

# **“WATER RESOURCE USERS ASSOCIATIONS” AROUND MOUNT KENYA – ESTABLISHMENT, OPERATION AND POTENTIAL FOR CONFLICT PREVENTION**

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## **Introduction**

The pattern of water use and land ownership on the slopes of Mount Kenya has changed dramatically over the past 40 years. Since Independence in 1963, many formerly large-scale farms have been settled by smallholders. More recently, the area has found considerable favour with horticultural enterprises, and both these factors have resulted in a massive increase in population and so demand for water. Accompanying the population increase has been considerable deforestation with the added consequences of both increasing the area available for settlement and hastening the run-off of rainfall.

As pressure on water resources increased, so did the potential for dispute over their apportionment. In some cases conflict became a reality as downstream users found themselves without water for much of the year and so moved upstream, often with their livestock, ruining crops, and even threatening lives. Wildlife also moved upstream in search of water, with similar results.

In parallel with the growing competition for water, evolved the idea of its users grouping together in an effort to better manage the resource. On some rivers the forum for the management and more equitable distribution of water emerged as a direct response to crisis; on others it was, and sometimes remains, more a realisation that it was better to be prepared to face shortages than to wait to react to them as and if they occurred. The formation of user groups was also aided by the presence of a local water-oriented company, Rural Focus Limited, which saw the advantages of such entities, long before they were officially recognised by statute.

## **Background Law**

In 2002, the present Water Act (“the Act”) was enacted “to provide for the management, conservation, use and control of water resources and for the acquisition

and regulation of the rights to use water ...”. In September 2007 the long-awaited Water Resources Management Rules (“the Rules”) were promulgated, helping to fill some of the gaps in the Act.

The Act is notable in general terms for devolving the management (not supply) of Kenya’s water resources to the Water Resources Management Authority (WRMA). This in turn is mandated by S 15 to “... formulate a catchment management strategy for the management, use, development, conservation, protection and control of water resources within each catchment area”. Kenya has been divided into six Catchment Areas, that known as Ewaso Nyiro North, with its headquarters in Nanyuki, covering an area from the north of Mount Kenya right up to Somalia.

One of the statutory ways to promote an effective catchment management strategy is for WRMA to “provide mechanisms and facilities for enabling the public and communities to participate in managing the water resources within each catchment area” (S 15(3)(e)).

S 15(5) then goes on to say that “... the catchment management strategy shall encourage and facilitate the establishment and operation of water resources users associations as fora for conflict resolution and co-operative management of water resources in catchment areas.” This is the only reference to WRUAs in the Act, almost as if they had been granted statutory recognition as something of an afterthought. The references to WRUAs in the Rules are more detailed, particularly regarding formation and also registration with WRMA, but despite this, the WRUA-WRMA relationship remains very ill-defined.

Most importantly, the Act enacts the principle of local users taking responsibility for the guardianship of their own resource. This represents a complete change in resource management strategy, which in turn will require a major reassessment in thinking on the part of both consumers and managers. This devolutionary principle is also expressed in the provisions of the Forests Act relating to the establishment of Community Forest Associations and in the sections in the draft Wildlife (Conservation and Management) Bill covering the establishment of Regional Wildlife Conservation Areas and Committees. It is now widely understood that community participation in local resource management is desirable, and indeed the only way to solve social, as opposed to technical problems.

It will inevitably take a long time for local people to fully appreciate that neither *Mungu* nor Central Government are the custodians of the country’s natural resources, but rather they themselves, and in the case of water, in conjunction with their local WRMA.

### **The legal structure of WRUAs**

The Act is silent as to how WRUAs should be structured. This leaves them to be set up outside it, probably deliberately, thereby enabling WRUAs to act as checks on the performance of WRMA. It effectively encourages ownership of the association by its

members, who are united in their interest of conserving a natural resource; and it also renders WRUA management free from official interference and control, at least by the water authorities.

The Rules define a WRUA as “an association of water users, riparian land owners, or other stakeholders who have formally and voluntarily associated for the purposes of co-operatively sharing, managing and conserving a common water resource”.

Rule 10 covers the registration of WRUAs with WRMA and certainly clarifies some of the uncertainties existing as a result of the scanty reference to them in the Act. However it says little more about the preferred entity of a WRUA other than to prescribe that “for a WRUA to be considered for registration by the Authority, it should be legally registered, have a constitution ...”. “Legally registered entity” is itself defined in the Rules as “an organisation, corporate body or person that has legal status”.

In making provision for community participation in forest management, S 46(1) of the Forests Act of 2005 is quite specific in that this should be achieved first by the registration of “a community forest association under the Societies Act”. The assumption may be that, given the use of the word “association” in both Act and Rules this is the preferred entity for a WRUA as well, and whether or not for this reason, this is in practice probably the case.

Unfortunately Associations are not easy to set up. A combination of the need for a lengthy constitution, bureaucratic paranoia in the Registry of Societies and a formation time often measured in years rather than months makes their establishment expensive in terms of time, energy and money. Sometimes a lawyer’s services are enlisted, although now that a good model constitution has been developed some WRUAs have managed the formation process on their own. Once established, there are still annual returns to submit to the Registrar of Societies, as well as accounts to present to members at statutory meetings.

WRUAs often start life as Self-Help Groups or Community Based Organisations (CBO) registered with the Department of Social Services. CBOs are easily established and very little documentation needs submitting before a registration certificate is issued, which itself is enough to facilitate opening a bank account. WRMA in Nanyuki accepts CBOs as WRUAs and indeed some WRUAs seem reluctant to tackle the next step of association formation. However, Associations have stronger legal standing, backed up by the detailed provisions of the Societies Act; they also have a better structured system of governance and membership and so prove more acceptable receptacles for donor funds. There is therefore much to be said for making the considerable effort required to “upgrade” from CBO to Association.

Being private entities, Trusts are far easier to establish than Associations, and may be appropriate entities for those WRUAs with few defined users. However, there are some caveats to using them as WRUAs. They are less suitable as membership organisations, representation usually coming through the right to elect a trustee to the board; and

whether or not they are acceptable as WRUAs to WRMA has yet to be tested. Being privately established, it might be argued that they were not “legally registered”, even after registration of the actual trust deed at the Lands Registry under the Registration of Documents Act. Trusts are, to some extent, victims of their own simplicity in that being privately established, they lack the gravitas of an entity like a company or society that has obtained formal government approval to its establishment through the appropriate registry. A Trust might be more suitable if, for example, a group of WRUAs required an umbrella organisation to help them speak in various fora with a louder voice.

### **Setting up WRUAs**

The upper reaches of many of the rivers round the northern slopes of Mt Kenya are tapped by large commercial flower farms. With relative wealth, an office infrastructure, transport and some worldliness, one of these often drives both the formation of a WRUA, and its continuing administration. This is generally a benefit, although cultural differences may mean the pre-formation sensitisation process is unduly hastened, and the association is born with insufficient consultation of those who will ultimately be expected to join, manage and contribute to it. Similarly, cultural differences may manifest themselves in the conduct of meetings and other association activities. These differences might certainly be less apparent if WRUA management was in the hands of indigenous Kenyans, but generally they are far outweighed by the advantages of different cultural groups each bringing contrasting strengths to the table.

At the outset, a prospective WRUA may comprise no more than a few interested individuals determined to band together for the better management of their resource. Even if the group gets no further than this, failing to achieve formal recognition or registration, many of its objectives may still have been achieved. Arguably, the process of establishing a WRUA is just as important as the end result, and going through this will give users the opportunity to meet and respect the views of each other, and hopefully unite them in a common goal.

The enthusiasm with which users embrace the idea of a WRUA varies enormously. Some river systems, like the Likii, have experienced no real water shortages and so far no dispute over the resource’s allocation. The river is generally a high altitude one, which passes through no pastoral country, and selling the idea of a WRUA as an entity to better manage the resource, and to prevent possible future conflicts, has not been easy. In contrast, the Burguret, like the Ngare Nything, services flower farmers, domestic consumers, livestock and wildlife interests. The formation of its WRUA was driven by a very real danger of conflict as users in the lower reaches towards Ol Pejeta began edging upstream in response to a disappearing river.

Generally, upstream users are harder to convince of the benefits of an association, as they enjoy the privileged position of never experiencing water shortages. Once members of a WRUA, they may still be difficult to persuade to share the burden of

rationing when this is necessary. There is also no doubt that attendance at WRUA meetings is far higher when water is scarce.

### **Funding WRUAs**

Two basic issues dominate the funding of any WRUA; how much does it need - which depends generally on its ambitions - and how is going to raise this.

All WRUAs levy a joining fee, and then an annual membership fee, which varies according to membership category. Several WRUAs would like to charge for water where meters can monitor consumption, especially when it is extracted by big gravity-fed off-takes rather than by smaller consumers with portable pumps. In practice, many large farms already make additional contributions in cash or kind (e.g. provision of office infrastructure or transport to meetings), in order to help the WRUA function effectively, and community consumers may contribute time and labour.

If the majority of the funds to run a WRUA are provided by one or two rich farmers, there is inevitably a risk of these starting to wield a disproportionate degree of power and influence in the WRUA's affairs. More democratic contributions are therefore preferable, but this may not always be practical.

Extra cash contributions are particularly required for WRUAs employing full-time project officers, as, for example do the Likii, Burguret and Ngusishi. Otherwise the function of a project officer may be fulfilled, in part at least, by a farm or NGO community liaison officer, as it is on Ngare Nything by Kisima and Lewa Wildlife Conservancy.

Additional donor funding may be obtained for one-off projects such as weir construction or the installation of reticulation systems, and Laikipia Wildlife Forum has a substantial grant from EU, part of which is designated for the support of WRUAs. However, core office support is dependent on subscriptions and such other income as the WRUA can raise.

Water sales to road builders, and visitor fees to see how WRUAs work, have brought in additional income. Several WRUAs are contemplating stocking their waters with trout to attract sport fishermen, who may even stay in WRUA facilities or use its appointed guides. Others are hoping additional revenue will come from commercial tree nurseries or bee-keeping projects. Sales of borehole water may bring in future revenue for WRUAs, either for agriculture or even in bottles for personal consumption.

Being mandated through the catchment management strategy to "encourage and facilitate the establishment and operation of WRUAs", WRMA could easily divert some of any money it ultimately raises from water charges back to help the formation of new WRUAs or to fund existing ones. It would certainly be good for consumers who pay for water to see some of their money being recycled back into the system. The Water

Services Trust Fund is established under S 83 of the Water Act to “assist in financing the provision of water services to areas in Kenya which are without adequate water services”. Initially confined to funding water supply, it is now permitted to fund water resource management and WRUAs could also apply to it for finance.

WRUAs might also consider approaching their local Constituency Development Fund for assistance. It will inevitably take time to accept the principle of more localised spending of Government resources and in the early years these Funds were grossly mismanaged. However, seen as a sign of further commitment to the devolution process, CDFs are now very popular at local levels.

While having an assured income is clearly a comfort, there is a danger of it creating expectations among the WRUA committee members of sitting, transport and other allowances, to such an extent that some WRUAs report prospective committee members refusing to take their seats if these are not provided – potential problems for any locally based organisation, not just WRUAs.

### **Membership and management of WRUAs**

Membership and management of WRUAs is detailed in their constitution, the contents of which are largely governed by their legal status. The constitution of an Association, registered under the Societies Act, is often based upon the specimen provided by the Registrar, as modified to suit individual requirements. More detailed management provisions may be contained in bye-laws made subsidiary to the constitution.

The potentially complex issue of WRUA membership seems efficiently managed by the creation of different categories of membership, this ensuring that all water users are represented, either directly or indirectly, on the Association.

Riparian landowners are all usually entitled to membership, while community water projects with their own off-take either elect one or more representatives to membership of the Association or automatically nominate one or two of their office-bearers. The responsibilities of membership of the WRUA often take time to absorb, and project representatives may be lax in reporting back decisions made at meetings, as well as the rationale behind them, to their project members.

Large-scale users like flower farms or Nanyuki Water & Sewage Co Ltd are represented on their Association as individual or commercial members, and pay a higher membership fee; abstractors with portable pumps may also qualify for such membership. To ease administration some associations also divide their river into geophysical sections, perhaps three, upper, middle and lower, or in the case of the Burguret into five; and each of these sections may have the right to elect an Area Member. Finally, to help distinguish between primary and secondary stakeholders, there may be an Observer Member category for those who are not water users but have

an interest in the activities of the WRUA and the conservation of the resource it manages.

Management of the WRUA devolves upon an executive committee, usually made up of the Association's office bearers, and also perhaps of others either from different sections of the river, or varying interest groups. The frequency of both committee and general members' meetings varies, but members seem to meet on average about once a quarter, with the committee meetings being called in response to specific problems. One of the members' meetings will be the Annual General Meeting. Meetings of the Ngare Nything WRUA are hosted by different members in rotation, enabling members to experience a different part of the river, and the problems associated with it, each time; there is also a social dimension to these meetings, with food provided afterwards.

Any WRUA would be far better run if it could afford to employ an executive officer responsible to the executive committee. However on top of the salary are transport costs, office space and general infrastructural back-up, and this ratchets up the WRUA's financial requirements dramatically.

### **The activities of WRUAs**

The objectives of a WRUA are set out in its constitution; those of the Ngusishi Water Users Association are typical:-

- (a) Promote legal water abstraction from the Ngusishi River
- (b) Promote efficient and proper water use of water abstracted from the N River
- (c) Promote sustainable water use, water management and water development on the N River
- (d) Promote soil and water conservation practices within N catchment area
- (e) Promote conservation of water quality of N river
- (f) Promote a situation in which the available river flow is reasonably shared between the environment, wildlife and all the communities relying on N river, in a manner that recognizes the following priority ranking of water use:-
  - i. Domestic
  - ii. Livestock
  - iii. Environment, wildlife, fisheries
  - iv. Irrigation
  - v. Recreation
  - vi. Manufacturing industry
  - vii. Other
- (g) Provide a forum to discuss, prevent and resolve water use conflicts
- (h) Promote dialogue between water users and GoK in regard to water policy and enforcement of the Water Act in respect of activities relating to N river
- (i) Promote a situation in which all modifications to existing river abstractions and all new river abstractions must be approved by the Association before being considered by the relevant water boards.

The partitioning of water between users is achieved in a number of ways, including metering, diverting flow through reticulation systems and rationing. The piped off-take from a river is often divided into projects, each of which manages the further sub-distribution of its own off-take. Universally, since the inception of any WRUA there has been far less need for rationing, rather the water being turned off for the odd day at a time after due consultation with affected users.

The mandate of any particular WRUA ends when its river joins another of a different name below the confluence, so that of the Likii WRUA stops when the river enters the Nanyuki just below the town, and the Nanyuki's stops where it joins the Ewaso Nyiro. It may be expected practice that at the end of any WRUA's area of influence a 30% minimum flow remains in the river but the definition of "reserve" in the Act and in the Rules is much more flexible.

Other than managing their water resource, WRUAs fulfil their mandate to act "as for conflict resolution and co-operative management of water resources" in many other, often very innovative, ways, including by:-

- (a) Acting as bridging organization between users and WRMA
- (b) Undertaking water abstraction surveys
- (c) Creating awareness among users of their differing circumstances
- (d) Creating upstream water storage facilities to help augment flow in droughts (both Ngare Nything and Nanyuki rivers have plans for these)
- (e) Excavating 90 day storage water pans
- (f) Advising and training on rain water harvesting and water conservation
- (g) Holding open / field days for members who may visit other WRUAs, other users on the same river or demonstration projects in the area
- (h) Creating demonstration small farm projects showing best use of water through drip irrigation and other water-saving projects (Ngusishi)
- (i) Drip irrigation training projects (Burguret)
- (j) Diverting water from the main stream to allow clothes washing and animals to be watered away from the main river
- (k) Building footbridges
- (l) Rehabilitating old dams and boreholes, and making borehole water more widely available, not least by getting borehole owners to share with others
- (m) Running tree nurseries on both river and zonal levels (Burguret)
- (n) Dealing with pollution or effluent discharges (Nanyuki WRUA has particular difficulties with discharge from NAWASCO)
- (o) Solving problems generally (although users may expect too much of their WRUA, being fully prepared to bring problems to the table, but less willing to help resolve them.
- (p) Enforce rules relating to cultivation or tree cutting close to the banks (Nanyuki WRUA is bringing a court case with support of WRMA)
- (q) Rehabilitating banksides
- (r) Stopping sand and stone collection (Nanyuki)
- (s) Stocking with trout fingerlings (Ngare Ndare)

- (t) Monitoring water quality and quantity
- (u) Broadening their remit into wider catchment rehabilitation and income generation within that area (e g honey projects)

Many of these activities go well beyond the minimum expected of any WRUA and will play a very important role in generating goodwill among water users, and so hopefully encouraging them to join their local association. The Rules now cover a wide range of matters ancillary to water management, including conservation of riparian and catchment areas, permitted activities on riparian land, effluent discharge and fishery management and WRUAs could go a long way towards familiarising communities and water users with these provisions.

### **Interaction with WRMA**

While the fact of WRUAs being set up outside the Water Act makes them fully autonomous, operating beyond any influence of WRMA can make for an awkward relationship between the two. While WRMA suggests that its duty is to provide an enabling environment for the establishment of WRUAs, it may use the eventual autonomy of a WRUA as an excuse to deny it assistance. On watercourses where there is no WRUA, WRMA may convene meetings of local users, both legal and illegal, using the Provincial Administration as the entry point to the relevant community.

Once established, a WRUA can be registered with WRMA. Rule 10(6) provides the procedure for registration by completion and submission of Form 18, and Rule 10(5) requires WRMA to maintain a register of WRUAs (currently 32 within the Ewaso Nyiro North Catchment Area). There are also provisions enabling WRMA to cancel registration, although not of course to disband the WRUA.

The expectations of a WRUA from WRMA's perspective may be set out in the Memorandum of Understanding which both are empowered to enter into by Rule 10(7); these include:-

- (a) Awareness creation
- (b) Acting as a bridge between WRMA and water projects
- (c) Installing measuring devices
- (d) Ensuring a given water reserve at all times
- (e) Starting tree nurseries
- (f) With assistance from WRMA, disseminate rainwater harvesting techniques, collect revenue, manage projects and water resources

The WRUA also supplies WRMA with details of its river, catchment area, legal registration, bank account and other relevant information. In furtherance of a two-way relationship WRMA agrees in the Memorandum to send representatives to WRUA meetings, conduct abstraction surveys, monitor water quality and generally assist the WRUA in revenue collection, proposal writing, project management and water resource management.

There is a general feeling that WRMA should make more use of WRUAs than it does, interacting over a lot more than just the issue of Water User Permits. Being so newly created WRMA has little experience of dealing direct with water users, and if sensitively used, WRUAs could be a huge help in bridging the gap between WRMA and the public. The devolutionary process may be taking some time to absorb, both for users and administrators; a lot of WRMA staff also worked in the old centralised system and are taking time to adapt. However, the potential for WRUAs to help educate water users and introduce them to the new regime cannot be over-emphasised.

### **Water permits**

One of the consequences of devolution is that water permits are now issued by Catchment Area offices, rather than in Nairobi. Prior to the promulgation of the Rules, an efficient system of issuing extraction permits seemed to be taking time to emerge, matched at the consumer's end by the failure of some of those with permits to stick to their provisions. Other users were operating without permits at all, some who had them under the old centralised regime having had no response to their fresh application to WRMA; others having made application for the first time were encountering similar difficulties.

Before the Rules arrived, WRUAs and WRMA were probably most in contact over the issue of extraction permits, and WRUAs' experiences varied considerably. Well established WRUAs expected to have permit applications submitted to them for approval by the user first, failing which, at least that the WRMA would refer direct applications back to the WRUA for confirmation before approving them. Yet even long standing WRUAs found permits being approved by WRMA without reference, or even being issued in the face of refusal of the relevant WRUA to endorse them.

Rules 16-48 now set out detailed procedures for the application for and issuance of Water Use Permits, although of course how well or how quickly these will be implemented remains to be seen. The Rules are also quite specific about the involvement of WRUAs in the permit application process, 28(1) requiring that WRMA submits copies of every water use application to the "relevant registered WRUA, if one exists, for comment" and 28(2) that the WRUA's comments be referred back to the WRMA within 30 days. There are also provisions for involving WRUAs in objections to permit applications. Statutory recognition of the role of the WRUA is to be welcomed but it still remains an advisory one and there is nothing to compel a WRMA to follow the WRUA's recommendations.

In fact, a WRUA wishing to object to a permit application might be able to exercise more influence in the WRMA's decision-making process by actually instigating an objection to a permit application under Rule 30, rather than simply commenting on the application under Rule 28. By Rule 30, "Any person may raise an objection ... to any permit application" and the definition of "person" in the Rules includes an association.

WRMA is presently trying to persuade users to install meters, at their own expense, to monitor consumption of water for which they will eventually be asked to pay. This idea of charging both for a permit and water consumption is probably ultimately acceptable to users, providing there is transparency of the amounts raised and how they are spent. Rules 104-115 cover Water Use Charges. Users are divided into categories of Livestock, Hydropower Generation, Irrigation, Fish Farming, Commercial/Industrial and Effluent Discharge with varying charge rates and conditions for each. Those who do not need to apply for a permit are not charged for consumption

On the face of it, the idea of WRMA returning some of the money it raises to a WRUA might be appealing. It would certainly threaten the independence of WRUAs if WRMA acted as a revenue collection agency on their behalf, and so might risk tying them more closely to WRMA, but need this necessarily be any bad thing?

### **Resolving conflict**

The intention of WRUAs to act to resolve conflict over water is apparent in the Water Act which provides specifically that “... the catchment management strategy shall encourage and facilitate the establishment and operation of water resources users associations as fora for conflict resolution”. In addition, a constitution often envisages that the Association it governs will “provide a forum to discuss, prevent and resolve water use conflicts”, as does that of Ngusishi.

Without the forum there is nowhere for grievances to be aired, anger vented and feelings made known. There is then a very real risk of problems escalating into disputes and this is where the existence of a WRUA is so crucial. The most obvious conflicts it helps prevent are those, often much publicised ones, between pastoral users lower down a water course, and agricultural or horticultural extractors in the upper reaches. Being able to bring all users together, and make them more aware of each other’s problems and perspectives is one of the most vital roles of any WRUA. The very existence of a forum where problems can be discussed before escalating into disputes usually stops this from happening, and in the last resort the threat of conflict is often enough to prevent it.

There are many other conflicts, potential or real, which WRUAs can help manage or prevent. Although not usually concerned with internal machinations of project management, a WRUA may still help to resolve conflicts between project members, as well as between projects. It may also facilitate the entry of new members to existing projects, notwithstanding this may diminish the supply to present users. If anyone is to be displaced in the construction of a community water project, the WRUA can help determine the terms of compensation.

Human-animal conflicts also often stem from lack of water, and maintaining the flow can go a long way towards preventing these. Baboons can be very aggressive when

ving with humans for a single water source, and of course if a river starts to dry up, hippos must move upstream in search of new pools. Other less sedentary animals may move far upstream destroying crops as they go.

Bridging the divide between WRMA and the consumer is an under-appreciated role of any WRUA. WRMA personnel have frequently been threatened by irate water users, who remain convinced that water is a gift from God and should never be charged for. The local WRUA could play a crucial role in educating communities into realising that with water becoming increasingly scarce, means of sharing, rationing and even charging for it have to be considered. Sensitisation and education are very important in creating the understanding from the lack of which conflicts so often arise.

Ultimately, water should start to act as an agent of co-operation rather than of conflict, and the WRUA can be the principal entity which helps this to happen.

RUPERT WATSON – Nairobi, November 2007

### **Acknowledgements**

The contents of this paper largely derive from conversations with

Maitima M’Mukindia and P Kariithi of WRMA, Nanyuki  
Evans Kimani of Ministry of Water and Irrigation, Saba Saba  
George Njugi and Tim and Maggie Hobbs of Burguret WRUA,  
Dr B P Kiteme of Centre for Training and Integrated Research in ASAL Development  
Max Graham of Laikipia Elephant Project  
Anthony King and Nteere Gitonga of Laikipia Wildlife Forum,  
James Mwangi and Kiki Fernandes of Liiki WRUA,  
George Murray and Jamie Murray on Marania River,  
Robert Myall of Nanyuki WRUA,  
John Horsey, once of Ngare Ndare WRUA,  
Martin Dyer and Charlie Wheeler of Ngare Nything WRUA,  
Gordon Murray of Ngisishi WRUA,

... and from comments received after a review of a first draft of this paper by Mikes Lane and Thomas

Most grateful thanks to all of you.

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