Testing time: Umgeni Water officials take a depth sample in Midmar Dam in KwaZulu-Natal. The absence of a CEO and a board of directors at the agency is causing alarm among some investors. / **Sunday Times file picture**

Headless Umgeni Water worries large investor

● *Futuregrowth notes company must have a fully functioning board and transparent selection*

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Deputy Editor

Asset manager Futuregrowth has raised the alarm over governance at Umgeni Water, which has been left without a permanent CEO or a board after Water Affairs Minister Nomvula Mokonyane dissolved it at the end of June.

Umgeni Water is the largest supplier of water services in KwaZulu-Natal, with R1.5bn in listed bonds in issue.

On Tuesday, it issued a Sens notice in which it gave a governance update, warning that it could be without a board for up to six months. In the interim, all major decisions including procurement were in the hands of acting CEO Thami Hlongwa and must be taken "in conjunction" with Mokonyane.

Futuregrowth chief investment officer Andrew Canter said it had been engaging with the management for the past 10 months on governance matters.

"We noted that the board was dismissed on 30 June. We communicated our concern [over the dismissal] and the acting CE. We urged Umgeni to communicate this matter to investors, which they did via Sens on Tuesday," Canter said.

But the Sens notice has instead heightened concern as it implies that Mokonyane had been left with no choice but to end the terms of the directors due to a recent court judgment involving the Umhlathuze Water Board. "The board had already served two four-year terms. The minister's decision is in line with a judgment by the High Court in Pietermaritzburg, which declared the extension of term of office as board members as invalid," said the statement.

But the Water Services Act states that directors can be reappointed and serve three consecutive four-year terms.

"Contrary to their release, our understanding is that nine of the 12 nonexecutive directors were fully eligible to serve an additional four-year term. We are of the view that the reason offered for the termination of the board is inconsistent with maximum terms allowed by the act," said Ringetani Ndlovu, a credit analyst at Futuregrowth.

Mokonyane's spokesman Mlimandlela Ndamase, said that while the act allowed directors to be reappointed, the Umhlathuze judgment was that "a new process" of calling for fresh nominations had to take place before reappointment.

This too is a misrepresentation. In the Umhlathuze case, it was Mokonyane's decision to further extend the terms of the directors, among whom was SAA chairwoman Dudu Myeni, after three four-year terms, that was overturned. Contrary to Ndamase's interpretation, Judge Yvonne Mbatha stressed the dangers of "a headless body" and allowed the illegally appointed board to remain in place until legally rectified.

Umgeni spokesman Shami Harichunder said the board had dealt satisfactorily with the concerns of all lenders. Evidence of its good governance was that ratings agency Fitch had confirmed its rating subsequent to the board's dissolution. Standard & Poor's had upgraded it.

Canter said that the agencies were not taking any evident action to protect investors' interests. "This company requires a fully functioning board and Futuregrowth and the market will watch closely to confirm that the selection process is transparent and that the new board is appropriately skilled and qualified," he said.