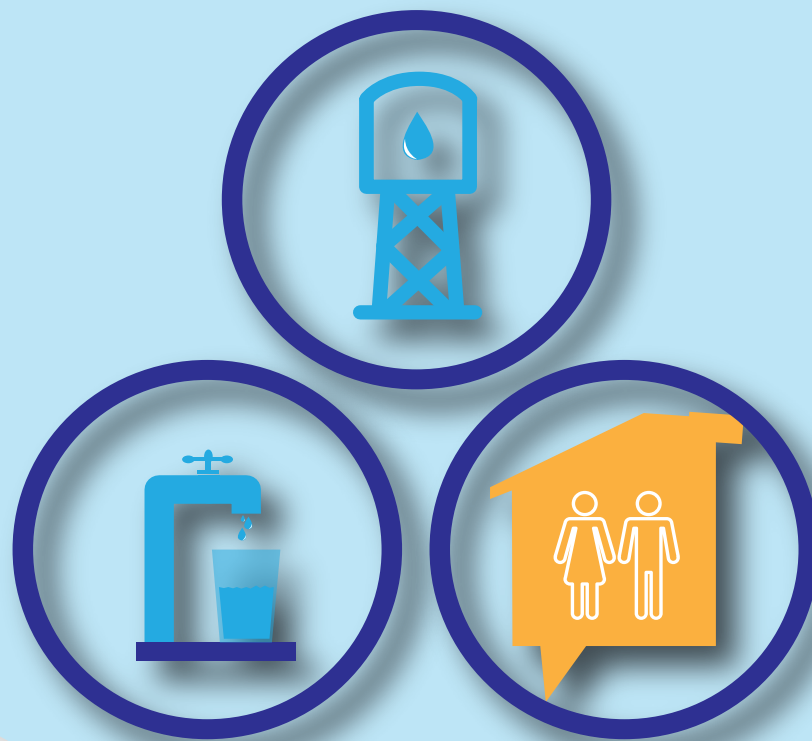


# **GUIDELINE** FOR PROVISION OF WATER AND SANITATION SERVICES IN RURAL AND UNDERSERVED AREAS IN KENYA



**2019**





# **GUIDELINE FOR PROVISION OF WATER AND SANITATION SERVICES IN RURAL AND UNDERSERVED AREAS**

**December 2019**

# FOREWORD



The Water Services Regulatory Board (WASREB) is the body mandated under the Water Act 2016 to provide regulatory oversight in the water and sanitation sector in Kenya. The principle objective for establishment of WASREB is to protect the interests and rights of consumers in the provision of water services.

Section 72 (1)(a) and (p) as read together with section 94(3) of the Water Act requires the regulator to determine and prescribe national standards and make recommendations on how to provide basic water services to marginalised areas. As part of this mandate and in support of the sector's efforts towards the full realisation of the Right to Water, and considering the predominance of community-managed systems in rural areas and further appreciating the related governance and non-functionality issues, it is important that national standards in water service provision also apply to these systems.

Voluntary community management of small scale water systems has been the de facto practice in rural Kenya for decades, however

there is a growing evidence base critiquing the appropriateness of this model, not only in Kenya, but in many countries that are plagued by high levels of non-functionality and limited access.

Cognizant of the essential central role that rural water supply systems play towards the progressive realization of the right to water, it is imperative that professionalization in management of these systems is embraced, while ensuring that investment are sustainable, if the progressive realization of the rights to water and sanitation is to be guaranteed.

It is against the foregoing challenges that this guideline for water and sanitation services provision in rural and marginalised areas has been established with the aim of:

- Ensuring that water service standards are adhered to in terms of quality, cost and customer service in order to to guarantee health and safety of consumers
- Regularizing rural water service in order to streamline, professionalize and formalize operations
- Updating the databank in WASREB as part of monitoring the progressive realization of the right to water, and
- Enabling the county governments to operationalize section 94 of the water act 2016 that requires the devolved governments to focus on areas that are not commercially viable under the guiding principle of leaving no one behind

The guideline applies to the following category of operators:

- Community water systems
- Gated community water providers
- Infrastructural /Housing Development Company Water Projects
- Private/ Individual Water Suppliers
- Non-Governmental Organization (NGO)/ Faith-Based Organizations (FBO) water projects
- Irrigation projects that also supply water for domestic purposes

WASREB greatly appreciates the invaluable support and inputs from Kenya Markets Trust, Caritas Switzerland and Water Sector Trust Fund in delivering this essential tool to the Kenya water sector. It will go a long way in providing the much-needed platform to increase access to water and sanitation services in the country.

A handwritten signature in black ink, appearing to read 'R. Gakubia'.

**Eng. Robert Gakubia,**  
**Chief Executive Officer**

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# DEFINITIONS

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In this guideline, except where the context otherwise requires –

“Act” means the Water Act 2016 (Act No. 43 of 2016);

“Bulk water” means supply of water in bulk as defined in these Regulations;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to water;

“County government” means a County Government as provided for under Chapter 11 of the Constitution of Kenya;

“County executive committee member” means the county executive committee member responsible for matters relating to water;

“Customer” means a person or persons who is or are the buyer or recipient and end user of water services;

“Director” means the County Director of Water Services;

“Licence” means a licence in force under the Act;

“Licensee” means a water services provider licensed by the Regulatory Board under the Act;

“Ministry” means the Ministry responsible for water affairs;

“National Regulator” means the Regulator responsible for regulation of water and sanitation services established under section 70 of the Act also referred to as Regulatory Board;

“Regulatory Board” means the Water Services Regulatory Board established under section 70 of the Act;

“Rural water services” means services provided in rural areas as shall be defined by the Regulatory Board;

“Sewerage services” means the development and management of infrastructure for transport, storage, treatment of waste water originating from centralized and decentralized systems but shall not include household sanitation facilities;

“Supply zone” means an area, determined by a licensee, within which all the customer connections are provided with water supply services from the same bulk water supply;

“Water Fund” means the Water Sector Trust Fund established in section 113 of the Act;

“Water services” means any services of or incidental to the supply or storage of water and includes the provision of sanitation services.

“Water services provider” means an entity established in accordance with Section 77 of the Act;

“Wasreb” means the Water Services Regulatory Board established under section 70 of the Act;

“Water Strategy” means the Integrated National Water Services Strategy formulated by the Cabinet Secretary in Section 64 of the Act;

# 1 PREAMBLE

The Constitution of Kenya and international covenants to which Kenya is signatory impose positive obligations on the State to ensure that water is available to all, with an additional obligation on the State to ensure access by the vulnerable groups, such as women and communities in marginalized areas of the country.

Articles 21 (2) of the Constitution further obliges the State to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43, including the right to clean water in adequate quantities and to reasonable standards of sanitation. More so the International Covenant on Economic Social and Cultural Rights places the State under obligation to enact legislation to fulfil international obligations. It is therefore imperative to note that the State has an obligation to pursue a human rights-based framework at both national and county level for progressive realization of the right to water and sanitation services.

Article 56 of the Constitution similarly obliges the State to put in place affirmative action programmes designed to ensure among others, that minorities and marginalized groups “participate and are represented in governance system” and they “have reasonable access to water, health services and infrastructure”

## **1.1 Functions of the National Government in Water and Sanitation Services**

Governments at the National and County level are distinct and inter-dependent. The two levels of government are expected in law to perform their respective functions in the spirit of consultation and co-operation, and in accordance with the legislation, policies and standards set by the State. Accordingly, water service provision is a shared function between the National and County Government as set out specifically in the Fourth Schedule of the Constitution.

It is the mandate of the national government to among others protect the environment and natural resources with a view to establishing a durable and sustainable system of development including water protection, securing sufficient residual water, hydraulic engineering and the safety of dams. The Constitution further provides national government functions to include consumer protection, capacity building and technical assistance to the counties and national public works. Realisation of the aforesaid mandate of national government is premised on establishment of standards for water and sanitation services provision as contemplated by articles 21 and 191 of the Constitution.

## **1.2 Function of County Governments in Water and Sanitation Services**

Part 2 of the Fourth Schedule of the Constitution of Kenya provides for the functions of the County Governments to include among others county public works including water and sanitation services. County governments are also required to implement specific National government policies on natural resources and environmental conservation including soil and water conservation, and forestry.

### **1.3 Legal Framework for Water Services Provision under the Water Act 2016**

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The Water Act, 2016 was enacted by parliament to provide a framework for the regulation, management and development of water resources, water and sewerage services; and other connected purposes across the Republic. The Act recognizes that provision and management of water services is a shared function, distributed between the National and County governments. This law came into force in April 2017.

Section 158 of the Water Act, 2016 provides that a County government shall subject to sections 117 and 120 of the County Governments Act 2012, give effect to national water services standards and conditions set by the Regulatory Board for purposes of ensuring consumer protection; and take into consideration the requirement relating to tariffs gazetted by the Regulatory Board while imposing tariffs.

County governments are also required in law (Water Act 94) to put in place measures for provision of water services to rural areas which are considered not to be commercially viable in compliance with standards set by the National Regulator. This is aimed at ensuring quality of service in keeping with the normative content of the right to water.

### **1.4 Mandate of Water Services Regulatory Board**

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Water Services Regulatory Board (WASREB) is the national regulator of water and sewerage services, having been established in March 2003 as part of the comprehensive reforms in the water sector under the Water Act 2002, and her functions and mandate retained under section 70 as read together with section 72 of the Water Act, 2016. The principle object for establishment of the WASREB is to protect the interests and rights of consumers in the provision of water services.

Section 72 (1)(a) and (p) as read together with section 94(3) of the Water Act requires WASREB to determine and prescribe national standards and make recommendations on how to provide basic water services to marginalised areas.

It is against the foregoing background that this guideline for water and sanitation services provision in rural and marginalised areas have been established by WASREB.

Therefore, this guideline:

- In the interest of ensuring that water service standards are adhered to in terms of quality, cost and customer service.
- To guarantee the health and safety of consumers
- To update the databank in WASREB for the types of water services access available to Kenyans as part of monitoring the progressive realization of the right to water.

This guideline applies to the following category of operators:

1. Community water systems
2. Gated community water providers
3. Infrastructural /Housing Development Company Water Projects
4. Private/ Individual Water Suppliers
5. Non-Governmental Organization (NGO)/ Faith Based Organizations (FBO) water projects
6. Irrigation projects that also supply water for domestic purposes



# 2 STATUS OF WATER SERVICES IN RURAL AREAS

The section provides a definition of rural areas and further presents the status of rural water services in terms of functionality and challenges with the current framework of operations.

## 2.1 Why target the small scale water supply systems in the rural areas and underserved community groups

Poor governance, management and cost recovery systems are common issues faced by community water schemes, which often lead to a low level of services provision and non-functionality of infrastructures.

Further most community water schemes operate in isolation and are not registered as legal entities. Hence, they are unable to access credit facilities, legally contract support services, acquire assets such as land, seek redress in court or sign agreements as a water service provider. There are no control systems to protect the rights of the customers, as it excludes those groups from government financial and/or technical support mechanisms. This poses a serious threat to the sustainability of the community water schemes.

To support the sector's efforts towards the full realisation of the Right to Water, and considering the predominance of community-managed systems in rural areas and the related non-functionality issues, it is important that national standards in water service provision also apply to community water systems.

## 2.2 Functionality

Countries are making efforts to meet the Sustainable Development Goal (SDG) number six which aims to ensure sustainable access to safe drinking water and sanitation for all by 2030. According to the pilot report for SDG 6 by the Ministry responsible for water services in Kenya, water coverage in Kenya's rural areas is estimated at 50% (JMP/UNICEF, 2018). However, less than 16% of this population have access to piped water sources. Almost one third of rural water systems are dysfunctional while the other two thirds start malfunctioning within 3-5 years of construction (Kwena and Moronge 2015). Therefore, the rural water sector faces the twin challenges of increasing coverage and accessibility to safe water supplies as well as improving functionality of these services. This is attributed to among others, the voluntary management committees' inadequate capacity in managerial, technical and business orientation.

## 2.3 Challenges with the current arrangements

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Voluntary community management of small scale water systems has been the de facto practice in rural Kenya for over three decades, usually excluding other management options in policy and practice. Key characteristics of this model includes financing and installation of water infrastructure by government and non-governmental organizations and thereafter handing over operations and maintenance to non-regulated community entities, with assumptions that they will offer post construction good management practices leading to sustainability.

There is a growing evidence base critiquing the appropriateness of this model, not only in Kenya, but in many countries that are plagued by high levels of non-functionality and limited access . Although the sector lacks exact data on number of community managed systems, World Bank estimates suggest that 1,200 small piped water systems provide water to 3.7 million rural Kenyans, this excludes community managed hand-pumps. Sector practitioners estimate that including hand-pumps drives the total up to over 2,000 such systems. There is much less data available on non-regulated service providers, including independent private operators and voluntary community-managed systems.

Most of the small scale water supply projects are abandoned when there is a breakdown; communities then approach NGOs or donors for new schemes. In such situations, even when the consumers are getting water from the improved sources, service level (reliability/supply hours, quality, and convenience/ time for fetching) remains un-predictable; hence communities are underserved.

# 3 FRAMEWORK FOR DELIVERY OF WATER SERVICES IN RURAL AND UNDERSERVED AREAS

Section 77 of the Water Act 2016 requires county governments to establish water service providers that comply with the standards of commercial viability set out by the regulatory board. Further, Section 85 (1) requires that provision of water services be under a licence issued by the regulatory board. However, section 94 requires county governments to put in place measures for the provision of water services in rural areas which are not considered to be commercially viable for the provision of water services. These measures shall include the development of point sources, small scale piped systems and stand pipes which meets the standards by the Regulatory Board and may be managed by community associations, public benefits organizations or a private person under a contract by the county government.

The measures to be put in place depend on the county strategies and existing situation in water service provision.

The section below discusses the service delivery options depending on the existing condition in a county.

An option is described as ‘appropriate’ if it embeds the management and operation of a water system into the sector’s regulatory framework so as to guarantee the protection of the interests and the rights of the consumers and to ensure that water services are provided according to the national standards.

## 3.1 Where the Community/Small scale water service provider is within the Service area of an existing regulated Water Service Provider

### 3.1.1 Option 1.1 Existing Regulated Water Service Provider takes over the Community/Small Scale Water Supply System

This is informed by section 85(1) of the water act. (A person shall not provide water services except under a licence issued by the Regulatory Board, upon submission of an application and such supporting documents as the Board may require).

Option 1.1 is illustrated in figure 3.1.1.A.

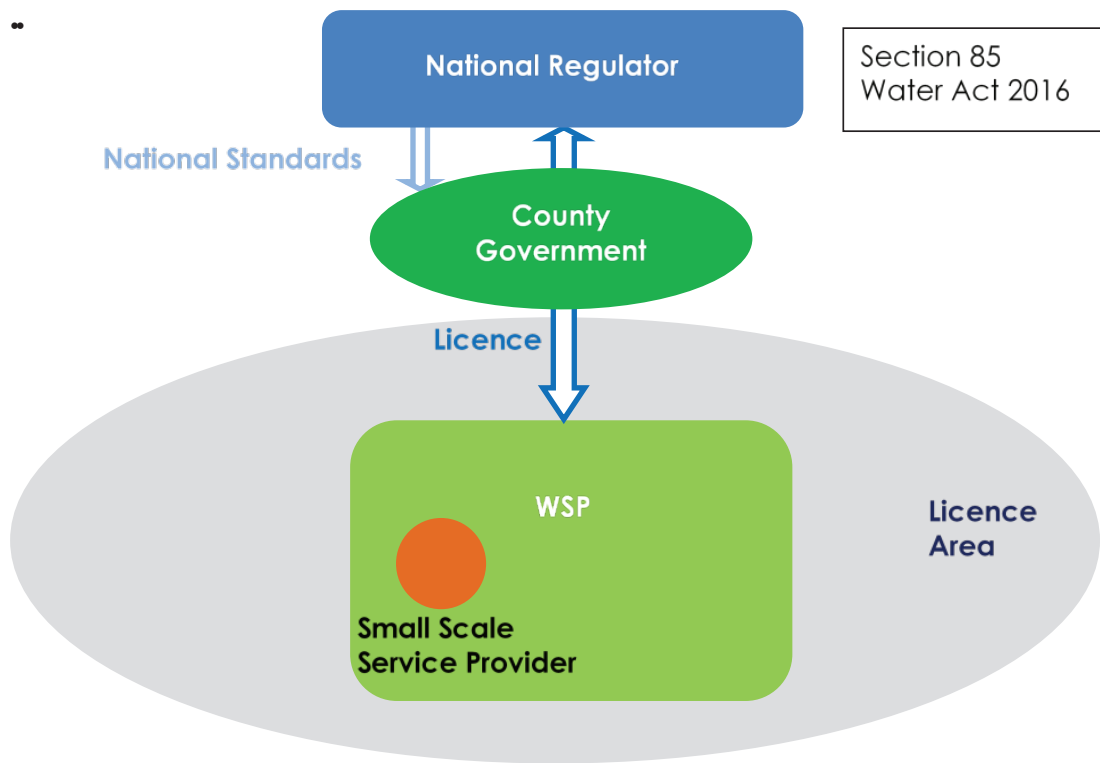
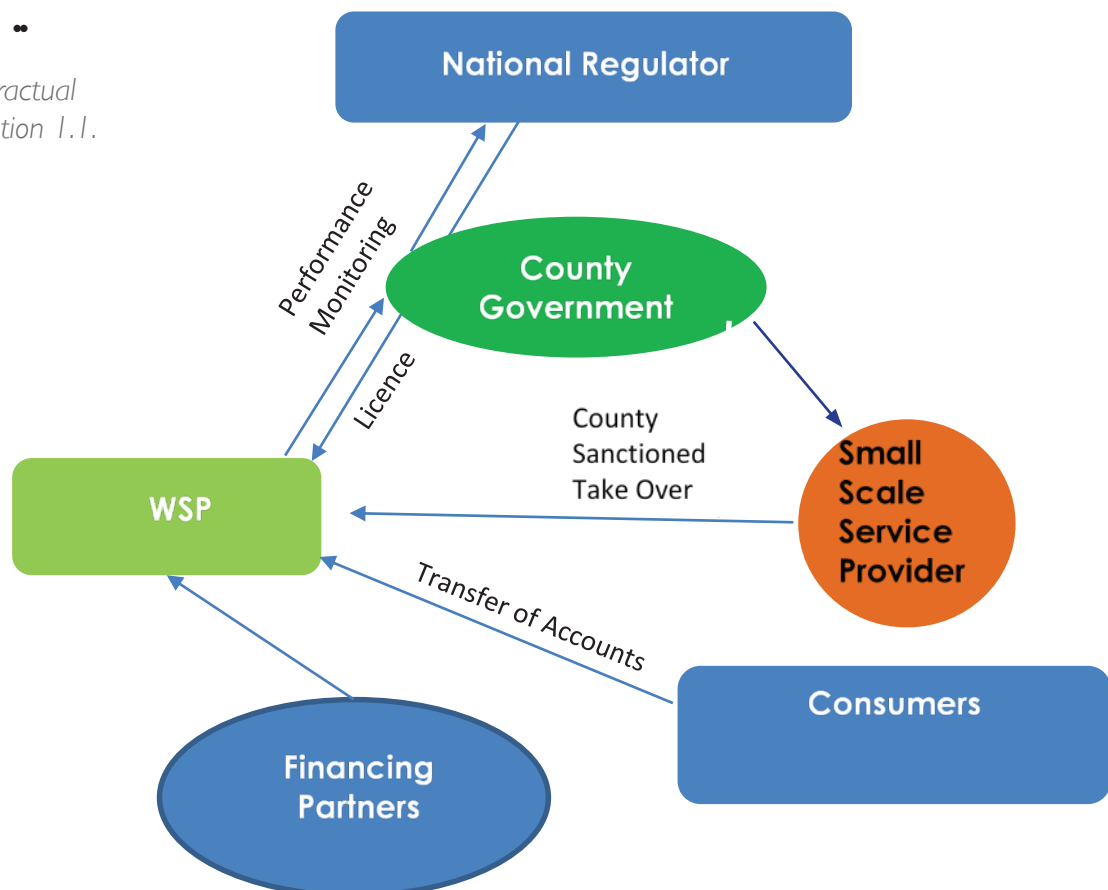


Figure 3.1.1 A: Option 1.1 WSP takes over the small-scale service provider

This will apply when the existing WSP has the technical and financial capacity to take over the full responsibility for the system and there is none or there is a weak community group managing the system. Where there exists a community management group, the community shall be sensitized on the national policies and the objective of the government to ensure professional management of water services to protect consumers' rights.

The contractual mechanism for option 1.1 will be as per the figure 3.1.1.B.

Figure 3.1.1.B: Contractual Mechanisms for Option 1.1.

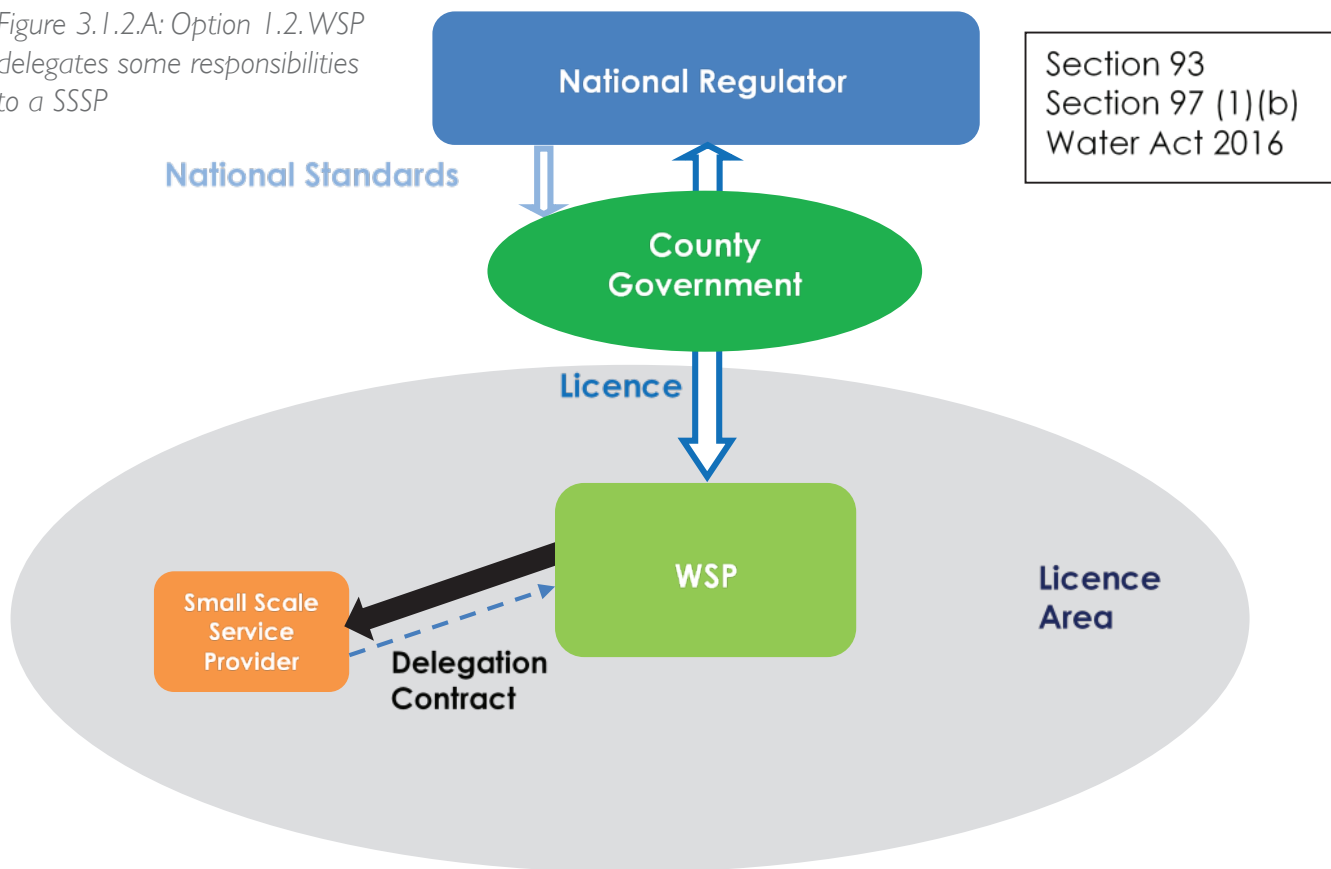


### 3.1.2 Option 1.2 Existing Regulated Water Service Provider(WSP) Delegates Some Responsibilities to the Small Scale Service Provider(SSSP)

The licenced WSP delegates some responsibilities to an SSSP registered as a Water User Association (WUA) as informed by both section 85(1) and 97(1) (The Regulatory Board may, on the application of the licensees— permit the joint provision, by two or more licensees, of water services on such terms as it may approve)

Option 1.2 is illustrated in figure 3.1.2.A.

Figure 3.1.2.A: Option 1.2.WSP delegates some responsibilities to a SSSP



Option 1.2 shall apply under the following cases:

1. When the WSP does not have the technical and financial capacity to take over the full responsibility for the O&M of the system.
2. When the system is managed by a community group that is professional enough to ensure a part of the responsibilities related to the Operation and Maintenance (O&M) of the system and that is registered as Water Users Association (WUA).

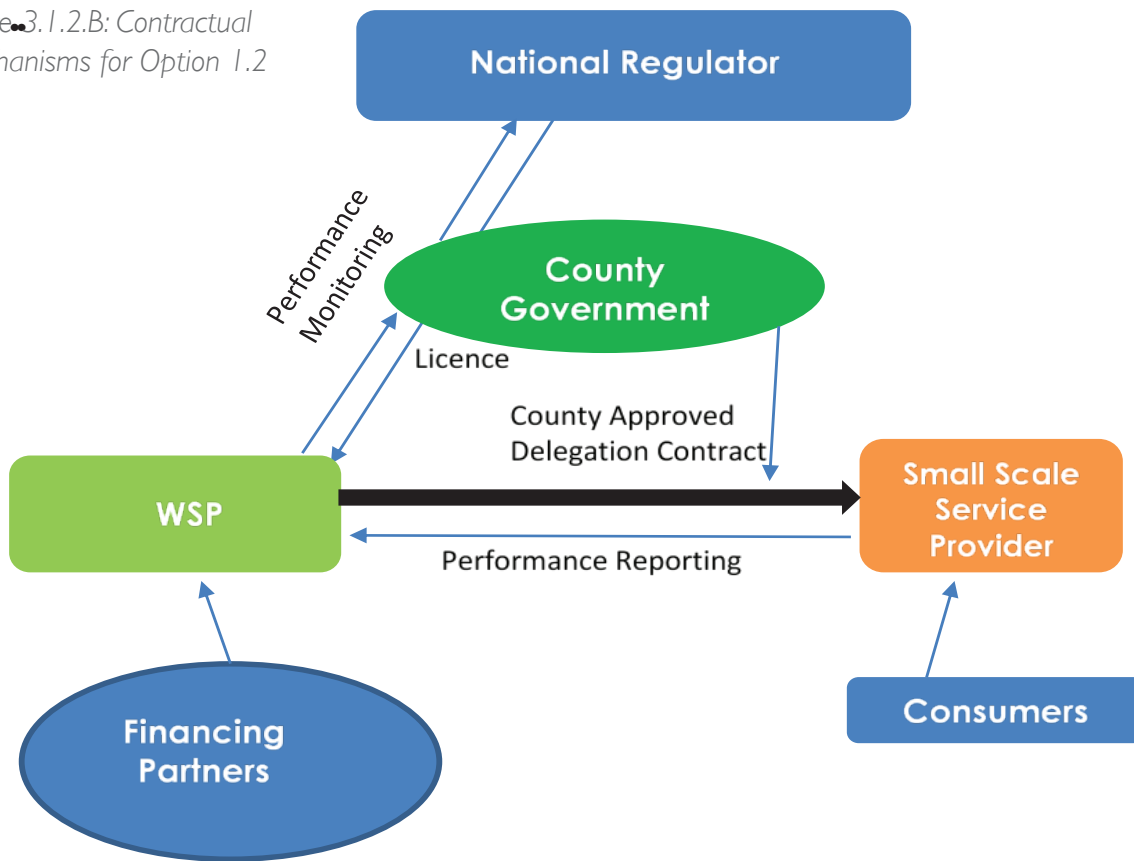
Where the system is managed by a community group, it is important to:

- i. Support them in improving their performance;
- ii. Guide them on the requirements for their registration as WUA which must be a legal entity; (Registration as a community-based Organisation (CBO) or Self-Help Group (SHG) is not sufficient.)
- iii. Support the negotiation process with the WSP regarding the delegation of responsibilities and the financial flow between WUA and WSP;

The final contract must be approved by WASREB.

The contractual mechanism for option 1.2 will be as per the figure 3.1.2.B.

Figure 3.1.2.B: Contractual Mechanisms for Option 1.2

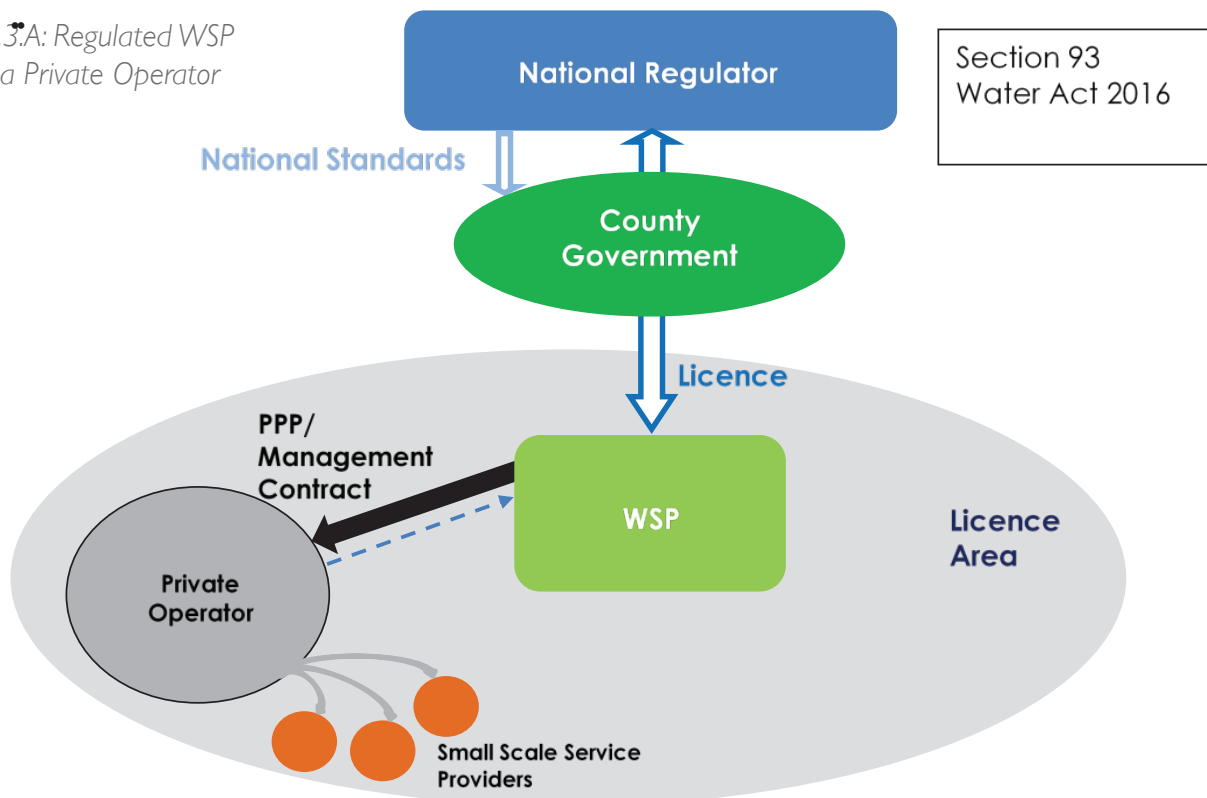


### 3.1.3 Option 1.3 Existing Regulated WSP Contracts a Private Operator

Existing licenced WSP contracts a private operator (Also called PPP or management contract). This is informed by section 93 of the water act (A water services provider may enter into a public private partnership or public partnerships for the exercise and performance by another person of some or all of its functions as a licensee with respect to a part or the whole of its area of water service provision.)

Option 1.3 is illustrated in figure 3.1.3.A.

Figure 3.1.3.A: Regulated WSP Contracts a Private Operator



Option 1.3 shall apply under the following cases:

- 1. County Government is not in favour to maintain community management.
- 2. When the WSP does not have the technical and financial capacity to take over the full responsibility for the system(s).
- 3. When there is no community group managing the system or when the management is not professional enough and the community group is not registered as WUA.
- 4. Where there is a private operator interested to take over some or all responsibilities for the O&M of the system.

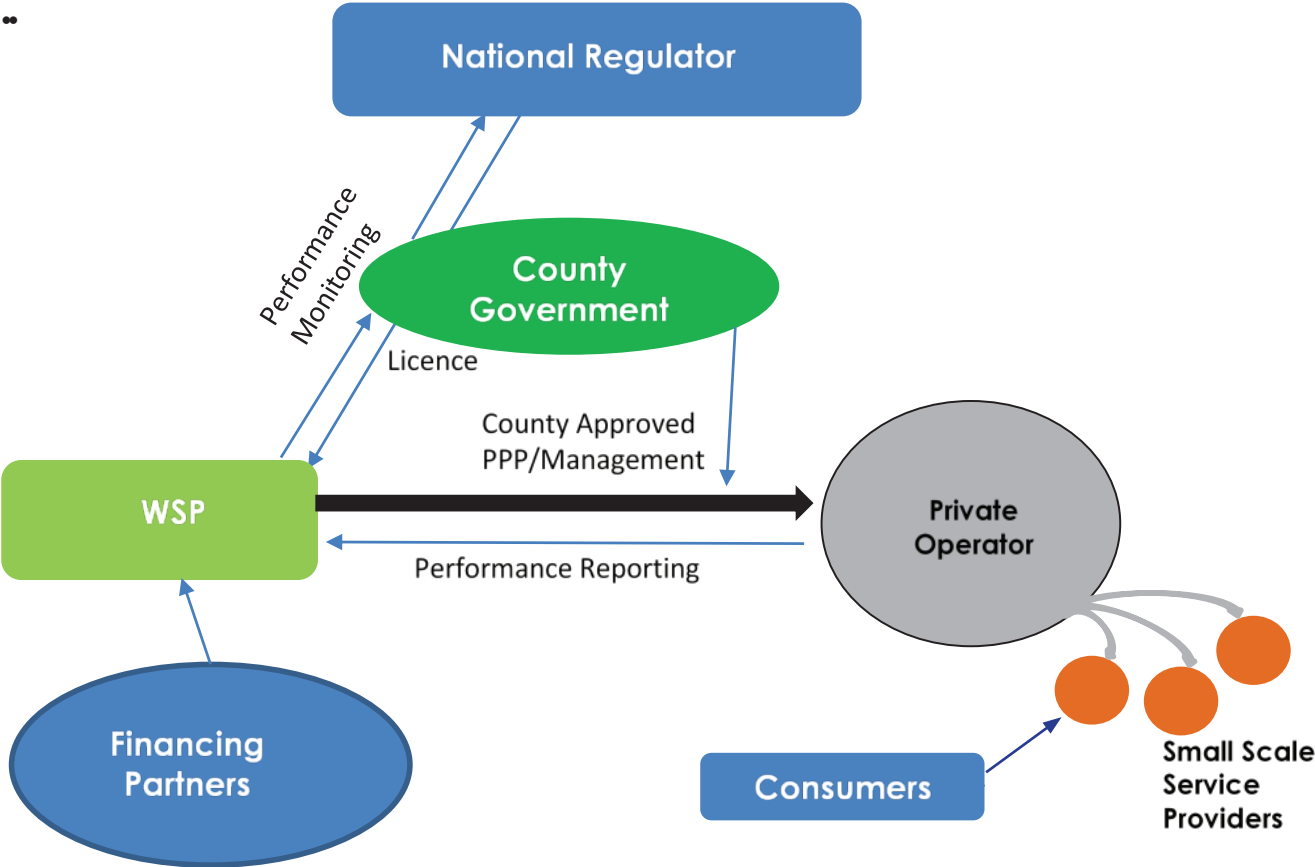
When the system is managed by a community group, it is important to:

- i. Clarify what is the added value to have a private operator responsible for the O&M of the system;
- ii. Adopt a right-based approach and clarify communities 'rights and obligations;

The final contract must be approved by WASREB.

The contractual mechanism for option 1.3 will be as per the figure 3.1.3.B.

Figure 3.1.3.B: Contractual Mechanisms for Option 1.3

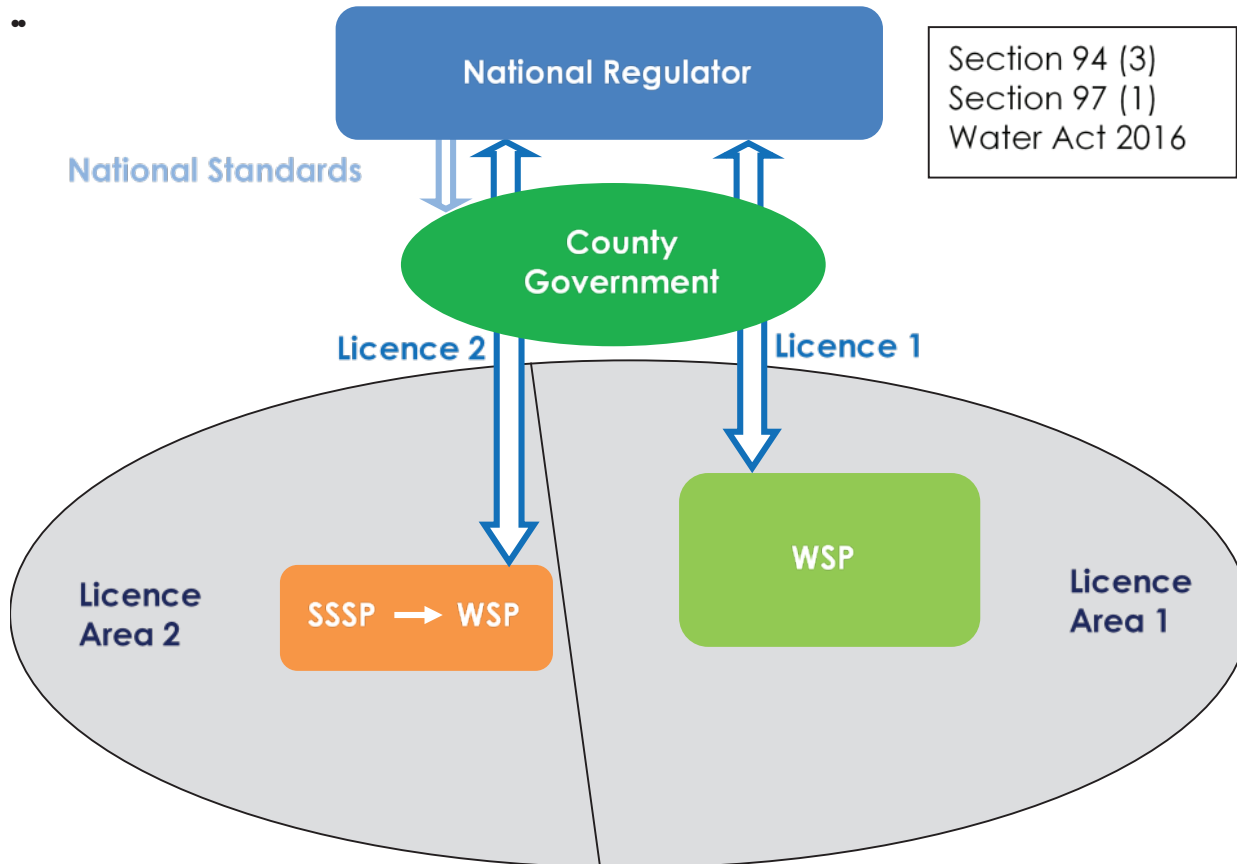


### 3.1.4 Option 1.4 Small Scale Service Provider becomes a Regulated WSP

The licenced WSP relegates a part of its licence area to the SSSP which applies to be licensed as a WSP as informed by both section 94(3) and 97(1) (The Regulatory Board may, on the application of the licensees— permit the joint provision, by two or more licensees, of water services on such terms as it may approve or permit the transfer of a water service, or a part thereof, from one licensee to another licensee.)

Option 1.4 is illustrated in figure 3.1.4.A.

Figure 3.1.4.A: Option 1.4 Small Scale Service Provider becomes a Regulated WSP



Option 1.4 shall apply under the following cases:

1. When the County Government is 'open' to new WSP.
2. When the system is commercially viable.
3. When the community group managing the water, system is registered as a WUA, professional enough and fulfils the requirements of commercial viability and standards for service delivery.

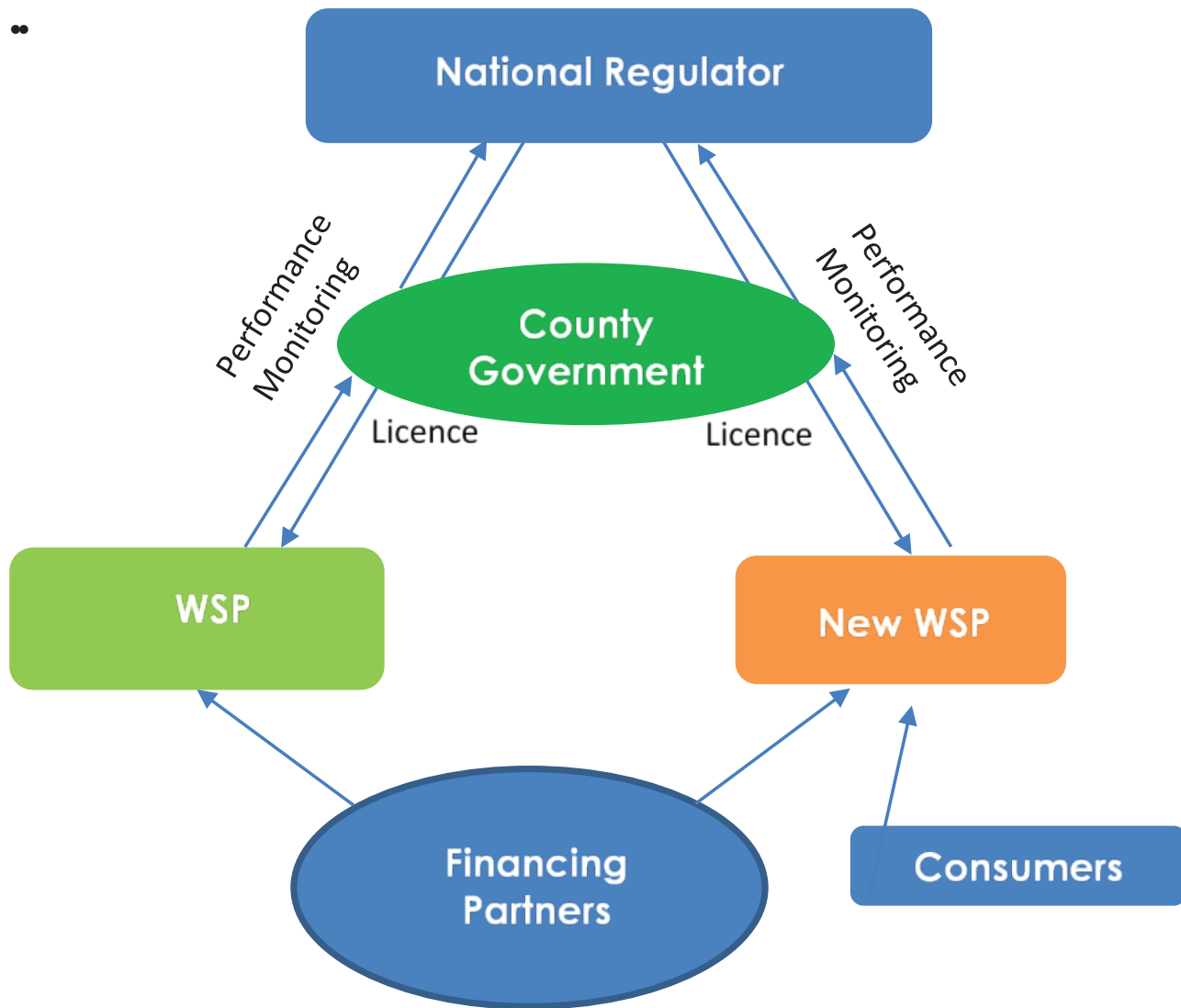
Under this option it is important the county government:

- i. Facilitates the dialogue between the existing regulated WSP and WUA
- ii. Support the WUA to fulfil the requirements for the licence application, to be submitted to WASREB.

The contractual mechanism for option 1.4 will be as per the figure 3.1.4.B.



Figure 3.1.4.B: Contractual Mechanisms for Option 1.4



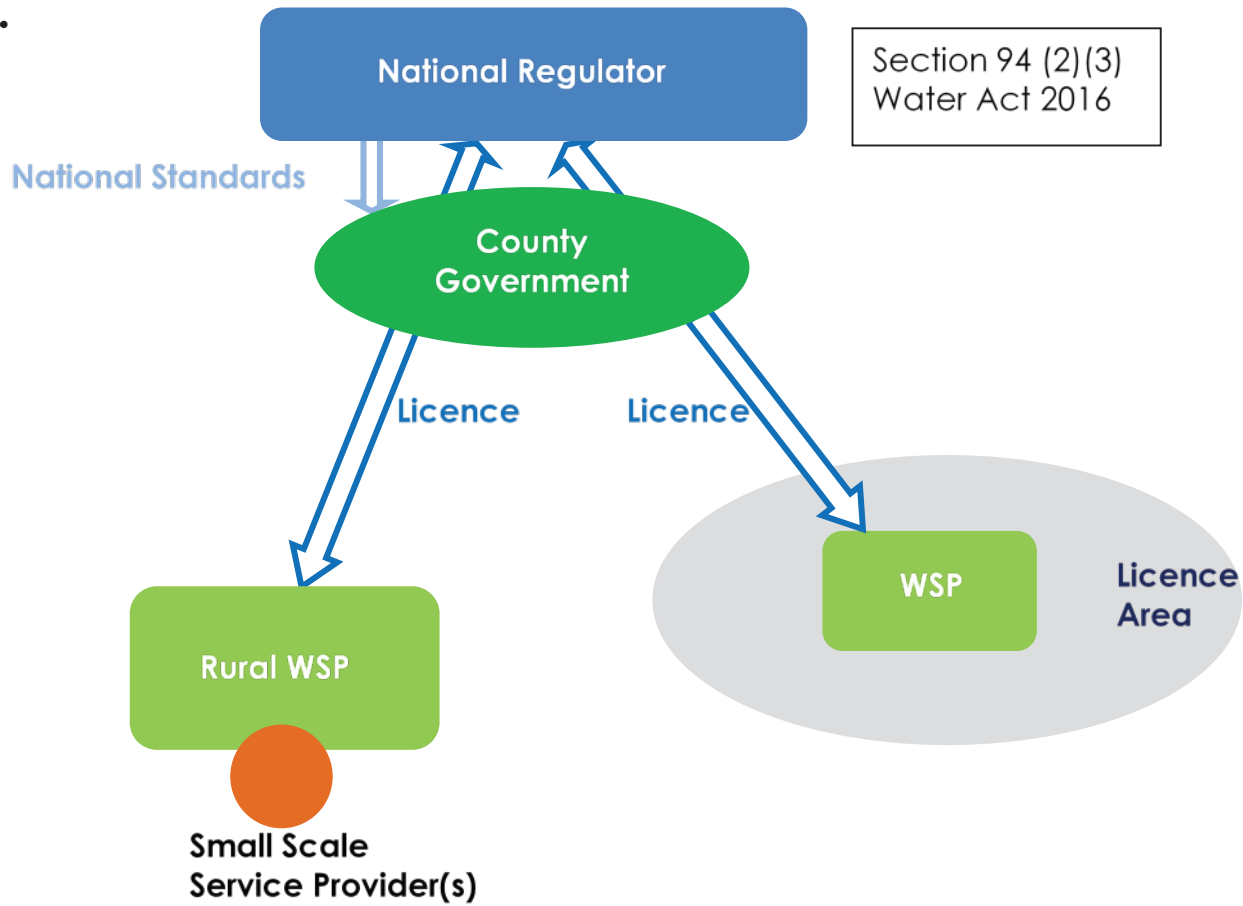
### 3.2 When the system is not part of the service provision area of a WSP

#### 3.2.1 Option 2.1 Formation of County Rural WSP

The County to establish a rural water services provider to manage service provision in areas deemed not commercially viable, as informed by Section 94 (2)(3) - (Every county government shall put in place measures for the provision of water services to rural areas which are considered not to be commercially viable for the provision of water services. The measures shall include the development of point sources, small scale piped systems and stand pipes which meet the standards set by the Regulatory Board and which may be managed by the community associations, public benefits organizations or a private person under a contract with the county government).

Option 2.1 is illustrated in figure 3.2.1.A.

Figure 3.2.1.A: Option 2.1. Formation of County Rural WSP



Option 2.1 shall apply when there is no WSP, or when there exists a large non-commercially viable area. It becomes necessary to have an entity through which the county will ensure the right to water and sanitation is met for communities living within these areas.

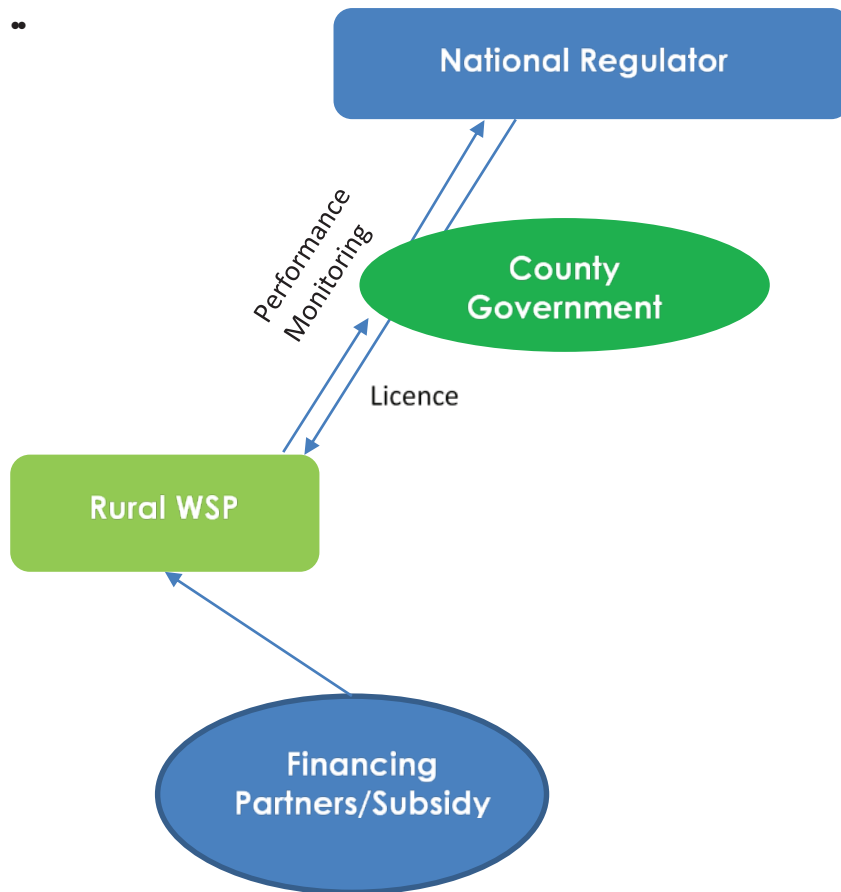
Under this option it is important the county government ensures due process in forming the Rural WSP and facilitate the WSP to apply for a licence from the national regulator (WASREB) and ensure compliance with requirements for licencing.

The formed WSP will have all non-commercially viable areas within the county as part of their service area and ensure service provision in these areas. (with financial support of the County Government as the system(s) is(are) not commercially viable).

The County may then employ the options 1.1, 1.2 or 1.3 if and when necessary, to achieve this.

The contractual mechanism for option 2.1 will be as per the figure 3.2.1.B.

Figure 3.2.1.B: Contractual Mechanisms for Option 2.1

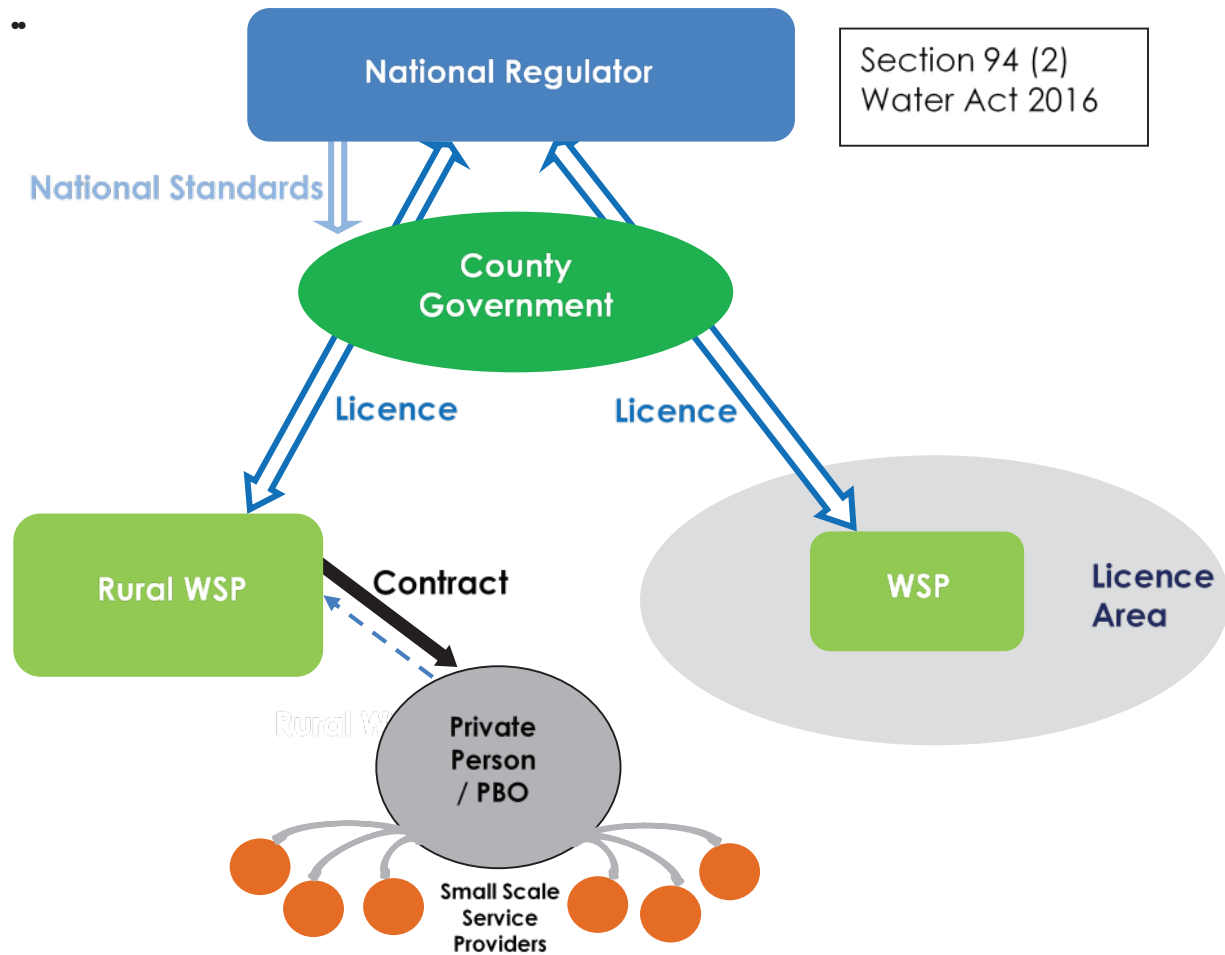


### 3.2.2 Option 2.2 The County Government Contracts a Private Person or Public Based Organisation.(PBO)

The County through the Rural WSP, contract person(s) or a Public-Based Organisation to manage service provision in areas deemed not commercially viable, as informed by Section 94 (2)(3) - (Every county government shall put in place measures for the provision of water services to rural areas which are considered not to be commercially viable for the provision of water services).

Option 2.2 is illustrated in figure 3.2.2.A.

Figure 3.2.2.A: Option 2.2. The County Government contracts a private person or PBO



Option 2.2 shall apply when:

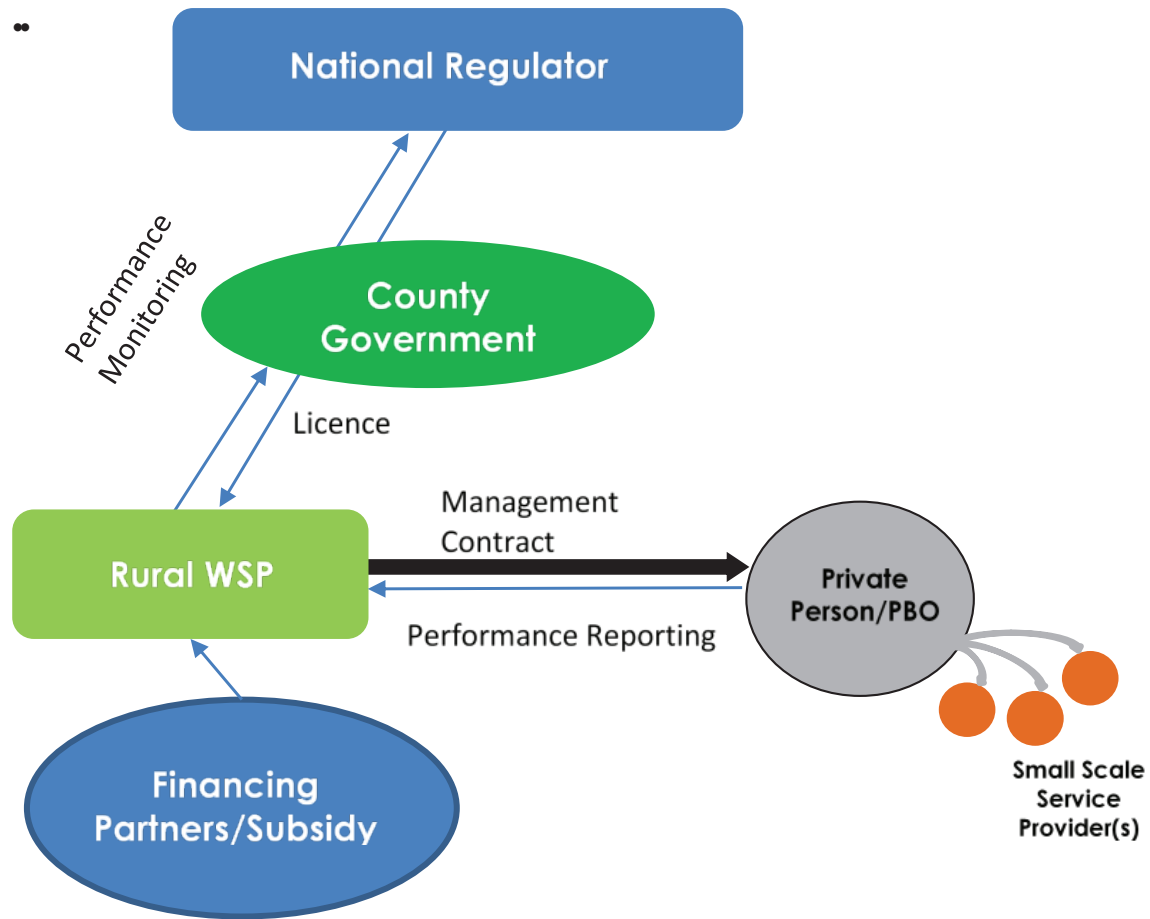
1. There is no WSP or when the system is located in a non-commercially viable area.
2. When there is no community group managing the system or when the management is not professional enough and the community group is not registered as WUA.
3. Where there is a private person or a Public-Based Organisation (PBO) interested to take over some or all responsibilities for the O&M of the system

Where the system is managed by a community group, it is important to:

- i. Clarify what is the added value to have a private operator responsible for the O&M of the system;
- ii. Adopt a right-based approach and clarify communities' rights and obligations.
- iii. Ensure that the private operator is linked to the County WSP through a contract, where roles and responsibilities including financial and technical support of the County Government as well as the reporting requirements are clearly stated.

The contractual mechanism for option 2.2 will be as per the figure 3.2.2.B.

Figure 3.2.2.B: Contractual Mechanisms for Option 2.2



# 4 STEPS FOR IDENTIFYING DELIVERY OPTIONS

There shall be three pronged steps in identification of delivery options, these shall comprise situational analysis, selection process of service delivery and public consultations as discussed below.



## 4.1 Situational analyses by County Governments

The key considerations include:

1. The county strategy and plans;
2. Whether the small-scale water provider is within the service area of an existing regulated WSP;
3. Whether the small-scale water provider is outside the service provision area;
4. Whether the WSP has the financial and technical capacity to take over the management of the water system;
5. The current technical 'status' of the water system (construction quality, capacity, current functionality status, etc.);
6. Who is currently managing the water system (community group, private operator, etc.) and how well?

## 4.2 Selection of Delivery Option

The CECM water in consultation with the county director water services and in reference to county water strategic plan and commercial viability assessments will adopt one of the appropriate delivery options as detailed in section 3 above.

## 4.3 Public /stakeholder engagement

The CECM Water department, in cooperation with the management of each water service provider/ community and other key stakeholders, shall organize to hold the following meetings to sensitize the different groups on the selected service delivery options:

1. A joint consultation with the larger key stakeholders within the service area to emphasis on the planned adoption of delivery options.
2. A full committee meeting to inform the committee about the assessment study and planned adoption of delivery options.
3. Agreement on handing over taking over steps and processes, this should take a maximum of one month.
4. Comprehensive inventory documentation and valuation of all assets.
5. Approval and official handing over letters between the county and the community.
6. Upon approval of minutes of the meetings listed above, the CECM will instruct formalization of delivery option.

# 5 OPERATIONALIZATION OF DELIVERY OPTIONS

Section 93 (1), (2) and (3) of the water act 2016 provides window through which water service provider and county government can establish different water services delivery options. The CEC in-charge of the county water department shall therefore direct operationalization of the service delivery options as detailed in section 4.

This will be actualized after situational analysis by the county water department, which includes, detailed technical, financial, commercial, governance, legal, socio-economic (willingness and ability to pay for water and sanitation services) and environmental assessments, market research, and commercial viability analysis of the targeted small-scale water utilities or an underserved area.

## 5.1 Public Consultations

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Subject to viability assessments of the Small scale water utilities or an underserved area as directed by the CECM water, reference will then be made to the Water Act 2016, section 139 (1)-(6) on public consultation, defining intent to improve water services provision through application of delivery options. The CECM shall then enter into negotiations and agreements with asset owners in cases where the community owns assets.

## 5.2 Procurement and Contracting

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Where the county engages a private operator to provide service, the county government will direct the County WSP to procure the private operator services in line with the Public Procurement and Asset Disposal (PPAD) Act 2015 with reference to sections 70 (1)-(6); 72-74, 77-78, 91-108.

## 5.3 Implementation Phase

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Pursuant to section 94(3) of the Water Act 2016, the County Governments shall develop water infrastructure which meet the standards set by the Regulatory Board and which may be managed by the community associations, public benefits organizations or a private person under a management contract with the county government or water services provider. This phase will include phase institutional setup, planning and investments and monitoring and evaluation.

## 5.4 Institutional Set-Up

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Where applicable the CECM in charge of water affairs will establish rural water services provider that will coordinate the functions of small-scale utilities. The County Government may provide financial and technical assistance to the established rural water services provider to undertake its functions. The registration of rural water service providers shall be a public limited liability company and the county government shall ensure that it meets all the requirements sets out under section 77 (2), (3) and (4) of the Water Act 2016.

In the case where there is takeover of small-scale water schemes by County Water Service provider, an administrative consolidation processes shall apply as guided by the regulatory board in consultation with the County Government.

County government shall conduct viability studies that may establish where an existing community water service provider shall be managed on their own and are eligible for licensing by the Regulator. The legal constitution of these establishments shall be assessed on the nature of the service delivery option based on potential licensing regime as set out by the regulator. The licensing requirements envisaged under sections 97 and 86 of the Water Act 2016 respectively shall apply. Application for tariffs shall be submitted to Regulator with consideration of the new service area and viability of the delivery option.

#### 5.4.1 Condition for Licensing

As per section 75 (5) of the Water Act 2016, Regulatory Board is supposed to develop and publish guidelines to regulate the conduct of licensed water services providers and licensing regime stipulating conditions of licensing. As such the following conditions of licensing shall apply:

- a. The SSSP must be registered as legal entity such as association, societies, or limited liability companies and/or public benefit organizations;
- b. The SSSP shall comply with all regulations, standards, rules and existing conditions of permits thereof in Kenya water sector – such as water permit from Water Regulatory Authority or any other conditions as prescribed in the licensing regime;
- c. The SSSP must report on credible data and performances and this will be informed my management option selected but the scope of what to be reported will be defined by the Regulator licensing regime;
- d. The SSSP must comply with regulator approved tariff which will be regulated on a case by case basis;
- e. The SSSP shall have arrangements for basic water treatment and testing;
- f. The SSSP shall have arrangements for sanitation and wastewater management;

Where the SSSP at the time of licence application does not meet the above requirements, it shall enter into an agreement with the County/Regulated WSP on attainment of the requirements.

#### 5.5 Investment Planning, Financing and Coordination

The County Government shall facilitate the process of development of operational plans (County Water Strategies, Water Master plans, Sectoral plans, CIDPs) for areas that do not have adequate water and sanitation services. This shall be undertaken in accordance to Water Act, 2016 Section 94 which obliges the County Governments to formulate and submit annually to the Regulatory Board and to the Cabinet Secretary, a five-year development plan incorporating an investment and financing plan for the provision of water services in the rural areas which are considered not commercially viable.

Additionally, County Governments may allocate targeted subsidy to enable the water service providers to meet operation and maintenance costs and increase coverage to rural and underserved areas. Further County Governments may partner with private sector and public institutions such as the Water Fund to invest in rural and underserved areas to improve water and sanitation services delivery. The partnership shall be in writing subject to the approval of the Regulatory Board. The terms and conditions of this public private partnership shall be in accordance to section 93 of the water act, 2016.

Licensed WSPs shall ring fence revenues to meet operational and maintenance costs and undertake service expansion against approved annual investment plans.



National and County Government entities, departments, agencies shall coordinate in the development and provision of water services in the County. Non state entities shall consult and coordinate with the County Government regarding development and provision of water services in the County.

## **5.6 Small-Scale Service Provider hand over process**

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The CECM in-charge of water with advice from director water services, shall commission handing-over/ taking-over of targeted small scale service providers upon situational assessment, viability analysis and agreed service delivery option.

The director water services will do a comprehensive inventory of all assets and liabilities; that includes human resources, entire infrastructure (hardware and software) customer inventories, cash and bank balances and project history; all the assets and liabilities will be evaluated at current values.

In instances whereby, small scale service provider is owned by the community/private institution or individuals, and there is sufficient evidence of strong ownership and investments, the CECM in-charge of water, shall in consultation with the county attorney and director water service be advised on how best to settle valued liabilities either through asset transfers, payment of lease fee or compensation.

Upon establishing the current status (assets and liabilities) of the small scale service provider in consultation with the Water Users Association/Committee, the CECM and Director water services, shall initiate and conduct structured public consultations with key stakeholders on handing/taking over.

Handing over tools shall include but not limited to;

1. Earlier registration documents (registration certificates and categorizations, KRA PIN)
2. The deed of hand-over/surrender (define the parties, content of the deed-project summary, assets current values, liabilities, customer inventories signatories, timelines). Develop a template to be annexed.
3. Water services regulations 2019

## **5.7 Performance Monitoring**

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The water service provider shall provide accurate and verified monitoring and evaluation key performance data as set out by the Regulatory Board. The Key performance indicators shall include Quality of Water Supplied, Frequency of Water Supply, Non-Revenue Water, Cost Recovery in Water supply services, Metering Level and Water Coverage.

The CECM responsible for water affair shall establish an inspectorate or mandate the established urban/ rural water service provider to inspect and monitor elements of water and sanitation services delivery in the rural and underserved on the key performance indicators developed by the regulator.

The rural water service provider shall submit monthly status reports to the County Executive Member in charge of water, who in turn undertakes appropriate remedial measures to ensure effective service delivery.

County Governments and the Rural Water Service Provider where applicable, shall be mandated to monitor and report the performance of private water service providers that have been contracted to operate within their service provision area.

## 6 REPORTING

The rural water service provider shall submit monthly status reports to the County Executive Member in charge of water, who in turn undertakes appropriate remedial measures to ensure effective service delivery.

County Governments and the Rural Water Service Provider where applicable, shall be mandated to monitor and report the performance of private water service providers that have been contracted to operate within their service provision area.

## 7 RISK MITIGATION

Risks should be allocated to the party which can minimize and manage the risk most effectively. Depending on the type of risk, this can be allocated to the CG or the private party with proper incentives. Where no party has a clear comparative advantage in managing the risks, they should be shared.

Ideally, there should be a balance of risks and penalties. Careful identification, analysis, and ranking of risks by an expert team before competitive tendering is key to best practice in risk mitigation and management. Risks should be carefully identified, analysed and ranked.



## **Water Services Regulatory Board**

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