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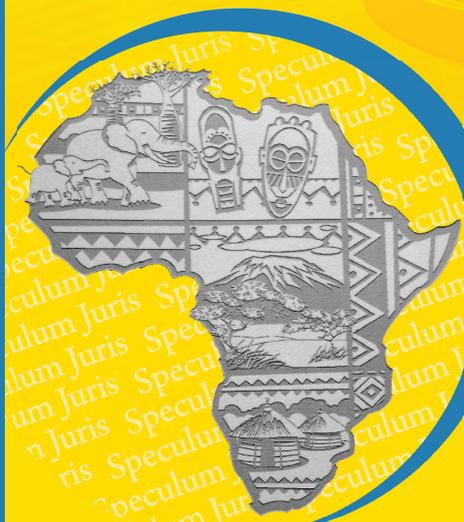
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# The Concept of Public Trusteeship and the Water-Energy-Food-Climate (WEFC) Nexus in Discretionary Decision-Making: Insights from *Thungela Operations v Department of Water and Sanitation (Water Tribunal, 26 April 2023)*

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## Abstract

*A new water law dispensation, signifying a shift in governance, was introduced with the National Water Act 36 of 1998 (NWA). The Act broke ground by inter alia introducing the concept of public trusteeship and establishing a Water Tribunal into South Africa’s water regulatory regime. According to section 3 of the NWA, the concept of public trusteeship means that all of South Africa’s water is under national government’s centralised control, acting as the public trustee. This concept aims to improve the allocation, management, use, and conservation of water resources. On its turn, the Tribunal is an independent body tasked*

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*with hearing appeals related to water issues. These appeals are made against decisions by the Department of Water and Sanitation or any other responsible authority on matters like the issuance of water-use licences. Given that the concept of public trusteeship and the functioning of the Water Tribunal are still in their infancy in South Africa, a critical analysis of the Thungela Operations (Pty) Ltd Department of Water and Sanitation and Others (Appeal No: WT04/22/GP) judgment illustrates the importance of integrating well-defined principles of public trusteeship into the Tribunal's appeal hearing decision-making processes. It helped clarify the scope and implications of public trusteeship within the context of these hearings, demonstrating how a suite of statutes collectively shapes the regulatory framework governing the Tribunal while guiding the content, scope and fulfilment of its public trust duties. The case highlights the necessity of adopting a framework that effectively recognises and addresses the interconnected dynamics of water, energy, food, and climate systems — often referred to as the Water-Energy-Food-Climate (WEFC) nexus — to ensure these duties are executed holistically and sustainably. Ultimately, this case analysis illustrates the Tribunal's role in balancing competing interests while protecting the long-term integrity of the country's water resources within the public trust.*

**Keywords:** environmental decision-making; public trusteeship; water law; Water Tribunal; WEFC nexus; sustainability

## 1 INTRODUCTION

Globally, evidence suggests the significant depletion of natural resources, driven by factors such as industrial pressures, mining, overconsumption and pollution. The 2024 Global Risk Report<sup>1</sup> identifies water shortages, alongside biodiversity loss and ecosystem collapse,<sup>2</sup> among the most severe risks facing humankind. In response to the deepening environmental crisis, various governance frameworks, practices, and initiatives have emerged to promote sustainable development and to protect the long-term integrity of these natural resources.<sup>3</sup> Against this backdrop, this case note examines three frameworks for sustainable water governance in South Africa: the concept of public trusteeship; the Water-Energy-Food-Climate (WEFC) nexus; and the role of the Water Tribunal.

Following South Africa's transition to democracy, the newly elected government adopted the Constitution of the Republic of South Africa, 1996 (the Constitution), which laid the foundation for a society based on democratic values, social justice and fundamental human rights.<sup>4</sup> This constitutional framework marked a fundamental shift in governance, embedding principles of equity and sustainability into the country's legal framework. Building on these principles, the post-constitutional legislature introduced a transformative water governance framework encapsulated in the National Water Act (NWA).<sup>5</sup> The NWA established the Water Tribunal and

1 World Economic Forum "Global Risks Report 2024" <https://www.weforum.org/publications/global-risks-report-2024/> (accessed 15-04-2024).

2 *Ibid.*

3 Sustainable development is a contested concept. There is general agreement on its core set of principles, but beyond that, much debate about its precise meaning. Baker and Eckerberg *In Pursuit of Sustainable Development New Governance Practices at the Sub-national Level in Europe* (2008) 5. Although not the focus of this case note, the United Nations 2030 Agenda for Sustainable Development; Resolution A/Res/70/1 adopted by the General Assembly on 25 September 2015 should also be noted here. The UN 2030 Agenda, with its 17 Sustainable Development Goals (SDGs), aims to secure and sustain critical natural resources for future generations.

4 See the preamble to the Constitution.

5 National Water Act 36 of 1998.

statutorily introduced the concept of public trusteeship.

Public trusteeship changed the country's water regulatory framework from one that linked access to water to land ownership<sup>6</sup> and differentiated between private and public water<sup>7</sup> to a framework that applies to all water in South Africa and which acknowledges that "water belongs to all people". Moreover, the concept of public trusteeship vests all water resources, including surface and groundwater, in the national government as the public trustee. In this capacity, the national government assumes overall responsibility and authority for water management, ensuring the equitable allocation and sustainable use of water for the benefit of all. This governance model is implemented through a licensing or authorisation system that regulates water use.<sup>8</sup> Despite its foundational importance, public trusteeship has seen limited substantive interpretation in reported case law. For example, in *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products* 2004 2 SA 393 (E) the High Court briefly mentioned the state's role as custodian, holding the environment in public trust for the people.<sup>9</sup> However, this concept's scope, meaning and full implications for water governance remain underexplored, necessitating further scholarly scrutiny.<sup>10</sup>

Internationally, and in South Africa, the WEFC nexus is increasingly recognised as an integrated approach to accelerating transitions toward sustainable development. Existing scholarship shows that the WEFC nexus, though defined in various ways,<sup>11</sup> primarily focuses on identifying the interrelationships between water, energy, food, and climate change. This approach emphasises identifying synergies, conflicts, and trade-offs in the management of these systems, providing a transparent framework for informed decision-making.<sup>12</sup> By incorporating the WEFC nexus as a decision-making framework into governance practices, policymakers can balance competing demands while ensuring sustainability. However, much like the emerging concept of public trusteeship, its integration into South Africa's water law frameworks remains in its early stages of development.<sup>13</sup>

The Water Tribunal, established in terms of the NWA, plays an increasingly critical role in water governance by providing a dedicated forum for adjudicating appeals against decisions made under the NWA. Its processes are pivotal in interpreting and applying concepts like public trusteeship and integrating the WEFC nexus into environmental decision-making. The case of *Thungela Operations v Department of Water and Sanitation & Others* of 26 April 2023 (*Thungela* case) serves as a landmark judgment in this regard. In the *Thungela* case, the Tribunal clarified the fiduciary duties inherent in public trusteeship, particularly in the context of environmental sustainability. The judgment illustrates the integration of the WEFC nexus into decision-making processes, ensuring that water governance aligns with broader sustainability goals. As discussed in more detail below, the significance of the *Thungela* case

6 Van der Schyff and Viljoen 2008 "Water and the Public Trust Doctrine – a South African Perspective" *The Journal for Transdisciplinary Research in South Africa* 340.

7 See Water Act 54 of 1956, s 1.

8 See NWA, ch 4.

9 *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products* 2004 2 SA 393 (E) 418.

10 Pienaar and Van der Schyff 2007 "The Reform of Water Rights in South Africa" *Law Environment and Development Journal* 183–184; Stein "Water Law in a Democratic South Africa: A Country Case Study Examining the Introduction of a Public Rights System" 2005 *Texas LR* 2170–2183; Thompson *Water Law a Practical Approach to Resource Management & Provision of Services* (2006) 279.

11 See section 2.5 below.

12 Botai *et al.* 2021 "A Review of the Water–Energy–Food Nexus Research in Africa" *Sustainability* 2.

13 Its slow adoption in legal frameworks may be ascribed to the assumption that many policymakers or lawyers do not fully understand the implications of the respective resource's interconnectedness. Another reason may be rooted in the fact that legal systems and government departments still often operate in silos, with separate laws, regulations, and policies for water, energy, food, and climate change.

lies in the Tribunal's exercise of its decision-making authority. This case arguably broadens the interpretation, scope and implementation of the public trusteeship concept in South Africa's water law by incorporating the WEFC nexus as a decision-making framework.

Building on existing theoretical and conceptual foundations, this case note critically examines the Water Tribunal's *Thungela* judgment by mapping the facts and analysing its implications to: (a) explore the meaning, scope, and significance of the concept of public trusteeship in environmental decision-making; and (b) demonstrate how an integrated governance framework that incorporates the WEFC nexus may enhance the effective fulfilment of public trust duties. Through this analysis, the case note aims to contribute to the ongoing discourse on sustainable water governance in South Africa.

## 2 THEORETICAL FOUNDATIONS

### 2.1 The Concept of Public Trusteeship

As indicated above, the NWA introduced a regulatory regime change.<sup>14</sup> The Act abolished the earlier differentiation between private and public water and severed the link that had previously existed between land ownership and access to resources.<sup>15</sup> The new paradigm of the NWA fundamentally transformed the South African regulatory framework by effectively nationalising water. Whereas the preamble to the NWA states that water is "a scarce natural resource that belongs to all people", the legislature introduced the concept of public trusteeship to facilitate the notion that water belongs to all. Section 3 of the NWA defines the public trusteeship mandate as follows:

3(1) As the public trustee of the nation's water resources the National Government, acting through the Minister, must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable manner, for the benefit of all persons and in accordance with its constitutional mandate.

(2) 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.

(3) The National Government, acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

In interpreting the concept and its ensuing fiduciary responsibilities, Van der Schyff argues that public trusteeship may be understood with reference to the legal principle of "stewardship".<sup>16</sup> The stewardship principle is generally understood as the careful and responsible management of the resources entrusted to one's care.<sup>17</sup> Bratspies extends this stewardship ethic further.<sup>18</sup> He describes stewardship as an approach that includes a "long-term perspective", with "a focus on sustainability, and a deliberate attempt to understand and respect the delicate balance of the earth's ecosystem". Accordingly, within the context of South Africa's water law and as a manifestation of stewardship, the concept of public trusteeship places the country's water

<sup>14</sup> See section 1 above.

<sup>15</sup> Viljoen "The Transformed Water Regulatory Regime of South Africa [Discussion of South African Association for Water User Associations v Minister of Water and Sanitation [2020] ZAGPPHC (19 June 2020)]" 2022 *Stell LR* 149.

<sup>16</sup> Van der Schyff "Stewardship Doctrines of Public Trust: Has the Eagle of Public Trust Landed on South African Soil?" 2013 *SALJ* 371.

<sup>17</sup> *Ibid* 371–372.

<sup>18</sup> Bratspies "Finessing King Neptune: Fisheries management and the limits of International Law" 2001 *Harvard ELR* 213 at 214; See also Van der Schyff 2013 *SALJ* 372.

resources under the custodial or fiduciary control of the state authority, as public trustee, to ensure their equitable use and protection for current and future generations.<sup>19</sup>

## 2 2 Constitutional Justification and Context

Section 24 of the Constitution, the environmental clause, has been interpreted by Van der Schyff as the conduit through which the concept of public trusteeship entered South Africa's jurisprudence.<sup>20</sup> The environmental clause asserts that everyone has the right to environmental protection through measures that prevent pollution and ecological degradation while promoting ecologically sustainable development.<sup>21</sup> However, the right of access to sufficient water under section 27(1)(b) of the Constitution reinforces this concept by imposing specific positive duties on the state to ensure access to sufficient water for all.

The Gauteng High Court confirmed and expanded on these principles in *HTF Developers (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2006 5 SA 512 (T), where it emphasised that section 24 embeds fiduciary duties within the government's role as a public trustee or custodian of natural resources.<sup>22</sup> By integrating the constitutional right of access to sufficient water, as outlined in section 27 of the Constitution, with the broad definition of the environment under the National Environmental Management Act (NEMA),<sup>23</sup> these fiduciary duties are understood to extend to the sustainable governance, equitable allocation, and protection of South Africa's water resources.

## 2 3 Delegation of Authority

Van der Schyff<sup>24</sup> observes that water, as a natural resource, is fundamentally vital to the survival and well-being of the people of South Africa. Its significance is further underscored by the fact that many decisions across various governmental spheres inevitably impact water use. This justifies the deliberate and purposeful statutory wording of the NWA, which vests ultimate responsibility for governing the country's water resources in the national government. By doing so, the NWA cloaks the country's highest governing authority, in its entirety, with the responsibility to govern the country's water resources in a manner that serves the public interest and ensures sustainability.<sup>25</sup>

Legally, the national government can delegate authority or responsibility to a state organ or department. Delegation takes place through mechanisms such as legislation and regulations. To this end, it is important to note that the NWA sets out a delegation framework. For example, section 3 of the NWA delegates the public trusteeship authority to the Minister; while chapter 6 further elaborates the delegation powers of the Minister. Additionally, chapter 15 grants the Minister the authority to establish a Water Tribunal. The Water Tribunal, established in terms

19 Van der Schyff 2013 *SALJ* 374.

20 *Ibid* 372.

21 See the Constitution, s 24.

22 This notion has been incorporated into different sector-specific laws regulating natural resources in South Africa, including, for example, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA), and the National Environmental Management: Biodiversity Act 10 of 2004 (NEM:BA). Each of these Acts further embeds the concept of public trusteeship more firmly within the South African environmental law framework. However, as indicated in the introduction above, there has been little effort in reported case law to comprehensively explain the concept of public trusteeship and its ensuing fiduciary duties within the context of water law. The content and implications of these duties have not yet been translated into practice.

23 See NEMA 107 of 1998, s 1.

24 Van der Schyff 2013 *SALJ* 381.

25 *Ibid*.

of section 146 of the NWA, is an organ of the state<sup>26</sup> that serves as an independent body with jurisdiction across all the provinces of the Republic.

## 2 4 The Water Tribunal: Regulatory Regime and Scope of Authority

Delegation of authority should align with the principle of cooperative governance.<sup>27</sup> To foster accountability and ensure effective governance and decision-making, the national government must clearly define the scope, limits, and conditions when delegating authority. This clarity not only reinforces transparency but also facilitates collaboration across the different levels of government. Notably, the NWA explicitly defines the delegated powers of the Water Tribunal.

As noted, the Water Tribunal was established in terms of section 146(1) of the NWA. Its primary role is to review appeals against decisions and directives outlined in sections 148(1)(a)–(m) of the NWA.<sup>28</sup> These include appeals against directives issued under sections 19 and 53 of the NWA, decisions on temporary transfers of water-use authorisations,<sup>29</sup> and decisions of the responsible authority on a WULA — by both the applicant and objectors to the licence.

Section 148(5) of the NWA grants the chairperson of the Water Tribunal the authority to devise rules outlining the Tribunal’s procedural framework. This authority was granted to provide clear guidelines for lodging and opposing appeals or applications as well as the procedures for their subsequent hearing by the Tribunal. The national government published the Water Tribunal Rules as Government Notice 926 in *Government Gazette* 28060 on 23 September 2005. In terms of Water Tribunal Rule 7, hearings conducted by the Tribunal are conducted as either a *de novo* hearing, essentially starting afresh, or as a “rehearing”. The term “rehearing” has been interpreted to imply that the Tribunal steps into the shoes of the original decision-maker.<sup>30</sup> The *Thungela* case did not involve a *de novo* hearing, but the Tribunal was set to “rehear” and “reassess” a decision made on a WULA.<sup>31</sup> According to *Makhanya NO and Another v Goede Wellington Boerdery (Pty) Ltd* 2013 1 All SA 526 (SCA), the Tribunal’s role, in the case of a “rehearing”, involves a comprehensive reassessment of the original decision.<sup>32</sup> The rehearing of a decision, or a WULA, constitutes what is commonly understood as an administrative action.<sup>33</sup> When the Water Tribunal reviews an appeal, it examines the original decision, including the records and reasoning provided by the original decision-maker including any new evidence.<sup>34</sup>

As the delegated authority of the public trustee, the Tribunal’s administrative actions are expected to be guided and informed by a regulatory framework. The scope, limits, and conditions of this legal regime include, among others, the Constitution, the NWA, NEMA, and the Promotion of Administrative Justice Act (PAJA).<sup>35</sup> More specifically, the trustee’s decisions must be consistent with sections 24 and 27 of the Constitution, which respectively guarantee the right

26 *Thungela* case paras 85 and 88.

27 See the Constitution, ch 3.

28 In the *Thungela* case, the jurisdiction of the Tribunal was beyond dispute, because the appeal at hand was directed at reviewing a decision made by the DWS as the responsible authority.

29 See NWA, s 25.

30 *Thungela* case para 14.

31 Water Tribunal Rule 7(2) elaborates on the procedure and stipulates that an appellant must be allowed to present their case afresh through either written or oral evidence. Those opposing the appeal or application should also be given a similar opportunity.

32 *Thungela* case para 13–15.

33 *Thungela* case para 14.

34 This approach indicates that the Tribunal’s review is not confined strictly to the decision being contested or to the grounds of appeal specified by the appellant. Instead, the Tribunal evaluates the WULA as though it were a new submission.

35 Promotion of Administrative Justice Act 3 of 2000.

to an environment that does not harm people's health or well-being — by preventing pollution and the right to access sufficient water.<sup>36</sup> These constitutional rights anchor decision-making in the imperative of environmental protection and equitable water access. NEMA plays an important role in facilitating cooperative environmental governance by establishing principles for decision-making on environmental matters.<sup>37</sup> Meanwhile, as mentioned above, PAJA is essential in defining the scope of the Water Tribunal's authority, ensuring that its decisions comply with the standards of administrative action and fairness. These legislative measures provide a framework for transparent, accountable and procedurally fair decision-making processes, ensuring that the Tribunal's rulings not only align with constitutional principles but also promote environmental justice and protect public interests.

The NWA further delineates the Tribunal's framework by requiring the assessment of several factors, including the objectives of the NWA,<sup>38</sup> the duties of state organs as trustees of water resources,<sup>39</sup> the National Water Resources Strategy,<sup>40</sup> classifications of water resources,<sup>41</sup> water management strategies,<sup>42</sup> reserve determinations,<sup>43</sup> objectives for water quality,<sup>44</sup> measures for pollution prevention<sup>45</sup> and any other relevant factors. Albeit not an exhaustive list, section 27 of the NWA specifically outlines factors that must be considered in the decision-making processes, ensuring a comprehensive and informed approach to water governance.<sup>46</sup>

## 2.5 The WEFC Nexus

Various sustainability governance frameworks evolved to facilitate and execute administrative action, discretionary decision-making powers, and public trusteeship duties. One such framework is the WEFC nexus governance approach, which integrates the management of interconnected resources into a cohesive decision-making model.

To understand how the WEFC nexus aligns with the principles of public trusteeship and its role in advancing sustainability in environmental decision-making, it is necessary to explore the background that facilitated its emergence briefly. The nexus gained traction following a report for the World Economic Forum Annual Meeting in 2009.<sup>47</sup> The report formally acknowledged a “structural problem” in water management. This problem was justified by an array of dire realities, including the increase in water scarcity in many parts of the world, the sharp rise in food demand, the likelihood that some economies will allocate less water to agriculture and more to the growing demands of energy and industrial sectors in the future, the compromising of the environment due to the over-extraction of freshwater, and the impact of climate change

36 See Soyapi “Water Security and the Right to Water in Southern Africa: An Overview” 2017 *PELJ* 1–26 for a comprehensive analysis of the constitutional right to water and its content.

37 See the long title of NEMA.

38 NWA, s 2.

39 *Ibid* s 3.

40 *Ibid* s 5.

41 *Ibid* ch 3.

42 *Ibid* ch 2.

43 *Ibid* s 16.

44 *Ibid* s 14.

45 *Ibid* s 19.

46 These factors include the efficient and beneficial use of water in the public interest, the socio-economic impact of the proposed water use, the potential effect of the water used to be authorised on the water resource, and the impact on the quality of water within the water resource which may be necessary for maintaining the Reserve.

47 World Economic Forum Water Initiative “The Bubble is Close to Bursting: A Forecast of the Main Economic and Geopolitical Water Issues Likely to Arise in the World during the Next Two Decades” 2009 <https://www.weforum.org/publications/bubble-close-bursting/> (accessed 20-05-2024).

on water resources. In the report, water security was termed as the “gossamer that links together a web of food, energy, climate, economic growth and human security challenges”.<sup>48</sup> Transpiring from the World Economic Forum report, various stakeholders have been involved in water-related initiatives to raise awareness, promote reform, and improve water management.<sup>49</sup> Two years later, in 2011, the World Economic Forum delivered a report,<sup>50</sup> that argued that water, energy, food, and climate crises are linked to the structural mismanagement of water across the global economy.

Since 2011, scholarship on the WEFC nexus and the implications it presents evolved in complexity.<sup>51</sup> In the early conceptualisations of the nexus, studies primarily focussed on identifying and uncovering the interrelationships between the respective resources and how to manage those interlinkages efficiently.<sup>52</sup> At the Bonn Nexus conference in 2011,<sup>53</sup> the nexus was put forward as a tool to enhance water, energy and food security by increasing efficiency, reducing trade-offs, building synergies and improving governance across sectors.<sup>54</sup> As the WEFC nexus evolved, it now also includes environmental and social dimensions.<sup>55</sup> This broader view aims to strengthen cross-sectoral integration and improve governance mechanisms. The WEFC nexus approach, designed to counteract compartmentalised governance, focuses on efficiency, sustainability, and enhanced decision-making across interconnected sectors. It, therefore, represents a holistic governance model encompassing water, energy, food, and climate sectors.<sup>56</sup>

Notably, Hoff<sup>57</sup> proposed guiding principles for the nexus approach, thereby contributing to the development of a WEFC nexus decision-making framework. Albeit not an exhaustive list, he proposed, first, that investing in the sustainability of ecosystem services is essential. Ecosystem services, defined as the contributions of ecosystems to human well-being, are particularly important, especially for the livelihoods of the poor. Ecosystems and the hydrological cycle are closely interlinked, with ecosystems serving as “natural water infrastructure” and often providing water services more efficiently than humanmade infrastructure. A precautionary approach that secures ecosystem services and maintains buffers against shocks and crises is necessary to prevent further ecosystem degradation. Second, Hoff held that achieving more with fewer resources is crucial. The Green Economy relies on increasing sectoral resource efficiency and overall resource use efficiency. Productivity, in this context, is then defined as the output — such as kilograms of biomass, kilocalories of food, or kilowatts of electricity — per unit of water consumed, or land or energy used. The guiding principles should therefore be to produce more with fewer resources, thereby reducing the impact and promoting sustainability. Third,

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48 *Ibid.*

49 *Ibid.*

50 World Economic Forum “Water Security The Water-Food-Energy-Climate Nexus” 2001 [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www3.weforum.org/docs/WEF\\_WI\\_WaterSecurity\\_WaterFoodEnergyClimateNexus\\_2011.pdf](https://www3.weforum.org/docs/WEF_WI_WaterSecurity_WaterFoodEnergyClimateNexus_2011.pdf) (accessed 23-05-2024).

51 Albrecht, Crootof and Scott “The Water-Energy-Food Nexus: A Systematic Review of Methods for Nexus Assessment” 2018 *Environmental Research Letters* 1; Bazilian *et al.* “Considering the Energy, Water and Food Nexus: Towards an Integrated Modelling Approach” 2011 *Energy Policy* 7896. Wolfe *et al.* “Engineering Solutions for Food-Energy-Water Systems: It is More than Engineering” 2016 *Journal of Environmental Studies and Sciences* 172–182.

52 Ximing Cai *et al.* “Understanding and Managing the Food-Energy-Water Nexus – Opportunities for Water Resources Research” 2018 *Advances in Water Resources* 259–273.

53 Botai *et al.* “A Review of the Water–Energy–Food Nexus Research in Africa” 2021 *Sustainability* 2.

54 Hoff 2011 *Understanding the Nexus: Background Paper for the Bonn2011 Conference: the Water, Energy and Food Security Nexus* 4.

55 Botai *et al.* 2021 *Sustainability* 3.

56 Niva, Cai, Taka *et al.* “China’s Sustainable Water-energy-food Nexus by 2030: Impacts of Urbanization on Sectoral Water Demand” 2020 *Journal of Cleaner Production* 2.

57 Hoff 2011 *Understanding the Nexus* 14–15.

accelerating access and integrating the poor is essential. There is significant overlap between people who lack adequate access to water, those who are undernourished, and those without access to electricity. By addressing these issues simultaneously, synergies can be created, and positive developments can be generated across the three nexus sectors, thereby improving living conditions. In fact, secure access to these resources may promote the sustainable use of natural resources.

As discussed in greater detail below, the evolving understanding of the WEFC nexus approach, which integrates environmental sustainability and social dimensions guided by the principles suggested by Hoff, offers methodologies to guide balanced, equitable and sustainable decision-making. This approach enhances the effectiveness of administrative action under frameworks such as the NWA and promotes the equitable distribution and sustainable use of water, energy, food, and climate resources. By situating the WEFC nexus within the context of public trusteeship, this case note argues how this integrated governance model supports the fulfilment of fiduciary duties, ensuring that natural resources are managed in a way that benefits both present and future generations. This approach can therefore potentially enhance and reinforce existing interpretations of the concept of public trusteeship. Building on the foundational theoretical concepts, the following sections map the facts and judgment of the case to provide the necessary understanding of the context and specific issues at hand.<sup>58</sup> Following this, the *Thungela* case will be critically analysed through the theory lens, allowing for a deeper examination of how the principles of public trusteeship and the WEFC nexus are applied in water governance.<sup>59</sup>

### 3 FACTS OF THE *THUNGELA* CASE

The dispute initially arose from the proposal by Thungela Operations (Pty) Limited (Thungela), formerly known as Anglo Operations (Pty) Limited, to initiate the Palmietkuilen coal mining project. This project was planned to take place near the Sedibeng District Municipality, situated along the borders of the Gauteng and Mpumalanga provinces. The area is rich in ecological diversity, with the Marievale Nature Reserve and Bird Sanctuary less than one kilometre from the proposed mining site.<sup>60</sup> Notably, the proposed project area is interspersed with several streams, wetlands, and pans, including water bodies such as the Dwars-in-die-wegvlei, Verdrietlaagte stream, and Aston Lake.

The project's relevant mining rights were granted in section 23(1) of the Mineral and Petroleum Resources Development Act.<sup>61</sup> However, the implementation of this mining project in the

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58 See sections 3 and 4 below.

59 See sections 5 below.

60 *Thungela* case para 36.

61 Mineral and Petroleum Resources Development Act 28 of 2002. Existing case law addressing the granting of mining licences has underscored the importance of balancing environmental protection with socio-economic development. These include, for example, *Trustees for the Time Being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* 2023 ZAGPPHC 487, wherein the court examined air pollution caused by coal mining and related activities. It emphasised the state's obligation to uphold environmental rights under NEMA and the National Environmental Air Quality Act 39 of 2004. Similarly, in *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management* 2007 10 BCLR 1059 (CC), the Constitutional Court emphasised the need to integrate environmental sustainability with justifiable economic and social development. The *Harmony Gold Mining Company Ltd v Regional Director* 2014 1 All SA 553 (SCA) case further clarified the duty of mining companies to prevent pollution.

designated area was anticipated to trigger several water uses as outlined in the NWA.<sup>62</sup> As the proposed project was set to trigger the licensing requirement,<sup>63</sup> Thungela applied for a water use licence (WUL) to the relevant office of the Department of Water and Sanitation (DWS), seeking authorisation for the following water use activities:<sup>64</sup>

Section 21(a) – taking water from a water resource;

Section 21(c) – impeding or diverting the flow of water in a watercourse;

Section 21(f) – discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;

Section 21(g) – disposing of waste in a manner which may detrimentally impact on a water resource;

Section 21(i) – altering the bed, banks, course or characteristics of a watercourse; and

Section 21(j) – removing, discharging or disposing of water found underground.

In support of their water use licence application (WULA), Thungela submitted several additional routine forms and specialist reports.<sup>65</sup> However, the DWS rejected Thungela's application for the WUL in a letter dated 12 April 2022.

The DWS disclosed the reasons for their rejection of Thungela's WULA.<sup>66</sup> First, the documents submitted by Thungela failed to adequately provide geochemical modelling to assess and demonstrate the potential long-term impacts of the proposed backfilling method on groundwater resources. Second, the application lacked sufficient geohydrological information about the pit area.<sup>67</sup> The description of the geohydrological regime, extent of contamination, and long-term migration predictions were not substantiated by data collection records.<sup>68</sup> Third, the public did

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62 The proposed coal mining project included the initiation of open pit mining activities, the establishment of a processing plant, and the construction of fuel storage facilities. It also included building haul roads, various conveyor belt systems, and creating overburdened dumps (the material overlaying the coal seam) alongside a run-of-mine (ROM) stockpile area. Further proposed developments were a discard disposal facility, which would include both a slurry dam and discard dump, the establishment of a Pollution Control Dam (PCD), stormwater trenches and sewage systems.

63 Section 21 of the NWA defines water use broadly. For purposes of the Act, water use includes taking and storing water, activities that reduce stream flow, waste discharges and disposals, controlled activities (those that detrimentally impact a water source), and removing water found underground for certain purposes. The public trustee allocates and regulates these water uses in the public interest through a licensing or authorisation system. Generally, water use must be licensed, unless it is listed in Schedule I of the NWA, is an existing lawful use, is permissible under a general authorisation, or if a responsible authority waives the need for a licence. This allocation exercise occurs through an administrative action or discretionary decision-making process. In this process, the public trustee has fiduciary duties to ensure that the country's water is protected, used, developed, conserved, managed, and controlled sustainably. See ss 3(1) and 21 of the NWA.

64 *Thungela* case para 6.

65 *Ibid* para 4.

66 *Ibid* para 10.

67 For instance, the information provided focussed only on the mine's peripheral boundaries rather than the pit area itself. The borehole drilled in the pit area was only slug tested, without any accompanying pump testing records. Moreover, the potential decant elevation was merely estimated, and no concrete plan was presented to mitigate potential pollution from the pit area during and after mining. *Thungela* case para 33.

68 *Thungela* case para 11.

not support the project due to its anticipated negative impact on the water resources.

Dissatisfied with the decision by the DWS to deny the WUL, Thungela (appellant) approached the Water Tribunal to overturn the respondent's decision.<sup>69</sup> The Water Tribunal was therefore tasked to step "into the shoes of the original decision-maker", re-evaluate and "overturn the original decision",<sup>70</sup> based on the following grounds:<sup>71</sup>

- That the respondent's decision regarding the backfilling method and the geochemical considerations was deemed to be irrational, lacking scientific basis, speculative, misleading, unclear, and not reflective of the documentation and expert reports presented to the respondents.
- That the decision concerning the geohydrological impacts of the proposed mining project, including predictions about the extent and quality of potential water table emergence and subsequent water contamination, was not grounded in the documentation and expert analysis available to the respondents.
- Lastly Thungela held that there is no foundation in the claim that the public was not in support of the project.<sup>72</sup>

It is important to note at this stage that the Tribunal repeatedly<sup>73</sup> recognised itself as an organ of state with public trusteeship duties. In fulfilling these duties, the Water Tribunal deliberately expanded the scope of its responsibilities beyond the three issues raised in the original WULA.<sup>74</sup> In this appeal, the central and broader issue is whether the appellant is entitled to a WUL based on WULA and its supporting documents, as supplemented by evidence and additional reports submitted during the appeal hearing.

#### 4 THE THUNGELA JUDGMENT

It was indicated earlier that the Water Tribunal's administrative actions must align with and be informed by a comprehensive regulatory framework.<sup>75</sup> This framework includes the Constitution, NEMA, and PAJA. The regulatory framework established by the NWA further obliges the Tribunal to consider a range of factors in its decision-making process. Under the delineated regulatory framework, the Tribunal considered a range of factors. For example, at the outset, the Tribunal recognised the adverse environmental impacts of mining activities, particularly those of coal mining projects. Such impacts include biophysical alterations, social disruptions, economic drawbacks, cultural disturbances, and aesthetic degradation. In the *Thungela* case, these adverse impacts were not in dispute. Instead, the Water Tribunal weighed them against factors such as the effects on groundwater levels or infiltration, water pollution, national energy security, food security, potential economic advantages for the local community,

69 The first respondent in the appeal was the Chief Director, Water Use Licence Management in the DWS. The second respondent was the DWS itself, and the third respondent was the Gauteng Regional Office of the DWS.

70 Thungela contended that a holistic reconsideration of the expert reports and additional oral evidence would lead to the Tribunal's approval of the WUL.

71 *Thungela* case para 11.

72 From a procedural point, the appellant also argued that the respondents did not provide them with an opportunity to present arguments to clarify any unclear geohydrological and geochemical aspects of WULA.

73 *Thungela* case para 16, 88.

74 The Tribunal therefore was not limited to the three issues of geohydrological, geochemical, and socio-economic impacts. In fact, the Tribunal emphasised that its consideration of the appeal would be guided by various sections of the NWA, NEMA, ss 24 and 27 of the Constitution and PAJA. See section 2.4 above; *Thungela* case para 18.

75 See section 2.4 above.

and climate change.

#### 4 1 Geohydrological Impacts

The first factor that the Water Tribunal considered was the potential geohydrological impacts emanating from Thungela’s proposed mining project. This was a logical point of departure, as coal mining generally gives rise to significant geohydrological changes. A prominent consequence of opencast coal mining is the need to dewater the area of the mining pit. This process lowers the water table, resulting in decreased water availability and creating what is known as a cone of depression. Naturally, this process has adverse effects on groundwater, its users, and the functionality of nearby wetlands or streams that rely on this groundwater. Notably, these geohydrological impacts are not only limited to the life of the mine, but also in their aftermath. After mine closure, the once-excavated pits, now refilled, will recharge with water. This recharging process causes the water levels to rise. Water re-accumulating in the excavated pits, and eventually surfacing, poses a significant risk of introducing pollutants into the environment through decanting.

The Water Tribunal noted that some geohydrological impacts may be managed through appropriate mitigation measures.<sup>76</sup> However, the respondent’s submissions and evidence revealed scientific disagreements and raised questions about the adequacy of the appellant’s information and data used to assess the geohydrological impacts and develop mitigation measures.<sup>77</sup>

#### 4 2 Geochemical Impacts

Beyond the contention over the adequacy of geohydrological data, the *Thungela* appeal also involved disagreements concerning the geochemical data<sup>78</sup> and the information used in designing mitigation measures, as well as selecting materials for the rehabilitation of the open pit area. In the *Thungela* appeal, geochemistry was a key consideration, particularly in assessing the risk of acid mine drainage (AMD) emanating from mine waste materials, such as waste rock, coal,

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76 *Thungela* case para 21.

77 In the Water Tribunal, the appellant led expert witnesses to confirm the methods and recommendations of the reports that were submitted as part of WULA outlining the geohydrological impacts of the proposed mining project. The respondents however highlighted an issue related to the accuracy of the appellant’s borehole data and tests on which their recommendations and proposed mitigation measures were based. More specifically, the applicant failed to provide the necessary geohydrological information for the open cast pit area. Mr Shibambo, a geohydrologist and the first witness for the respondents, indicated that only one of the two boreholes drilled was pump tested (as opposed to sludge tests). He further argued that the appellant’s calculations of hydraulic conductivity and groundwater flow were unreliable due to insufficient testing in the pit area. Moreover, he pointed out that without sufficient boreholes inside the opencast pit area that are pump tested, it is impractical to assess potential water impacts and devise effective mitigation strategies. The respondent’s witnesses therefore asserted that the geohydrological impacts were likely underestimated due to the lack of sufficient data. *Thungela* case para 34–39.

78 “Geochemistry” involves assessing the potential for chemical interactions among materials disturbed by mining activities to trigger reactions that could result in water pollution.

coal products, and coal discards.<sup>79</sup>

The contention during the appeal procedure was that the appellant's Geochemical Report inclined toward concluding that there would be no acidification,<sup>80</sup> while the respondent consistently stated that there could be AMD.<sup>81</sup>

### 4 3 Impacts on Wetlands

The third factor that was considered concerned the impacts of the proposed project on wetlands, specifically whether Thungela complied with the procedure outlined in the Regulations on the Use of Water for Mining and Related Activities Aimed at the Protection of Water Resources, as specified in Government Notice (GN) 704, published in *Government Gazette* 20119 on 4 June 1999. GN 704 was promulgated to establish specific prohibitions against opencast mining near watercourses unless a prior exemption is granted.<sup>82</sup> Although the Minister has the authority to grant exemptions from the requirements of Regulations 4, 5, 6, 7, 8, 10 or 11, the Tribunal found that Thungela did not seek the necessary exemption under GN 704.

In fact, Thungela's specialist reports conceded that the adverse impacts of the proposed mining project on wetlands would indeed be significant. Their Wetland Report asserted that no feasible mitigation measures were available for the loss of wetland habitat. Moreover, the failure to apply for an exemption under GN 704 further exacerbates the situation, placing the appellant in a detrimental position.<sup>83</sup>

### 4 4 Socio-economic Impacts and Food Security

The Tribunal considered evidence highlighting the potential economic benefits for the community if the WUL were granted. However, it also acknowledged that the proposed mining site is located in a thriving agricultural region. While mining jobs typically offer higher remuneration compared to agricultural jobs, the Tribunal recognised that agricultural activities provide long-term sustainability,<sup>84</sup> whereas mining is constrained by the finite nature of resources. From a

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79 Thus, a geochemistry study is critical in identifying potential impacts on water quality both during and after mining operations. In this appeal, geochemical considerations were at issue because the appellant planned to use overburden and interburden for backfilling parts of the open pit area where they extracted coal. By confirming the methods, findings, and recommendations in their specialist reports, the appellant's witness testified that the overburden material and interburden were unlikely to be acidic and using such material for backfilling posed less risk of AMD being generated. The internal expert that testified for the respondents, however, argued that there could be AMD. In fact, Mr Mutshaine, the internal geochemist of the respondents, argued that the mitigation measures proposed to address any acidification and resultant AMD have not been fully demonstrated to be effective. After reviewing the reports and witness testimonies submitted, the Water Tribunal concluded that Thungela's mining activities and their proposed method of concurrent backfilling were likely to cause some form of acidification. Furthermore, the mitigation strategies suggested fell short of addressing the anticipated pollution sustainably and effectively. Surrounding water bodies were likely to suffer adverse AMD effects after the mine's closure. *Thungela* case para 36–48.

80 *Thungela* case para 47.

81 Based on evidence led by an expert witness regarding the limited mitigation measures post-mining, the Tribunal concluded that the proposed mitigation measures may not sufficiently mitigate the predicted pollution sustainably and effectively. *Thungela* case paras 53, 51.

82 During the appeal, the appellant has argued that it need not formally apply for an exemption under GN 704, and if that is necessary, that it applied as part of WULA.

83 Notably, the Wetland Report introduced the concept of off-sets, which are measures to compensate for environmental damage by ensuring equivalent ecological benefits elsewhere. Despite this recommendation, the appellant did not consider off-sets. *Thungela* case paras 56, 59, 85.

84 In assessing the socio-economic impacts of the project, with a focus on agricultural activities and their contribution to regional food security, the Tribunal therefore considered food security. The Tribunal effectively stressed the importance of weighing the benefits of maintaining agricultural continuity against the proposed mining operations.

socio-economic perspective, the Tribunal concluded that approving the WULA would not be beneficial. Notably, the Tribunal applied section 2 of NEMA,<sup>85</sup> which outlines various national environmental management principles to ensure that developments are socially, environmentally and economically sustainable.<sup>86</sup>

#### 4 5 Cumulative Impacts

The Water Tribunal then considered concerns regarding the cumulative impacts of the proposed mine.<sup>87</sup> The proposed project is situated in the Witwatersrand area, which has already suffered significant cumulative impacts on its wetlands and catchment areas. The Tribunal noted that additional activities likely to exacerbate pollution would further deteriorate water quality. Given the significant impacts anticipated from Thungela's proposed activities, this project is expected to contribute to the ongoing cumulative degradation of wetland ecosystems at local, municipal, and regional levels.

#### 4 6 Post-mining Mitigation Measures, Financial Provisioning and the Impacts of Climate Change

Alongside the already stated factors, the Tribunal evaluated the potential for water resource pollution post-closure and the measures necessary to mitigate such pollution. Although the Tribunal was satisfied with the appellant's identification of most potential impacts associated with the proposed mining activity, Thungela's efforts to devise and implement mitigation measures for impacts related to water resources did not meet the Tribunal's expected standards set by legal requirements.<sup>88</sup> The evidence presented and the reports submitted showed that Thungela could not confirm the adequacy of financial provisions for post-closure water treatment and pollution prevention.<sup>89</sup>

The Tribunal then specifically evaluated how climate change might affect Thungela's mitigation strategies.<sup>90</sup> The inquiry revealed that the impacts of climate change had not been sufficiently considered during the environmental authorisation or the WULA process.<sup>91</sup> The Tribunal noted that all the reports presented to it made minimal reference to how climate change might impact the proposed mining project, including the decline of the global coal market, the risk of stranded assets, and the potential for economic fallout.<sup>92</sup>

#### 4 7 Strategic Importance and Energy Security

The Water Tribunal also considered energy security. The Tribunal criticised Thungela for failing

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85 See section 2.4 above.

86 According to s 2(4) of NEMA, sustainable development requires the consideration of various factors, including that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised or remedied. In fulfilling its public trust duties, the Tribunal concluded that issuing a WUL would contradict these environmental management principles. Section 2(3) of NEMA; *Thungela* case para 73.

87 *Thungela* case para 70.

88 *Ibid* para 79.

89 *Ibid* para 80.

90 See *Thungela* case para 88: "As an organ of state filling [...], we have a trustee duties [...]to ensure that the people living in the project area 53 years from now, and in all likelihood battling the effects of climate change, will not be burdened with historical water pollution and a barren landscape for which no one will be liable to remediate. We are entreated to bear in mind the strategic importance of any water use authorised."

91 *Thungela* case para 81.

92 *Ibid*.

to demonstrate the strategic importance of the proposed water use.<sup>93</sup> The proposed project's coal production was primarily intended for export markets, contributing minimally to national energy security and sustainability. The Tribunal emphasised the need to evaluate energy implications for long-term national benefits rather than short-term economic gains.

The Water Tribunal's decision-making process was therefore shaped by the interplay of various factors, including geohydrological impacts, geochemical impacts, effects on wetlands, socio-economic implications, cumulative impacts, climate change, financial mitigation measures, and the strategic importance of the proposed activities. After carefully weighing these considerations, the Tribunal ultimately dismissed the appeal.

## 5 CRITICAL ANALYSIS

Against the backdrop of the facts and judgment of the *Thungela* case, this section critically analyses and evaluates the judgment in the *Thungela* appeal. The analysis is conducted through the theoretical lens provided in section 2, where key concepts such as public trusteeship, its constitutional justification and context, the WEFC nexus, and the regulatory frameworks outlined in the NWA, NEMA and PAJA were discussed.<sup>94</sup> By applying the theoretical frameworks, the analysis seeks to assess the alignment of the Tribunal's decision with the principles of sustainable water governance. Additionally, it aims to refine and broaden the interpretation, scope and implementation of the public trusteeship concept, specifically in the context of decision-making within South Africa's water law.

In section 2.1 above, the concept of public trusteeship was introduced as the careful and responsible management of natural resources, including water. The idea was expanded by scholarship with a stewardship ethic, describing it as an approach that incorporates a "long-term perspective", a commitment to sustainability, and a deliberate effort to understand and respect the delicate balance of the earth's ecosystems. To this end, the *Thungela* judgment serves as an important example of the practical implementation of this public trust concept, demonstrating a commitment to sustainability<sup>95</sup> and a thoughtful understanding of ecosystems.<sup>96</sup> In its reasoning, the Tribunal explicitly considered the possibility that 53 years into the future, people living in the project area and grappling with the challenges of climate change should not be burdened by historical water pollution or a degraded, barren landscape for which no one is held accountable for remediation.<sup>97</sup>

The *Thungela* judgment is also analysed within the constitutional justification and context of public trusteeship, specifically through the lens of sections 24 and 27 of the Constitution. These provisions establish the foundation of the state's fiduciary duties to protect the environment and to ensure access to sufficient water for all. The theoretical discussions earlier emphasised the constitutional right to environmental protection, which requires the state to implement measures to prevent pollution and ecological degradation while promoting sustainable development. The *Thungela* judgment directly addressed this mandate, prioritising environmental protection and considering the implementation of effective mitigation measures to prevent water pollution.<sup>98</sup> In fulfilling its public trust duties, the Water Tribunal effectively reinforced these constitutional principles and affirmed the state's duty to protect South Africa's water resources from pollution. The Tribunal's decision, therefore, exemplifies how judicial interpretation and implementation

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93 *Thungela* case para 85.8.

94 See section 2 above.

95 See section 4.4 above.

96 See section 4.3 above.

97 *Thungela* case para 88.

98 See sections 4.1, 4.2 and 4.6 above.

of public trusteeship — anchored by the environmental right in section 24 and the constitutional water right of section 27 — can shape the protection and sustainable management of the country’s water resources.

The *Thungela* judgment further affirms that, in alignment with the principle of cooperative governance, national government can delegate specific public trust duties to subordinate structures. In fact, the *Thungela* case formally recognised and confirmed the delegation of the national government’s custodial authority and its public trusteeship responsibilities to the Water Tribunal.<sup>99</sup> This delegation underscores the Water Tribunal’s role in ensuring the effective trusteeship of South Africa’s water resources, demonstrating its central position in protecting the nation’s environmental and water resources through sound decision-making processes.

Notably, the *Thungela* case exemplifies how a suite of statutes collectively shapes the regulatory framework governing the Water Tribunal, while guiding the content, scope and execution of its public trust duties. The Tribunal’s decision-making process demonstrates that South Africa’s legislative regime establishes a comprehensive and multidimensional governance structure, empowering the Tribunal to address complex issues related to sustainable development, pollution prevention and socio-environmental issues. Several key legislative provisions can be traced as foundational to the Tribunal’s decision-making. The Tribunal specifically relied on sections 24 and 27 of the Constitution, along with the NWA, to inform its decision. It also drew upon section 2 of NEMA to integrate sustainability considerations into its evaluation, ensuring that the environmental, social, and economic impacts of proposed developments were thoroughly assessed. Furthermore, PAJA played an important role in ensuring procedural fairness, lawfulness, and transparency, reinforcing the legitimacy of the Tribunal’s decision-making processes or actions and its commitment to public trust duties. In this way, the Tribunal’s approach in rehearing the WULA, and exercising discretionary decision-making in administrative action extends beyond the scope outlined in section 3 of the NWA.

Beyond the primary statutes, the *Thungela* judgment demonstrates that the Tribunal operates within a broader governance framework that incorporates sector-specific regulations related to the WEFC nexus. The factors considered during the appeal confirmed that water allocation decisions are not isolated but are interconnected with energy production,<sup>100</sup> food security<sup>101</sup> and climate resilience.<sup>102</sup> Consequently, the Tribunal’s decision-making process was guided and informed by an understanding of these interconnected sectors. The Tribunal adopted a holistic and integrated approach, ensuring that the implications of water use on energy, food and climate systems were considered. In this context, it may be argued that the WEFC nexus framework concretised the Tribunal’s commitment to public trusteeship. By considering these interconnected sectors, the Tribunal ensured that water allocation decisions align with broader socio-economic and environmental goals, promoting sustainability across these areas.

Based on these evaluations, the *Thungela* case serves as an important example of how the Tribunal interpreted and operationalised the concept of public trusteeship through a holistic approach to decision-making. By incorporating the WEFC nexus, the Tribunal was able to assess the synergies and trade-offs between water resources and other critical sectors, ensuring that its decision aligned with broader sustainability goals. The dismissal of *Thungela*’s WULA therefore ultimately reflects a precautionary stance that prioritises the long-term protection and sustainable management of South Africa’s water resources, placing the country’s environmental

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99 *Thungela* case para 88.

100 See section 4.7 above.

101 See section 4.4 above.

102 See section 4.6 above.

well-being ahead of the immediate or short-term economic benefits of coal mining.

## 6 CONCLUDING REMARKS

This case note aimed to critically evaluate and discuss the *Thungela* case, providing insights into the evolving concepts of public trusteeship, the WEFC nexus and the functioning of the Water Tribunal, all of which continue to develop within South Africa's legal and regulatory landscape. The *Thungela* judgment explicitly recognised the public trust duties that the Water Tribunal must uphold as an organ of state.<sup>103</sup>

Through the analysis of the case, the scope and implications of public trusteeship within the context of appeal hearings have been discussed and clarified, while demonstrating how a suite of statutory instruments collectively shapes the regulatory framework governing the Tribunal and informs the fulfilment of its public trust duties.

The Tribunal's role in balancing various environmental, and socio-economic considerations was brought into sharper focus, reinforcing the need for well-defined principles of public trusteeship to guide the decision-making processes. The judgment serves as a reminder of the importance of considering the interconnections between water, energy, food, and climate systems — reflecting the synergies, conflicts, and trade-offs inherent in managing these interconnected sectors.

Ultimately, the *Thungela* case underscores how public trusteeship, when informed by the WEFC nexus, can effectively address the complex challenges of natural resource management within the context of environmental discretionary decision-making by the Water Tribunal specifically. It affirms the need for an integrated, sustainable approach to environmental and water governance that promotes long-term sustainability, responsible resource management, and equity across sectors.

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103 *Thungela* case para 88.