



OUTA and WSSA: Joint Press Statement
OUTA and WSSA campaign for an Independent Water Regulator

INTRODUCTION

1. South Africa's water sector is poorly regulated. This is resulting in serious economic decline in the face of water induced capital constraints, not least of all our country's food security. The Department of Water and Sanitation's (DWS) failure to effectively regulate South Africa's water sector requires serious and effective intervention and according to the Organisation Undoing Tax Abuse (OUTA) and Water Shortage South Africa (WSSA), establishing a regulator independent from the Department is a solution that both organisations agree on. As such, OUTA and WSSA are delighted to announce that they will be collaborating in championing for the establishment of an independent water regulator in South Africa. To this end, this presentation will discuss the reasoning behind OUTA and WSSA's collaboration, look briefly at competing schools of thought relevant to the project and finally, outline how OUTA and WSSA aim to achieve their objective through their steering committee.

COLLABORATION BETWEEN OUTA AND WSSA

2. As is generally known, OUTA is a proudly South African non-profit civil action organisation. It comprises of and is supported by people who are passionate about improving the prosperity of our nation and sustaining the environment. OUTA was established to challenge the abuse of authority, particularly the abuse of taxpayers' money wherever it arises.
3. The WSSA was established to raise the awareness of water shortages in South Africa and to facilitate the resolution of this unsatisfactory state of affairs via multiple initiatives from grass roots to national levels. These initiatives are generally to address and unlock the causes of water shortages through the implementation and proliferation of the "Paradigm

of Abundance" as opposed to the current very pedestrian and outdated "paradigm of Scarcity" that limits solutions and economic growth.

4. Following extensive discussions on issues confronting South Africa's water sector, both organisations agreed that the establishment of a regulator that is independent from the DWS will be a concrete step towards addressing regulatory issues, ensure no political interference and provide much needed certainty that will potentially unlock investment in the sector thus aiding sustainable economic and socio-economic development. Some of the symptoms of serious lapses in water regulation identified by OUTA and WSSA that highlight the need for a regulator are, among other things:

- Blue and Green Drop reports not published since 2014;
- Vaal river seriously polluted by untreated sewage discharge;
- Over 40 Sanitation Schemes have failed to meet minimum standards or non-compliant, more is suspected;
- Water pricing in municipalities not regulated resulting in under recoveries and compromised services;
- Agriculture not able to access the required volumes and quality of irrigation water during normal seasons and drought;
- Municipalities are on average leaking 37% of their water (War on Leaks Programme);
- Municipalities are unable to adequately address ongoing serious droughts due to confusion on who is responsible for bulk water provision;
- Emerging farmers are unable to secure adequate water rights; and
- Government reports that some R870 billion is required to bring South Africa's water and sanitation sector up to speed to have the required water resilience needed and assured quality supply to all water users.¹ Government has also stated that the fiscus cannot support this funding that is key to alleviate poverty, attract investment and grow our economy.

5. Previous research undertaken by OUTA on the shortcomings in the regulatory setup and performance by DWS revealed the following:

¹ See <https://pmg.org.za/taled-committee-report/2410/>

Summary of some shortcomings in the regulatory setup and performance		
Regulatory function or activity	DWS performance	Comments
Too many diverse functions are vested in one national department- e.g. DWS is policymaker, owner, operator and regulator of national infrastructure	Lack of focus and objectivity and resultant lack of regulation of in-house entities such as water trading entity. Preference to act as shareholder of water boards whilst neglecting to regulate them.	Concentration of many complex functions in one department. Difficult to balance as some of these functions are conflicting. Most common to neglect the regulatory role.
Municipalities are both supported and regulated by DWS	Regulatory role neglected as it may even be the same officials in a regional office to execute. The public interest (regulation) is ignored in favour of political support to municipal management.	A different approach and skills are needed for such diverse functions. The public interest must always remain the most important priority and not short term political favours
The monitoring of municipalities and water boards to comply with national standards such as SANS 241 for drinking water quality.	DWS has a regulatory unit but it is understaffed and not sufficiently funded. The acclaimed Blue Drop Program has not released a report since 2014- progress with the 2015 and 2016 report is unknown	The public is entitled to safe drinking water but is currently unaware of the status of drinking water supplies- this poses a huge health risk
Prevention of pollution by controlling discharges from Waste Water Treatment Works (WWTW)	Only an Executive Summary available for Greed Drop (GD) 2013 and no details on individual performances of WWTWs	Green Drop program seems to lose track- quality of discharges from WWTWs unknown
Regulation of raw and bulk water tariffs	Water Boards tariffs are controlled- Raw water tariffs imposed by DWS as water service provider not regulated at all	The Water Trading Account in DWS is running at huge deficits due to outstanding accounts and inefficiencies. Raw water tariffs are unilaterally increased instead of improved efficiency and debt control.

CMAs legislated as catchment-based water regulators	DWS seems reluctant to devolve responsibilities to the functioning CMAs	Regional water resource management entities can do more of the DWS centralised functions currently left unattended- such as pollution of rivers.
Follow up actions on non-compliance e.g. those WWTWs with Purple Drops	This has been lacking-e.g. the 2013 GD report mentions several systems that had been issued Purple Drops in 2013. These 248 systems received scores of less than 30% during 2013, thereby earning the undesirable status of “systems in crisis”.	Systems in crisis therefore represent a significant slice of all WWTWs regulated. It is doubtful if any action had been taken against any of these municipalities

6. As indicated above, OUTA and WSSA believe that all these symptoms can be resolved by an independent regulator as a start to addressing regulatory issues that will instil the required governance in the sector. The process towards this objective will have to consider three competing schools of thought and part of OUTA and WSSA’s work will be navigating this terrain.

COMPETING MODELS

7. Some thoughts on this matter from one of our steering Committee eminent members, Professor Turton are:

“When I teach on graduate programs I refer to the contestation between three alternative models. WIER believers say that **Water Is an Economic Resource** so the commodification believers are in this segment. WINER believers think that **Water Is Not an Economic Resource**. This is where the human right to water is embedded. Then the third group are WISER who believe that **Water Is a Social and Economic Resource**. This is where the PPP model resides where private capital is used to finance infrastructure, but a strong independent regulator ensures that human rights are not abused by powerful financial interests seeking to capture the Resource [...]”.

8. Given the fact that the fiscus is no longer able to fund the infrastructure upgrades we need we can accept that the WINER model has failed in South Africa. That leaves the WIER

and WISER model to choose from. The former will result in resource capture, so it's undesirable in our historic context, leaving the latter as the model best fit for purpose. Both capital and technology are available, but policy is unclear, and the absence of an Independent Water Regulator is an impediment. Therefore, WSSA and OUTA have launched an initiative to advocate for the establishing such a regulatory authority.

9. The human rights to water is fine where government is functional and the resource is managed properly. This means that the WINER model has failed and cannot self-correct under current circumstances. That defaults to the WIER model that is socially and politically unacceptable in our country. Therefore, WISER is a viable alternative for consideration.
10. Remember all water is not equal so we need to understand these important differences. A person can survive on 2 lit a day. To live a good quality life they need 200 l/d. But to survive each person needs 2000 plus calories a day. These differences are order-of-magnitude in size and that's significant in policy terms.
11. It takes a litre of water to produce a calorie of food so that's two tons of water per person per day in a poorly nourished community. The real figure is closer to 3.5 tons of water per person per day. This is called Virtual Water and was conceptualized by my mentor Prof Tony Allan, who went on to win the Stockholm Water Prize (the Nobel Prize for water) for this work. His work showed why the confidently predicted wars over water failed to materialize, because more water flows into the Middle East North Africa (MENA) region embedded in food than flows down the Nile annually. This is an important conceptual issue to grasp in a human rights debate.
12. The small water is easy to protect as a human right and is already done so in our current legislation. Medium water is water for jobs and that's separate from water for human rights. Ditto with big water needed for food. So, if we have a viable regulator to protect the fraction of the national water budget needed for human rights, we can also unlock the power of private capital for vital infrastructure upgrade. In this approach the critical variable is an independent regulator such as they have in Victoria State Australia. These are the facts as I know them."

13. We have for some time an Independent Energy Regulator where it states the following relevant *raison d'être*, Just replace "energy" with "water". If anything, the presence of the National Energy Regulator of South Africa (NERSA) strengthens the case for a water regulator when considering the value of the of the resources for development in the country.

14. The strategic outcome-oriented goals of NERSA are cascaded from the mandate and reflect the key policy priorities of government. These goals attest to NERSA's role in facilitating the achievement of the national socio-economic and socio-political development agenda. The strategic outcome-oriented goals, within the limit of NERSA's mandate are:
 1. To facilitate Security of Supply in order to support sustainable socio-economic development in South Africa;
 2. To facilitate investment in and access to infrastructure in the energy industry to support sustainable socio-economic development in South Africa;
 3. To promote competitive and efficient functioning as well as orderly development of the energy industry in order to sustain socio-economic development in South Africa;
 4. To facilitate affordability of and accessibility to the energy to balance economic interests of all stakeholders in support of socio-economic development of South Africa and a better life for all; and
 5. To position and establish NERSA as a credible and reliable regulator in order to create regulatory certainty.

15. The strategic objectives of NERSA expressed as the desired end state of the energy industry are stated as:
 - Promote energy supply that is certain and secure for current and future user needs;
 - Create a regulatory environment that facilitates investment in energy infrastructure;
 - Promote competition and competitiveness within the energy industry;
 - Promote regulatory certainty within the energy industry;
 - Promote accessible and affordable energy for all citizens; and
 - Establish and position NERSA as a credible and reliable regulator.

16. Water pricing for example is not regulated in South Africa and the drought in the Western Cape has led to extreme increases for example in the City of Cape Town. A regulator

would determine the pricing apolitically whilst ensuring fairness and the full cost recovery of water which is not the current practice in South Africa. Desiring to provide a solution to these regulatory issues, OUTA and WSSA have put together a steering committee (SC) with representatives from each organisation.

STEERING COMMITTEE

17. The SC consists of five representatives and is co-chaired by Yamkela Ntola, OUTA's Water and Environment Portfolio Manager and Benoit Le Roy, Chief Executive Officer of WSSA. Over the next two years the steering committee aims to engage all interested and affected stakeholders across the country to gather and consolidate their inputs to present before the appropriate state institutions. This will include but will not be limited to the agricultural, mining, manufacturing and the food and beverage industries. The SC's current work is centred of devising the appropriate methods and strategies for such engagements. Its second meeting will be held on 18 January 2019, and when in a position to do so, information will be made available by OUTA and WSSA on how we intend to engage all stakeholders.