watter verskil maakdit?
- Maak u teen woordigheid by vergaderinge n verskil? Wie bepaal die agenda? Word u stem gehoor?
- Dink u dat Spanjaardskloof vereniging al die rolspelers effektiewelik insluit om enige impak op die besluiteneming te maak?
- Hoe kan n groter impak op u plaas gemaak word?

General challenges and concerns for the emerging farmer

- Wat is u algemene water probleme en concerns wat u plaas, die area en die nasionale stand van water betref?
- Hoe dink u kan dinge verbeter in die toekoms?

ANNEXURE B-7

INTERVIEW GUIDES FOR RESEARCH

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Interview Schedule No 2: Open-ended questions for in-depth semi-structured interviews with key informants present within the study site:

CEO AND MANAGEMENT OF BGCMA/OTHER RELEVANT INSTITUTIONS

Questions

Background and understanding of concepts

- What is your position (since when?) and what does it entail?
- How many farmers (commercial and Emerging) are within the jurisdiction of GWUA?
- Who are your partners and How closely do you work with them (BGCMA /DWS)?

Groenland Water User Association

- Do you think that the board and its members are representative of race, gender and are they capable of representing the interest of all stakeholders?
- How does anyone qualify to be a board member?
- Is there any other agricultural fora for emerging and commercial farmers and are they included in business of GWUA?
- Do you think that the times, place of meetings makes to accessible to all stakeholders? When is this determined?
- How are decisions made? Voting system – how does it work? How is information disseminated to members?
- Do you think transformation is necessary/needed? Is it implemented?
- Do you think it is effective/sustainable? If not, why not?
- Who determines the agenda i.e. what are the issues, challenges, who decides?
- Who voice them? What language is used?
- How does institution ensure that board members can identify water related challenges and to effectively deal with it? Are they proactive – does it dictate agenda to eg BGCMA?
- Does the GWUA operate differently to the IB? If yes, please explain? Is it improved?
- Do you think WUA are relevant in the water scheme –should BGCMA be sole manager?

Meaning of emerging farmer

- What does the term emerging farmer mean to you?

- How does GWUA/BGCMA define EF?
- Is this the acceptable term? Practiced/used? By whom?
- Are you aware of any other concepts used?
- Is any criteria/ tool is used to determine whether farmer fits definition?
- Is this definition used/applied by all role players in dealing with the process of access?
- How important is this definition and application in the criteria to determine access to water for EF's?
- What do you understand by the above concepts?
- Has GWUA/BGCMA formally defined the concepts?
- How important are these distinctions to carry out the transformation agenda as per the GWUA business plan of 2009?

Water allocation

- Do you think that the new water allocation process had improved i.e. more efficient, sustainable?
- Do you have precise data on current water/m use and allocation within the area?
- How closely do you work with BGCMA/DWAS to manage water allocation?
- How do you or your staff ensure that you are able to effectively assist farmers with institutional queries or concerns?
- Do you track any queries/applications lodged to BGCMA/DWAS to advise farmers/
- When is it necessary to use consultants (why not BGCMA or DWS) and
- How often do you use consultants (who?) to assist with water management challenges?
- How do you think the water should be differently managed?
- What are your thoughts on the verification and validation strategy? Registration?

Legal and institutional framework within which BEFs operate to access water for productive use

- Are you familiar with the BGCMA policy documents guide the process for successful application for water access/use?
- Do you know whether EFs are familiar with it or do they rely on GWUA for guidance?
- Is the process made available/shared/disseminated to all interest groups/individuals/role players?
- Besides BGCMA, which other role players influence process and outcome of process?
- Who makes provisional, final determination on application access?

The legal and institutional difficulties are experienced by black emerging farmers (BEF) accessing water use for productive purposes

- Do you know whether (if yes, what) EFs experience difficulties accessing water use for productive purposes?

- What institutional support (or lack thereof) do EFs receive from the BGCMA?GWUA enabling them to effectively navigate the legal and institutional framework
- What is the outcome of such support (or lack thereof)?
- Who deals/interacts with the process of water access? From before application to ultimate outcome (including appeal)?
- What type of training did above identified persons receive to interact with public and equip them to deal with the process and public?
- Do you know whether resources are available to facilitate successful access to water use?
- How do the above challenges impact on the process?
- What is done by BOCMA (support/lack?) to address above identified challenges?
- What is BOCMA's perception of difficulties/challenges for EF's in the process?

The interest groups interacting with the process of water access for BEFs: their understanding, reconstruction and application of the legal and institutional framework and the impact on the implementation process

- What is done to ensure that every role player during process is familiar/ competent in ensuring that policy is?
- What institutional policy exists tracking the application process (checks and balances)?
- Who is accountable during the process and what are the consequences for not achieving outcomes?
- Do you think that the policy can be improved?
- What institutional support (or lack thereof) do BEFs receive from the interest groups enabling them to effectively navigate the legal and institutional framework?
- What is the contribution of the other interest groups to create an enabling process?
- What is the outcome of such support (or lack thereof)?
- What interrelational departmental coordination exists to streamline the process of accessing water for productive purposes by BEFs?
- Which other departments influence the process and outcome of access for EF's/
- What role do these identified departments play and what is the impact on the process of access (for BOCMA and EF's)?
- Does this promote or hamper the process of access?
- What policies and interaction (amongst staff?) are in place to facilitate the coordination to streamline the process of access?
- How is this monitored to ensure that the EF's are not detrimentally effected
- What is the end result of this interrelational departmental coordination for BEFs in accessing water for productive use?

The procedural and substantive challenges experienced by BEFs and frontline staff enabling access to water for productive use and what is the impact of these challenges on water access for BEFs

- What are the procedural challenges (do staff know where to start, which forms, how to complete, who responsible, are resources available?) experienced by frontline staff (who and how is it defined?) in dealing with access for EF's?
- How do the above challenges impact on the process?
- What are the substantive challenges (do they know which the legislative/policy are applicable and do they understand relevant requirements?) experienced by frontline staff in dealing with access for EF's?
- How do the above challenges impact on the process?
- What is done by BOCMA to address above identified challenges?

Way forward

- What do you think should be done to improve the water management in the area, CMA?
- How do you think the process for the water management can be improved?

ANNEXURE B-8

ONDERHOUDS-SKEDULE VIR NAVORSING

Title: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

Onderhouds-skedule No 4: Ope vrae vir die in diepte semi-gestruktureerde onderhoud met sleutel informante teenwoordig binne die studie area:

KOMMERSIELE BOERE

Vrae

Agtergrond en geskiedenis van plass/boer

- Gee u om agtergrond/geskiedenis van u en u plaas te deel?
- Is dit a familie plaas en hoekom in hierdie area? Is u die titel houer?
- Hoe lank is u al in die plaas bedryf en wat word oorwegend hiermee geboer?
- Word u beskryf as a kommersiele boer en wat beteken dit (en vir u boerdery?)
- In u opinie, maak u ras a verskil in die toeganklikheid van bronne i.e. water, finansies, grond? Is dit beter of slegter?
- Is u bewus van enige opkomende boere in die area? Wat beteken die konsep vir u? Wat is die impak van hulle teenwoordigheid in die area?

Water toekenning

- Hoe was/word u water toekenning bepaal, deur wie en is dit genoeg vir u doeleindes?
- Moes u aansoek doen vir die water toekenning? Waar? Department? Was dit maklik?
- Weet u of GWUA/BOCMA beleids dokumente/gids het wat die proses van water toekenning?
- Is die GWUA/BOCMA deursigtig (transparent) met hulle proses?
- Hoe word die proses beskikbaar /gedeel /versprei onder belangstellendes /individue/rolspelers?
- Behalwe GWUA/BOCMA, wie anders rolspelers beïnvloed die proses en die finale uitslag van proses?
- Het enigiets verander vir u en die plaas vanaf die nuwe water bedeling geïmplementeer is? Dink u dis beter of moeiliker?
- Weet u wie om te kontak en waar om te begin indien u aansoek moet rig vir water gebruik?
- Wie hanteer die proses van water toegang? Van die voor die aansoek tot die uiteindelijke outslag (ingesluit appel)?
- Weet u watter vorms, hoe om dit te voltooi en die tylyne om finaal toestemming te kry?
- Bestaan daar voldoende ondersteuning om die stelsel te gebruik?

The legal and institutional challenges for accessing water use for productive purposes

- Wat is u assosiasie met GWUA?
- Watter voordele geniet u deur die assosiasie? Betaal daarvoor? Is dit die moeite werd?
- Maak GWUA a verskil/bydrae in die gebruik/of beskikbaarheid van water op die plaas?
- Hoeveel stemme het u en hoe is dit bepaal?
- Dink u dat die stem stelsel werk i.e. besluit neming, wat is u bydrae,
- Maak u teen woordigheid n verskil? Wie bepaal die agenda? Word u stem gehoor?
- Dink u dat GWUA al die rolspelers effektiewelik insluit om impak op die besluiteneming te maak?
- Hoe kan GWUA beter bestuur word of n groter impak op u plaas te he?

General challenges and concerns for the commercial farmer

- Wat is u algemene water probleme en concerns wat u plaas, die area en die nasionale stand van water betref?
- Hoe dink u kan dinge verbeter?

ANNEXURE C

Letter: Permission to conduct research in Spanjaardskloof Area

23 April 2016

The Chairperson
Spanjaardskloof Inwoners Vereniging
Spanjaardskloof

Permission to conduct research in Spanjaardskloof Area

I hereby wish to confirm that on 30 March 2016, at a meeting held in Spanjaardskloof, the Spanjaardskloof Inwoners Vereniging had in principle granted permission for me to conduct research within the area.

I am pursuing my PhD at the University of Western Cape and my research seeks to explore water reform within agriculture amongst emerging farmers in the Breede Gouritz Water Management Area generally and specifically in Pietersielieskloof. This research is dovetailed with my Water Research Commission project which will contribute to the national debate and review of water policy.

I appreciate the permission granted and your assistance to conduct research and specifically do field work in the area will be invaluable. I had started the research and will arrange meetings with individual persons to conduct and discuss the research and clarify any concerns or questions they may have.

Should you have any queries or require further information please do not hesitate to contact me via email at williamsse@cput.ac.za or telephonically.

Once again your assistance with my research is highly appreciated and I look forward to working with you.

Kind regards

Sandra Williams
(076 380 6198)

ANNEXURE D

LETTER: REQUEST TO CONDUCT RESEARCH WITHIN THE JURISDICTION OF THE GREENLAND WATER USERS' ASSOCIATION

12 May 2015

8 Beefwood Street
KUILSRIVER
7580
(021) 9062581
0763806198

The Chairperson
The Greenland Water User Association
PO Box 313, Grabouw 7160

Dear Sir

Request to conduct research within the jurisdiction of the Greenland Water User Association

I, Sandra Williams, am affiliated with the **Centre of Water and Sanitation Research (CWSR)** at Cape Peninsula University of Technology and a PhD student registered at the UWC.

The **CWSR** and **Institute of Water Studies (IWS)** at UWC in collaboration with various Dutch Universities had signed a Memorandum of Agreement (MOA) with the Breede Gouritz Catchment Management Agency (**BGCMA**) and this is aligned with BGCMA's Strategic Plan which advocates "*collaboration with academic and research institutions which can play a meaningful role in terms of understanding technical issues, in building capacity and providing innovative responses.*"

In pursuit of this strategic objective I am conducting research exploring water reform and seek to determine how bureaucracy, law and power impact on water allocation for productive use. I will examine the substantive and procedural requirements, realities and challenges of water allocation and the implementation and impact on various stakeholders. I will do this by case study and the research sites that I am focusing on are Pietercielieskloof near Bredasdorp and the Greenland Water User Association's jurisdiction. To this end I require access to the relevant archives and documents and also permission to interact with relevant stakeholders.

As determined and dictated to by the University and on a personal basis, I guarantee the participants that the research will be conducted with the utmost confidentiality and respect.

Hence I ask your permission and assistance to conduct research and specifically field work in the area of jurisdiction of the Greenland WUA. I will gladly meet with the relevant persons to discuss this and clarify any concerns or questions.

Your consideration and assistance in this regard will be highly appreciated and I look forward to hearing from you.

Yours sincerely

Sandra Williams
(076 380 6198)

ANNEXURE E

CONSENT FORM

RESEARCH TITLE: Bureaucracy, law and power – water allocation for productive use: Policy and implementation, a case study of black emerging farmers in the Breede Gouritz Water Management Area in the Western Cape, South Africa: 2005-2017

I have read the information presented in the information letter about a study being conducted by SANDRA WILLIAMS towards the Doctoral Programme at the School of Government (SOG) at the University of the Western Cape.

This study has been described to me in a language that I understand and I freely and voluntarily agree to participate. My questions about the study have been answered.

I understand that my identity will not be disclosed and was informed that I may withdraw my consent at any time by advising the student researcher.

With full knowledge of all foregoing, I agree to participate in this study.

Participant Name : _____
Participant ID Number : _____
Participant Signature : _____
Date : _____
Place : _____

Student Researcher : SANDRA WILLIAMS _____
Student Researcher Signature : _____
Student Number : 8209179 _____
Mobile Number : 0763806198 _____
Email : _williamsse@cput.ac.za _____

I am accountable to my supervisor : __PROF GREG RUITERS_____
School of Government (SOG)
Telephone : +27 21 959 38_____
Fax : +27 21 959 3849
Email : ___gruiters@uwc.ac.za_____

ANNEXURE F

REFLECTION TOOL

Contact Summary Form

Contact type:

Contact Date:

Visit:

Today's date:

Phone:

Site:

1. What are the main issues or themes that struck me in this contact?
2. Summarise the information You got (or failed to get) on each of the target questions
3. Anything else that struck me as salient, interesting, illuminating or important in this contact?
4. What new (remaining) target questions do I have in considering the next contact with this site?
5. Concerns
6. Observations

ANNEXURE G

CONFIRMATION OF STATUS



FACULTY OF ECONOMIC AND
MANAGEMENT SCIENCES

SCHOOL OF GOVERNMENT

To whom it may concern,

RE: CONFIRMATION OF STATUS


Student : Sandra Williams
Student number : 8209179

Degree : PHD (1921)

This letter serves to inform that Ms Williams is currently enrolled with the School of Government and is registered for the 2016 academic year. She is reading toward her Philosophiae Doctor Degree (PHD) and is in the process of compiling her research. She has submitted her application for ethics clearance, which has been approved and recommended at the Economics and Management Sciences Higher Degrees Committee.

We trust that the student can be accommodated at this stage of her research.

Yours sincerely


.....
Mrs Lynette Festers
Post-graduate Administrator

