Comments on proposed changes to the National Water Amendment Bill as published in GN 4097 in GG 49733 of 17 November 2023

SECTION	CURRENT WORDING IN NATIONAL WATER ACT	PROPOSED AMENDMENT	COMMENTS
Definitions		(e) by the insertion after the definition of ''instream habitat" of the following definition: **"irrigation"** means the artificial watering of land to either foster plant growth, suppress dust or dispose of water containing waste;"; **(h) by the insertion before the definition of "waterwork" of the following definition: "water source area" means all land and aquifers which form the original collection point, and provide above average amounts, of water to the rest of South Africa's water resources, and which meet significant social, economic and environmental water requirements**	We do not support the inclusion of disposing of water containing waste in the definition because of the uncertainty it creates in respect of waste disposal that may trigger an activity under the NEM: Waste Management Act. We highly commend the introduction of Chapter 3A and the corresponding definitions. Legal protection of these areas is crucial for the water security of this country particularly given the climate crisis we are in, the implications for water availability, and the need to strengthen our resilience to climate change impacts. However, it is not clear why the Department has referenced these areas as "water source areas" instead of "**strategic** water source areas". The latter were identified and delineated in the 2018 WRC *"Identification, Delineation and Importance of the Strategic Water Source Areas of South Africa, Lesotho and Swaziland for Surface Water and Groundwater"* report, with corresponding fine scale delineation and technical reports, *inter alia.* Is it the Department's intention to distinguish the two, with SWSAs as a subset of WSAs or is it the Department's intention to term the identified and delineated areas as water source areas instead of strategic water source areas?

			We submit that their strategic nature is significant and must be recognised for their national importance. They are strategic because of the vital role they play from a national planning perspective and the water security of the nation. In addition to all of the existing research and published reports on SWSAs, the protection of *strategic* water source areas in particular is taken up in the NWRS3 and the National Water and Sanitation Masterplan, as also in national legislation such as the NEM: Protected Areas Act, as amended. We submit, therefore, that the definition should be amended and term these areas "Strategic Water Source Areas" with a definition that corresponds with the 2018 WRC report, namely: "Strategic Water Source Areas (SWSAs) are defined as areas of land that either: (a) supply a disproportionate (i.e. relatively large) quantity of mean annual surface water runoff in relation to their size and so are considered nationally important; or (b) have high groundwater recharge and where the groundwater forms a nationally important resource; or (c) areas that meet both criteria (a) and (b). They include transboundary Water Source Areas that extend into Lesotho and Swaziland." This will enhance alignment and the consistent terminology will ensure clarity and legal certainty without which enforcement is compromised.

Amendment of section 2 of Act 36 of 1998	The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors– (k) managing floods and droughts;	**The purpose of this Act is to ensure that the nation's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors–** **(a) by the substitution for paragraph (k) of the following paragraph: "(k) managing climate conditions, floods and drouqhts: and";** (b) **and (b) by the addition of the following paragraph: "(l) promoting effective water conservation and water demand management.".**	The inclusion of climate conditions as a factor to be taken into account in the protection, use, development, conservation, management and control of the nation's water resources is welcomed. We submit that it should be elevated if the inclusion is intended to refer to climate change. We submit that the National Water Act (NWA) should not shy away from the reality of climate change and its specific ramifications for water availability and our need to build resilience for the climate crisis. We propose the following wording: **"(k) managing [climate conditions] floods and drouqhts and in particular the need to build resilience for the impacts of climate change; and";** We fully support the addition of paragraph (l).
7. The following Chapter is hereby inserted after Chapter 3 of the principal Act:		**"CHAPTER 3A PROTECTION OF WATER SOURCE AREAS** **This Chapter deals with the protection of water source areas that have a relatively high runoff in the region of interest, which is made accessible for supporting the region's population or economy. These areas contribute substantially to developmental needs often far away from the sources.** ***Part 1*** ***Geographical location of water source areas Identification of water source areas.*** **20A (1) The Minister must, within one year of the commencement of this Chapter, publish a notice in the Gazette listing scientifically identified water source areas, and attaching a map indicating—**	The addition of a new chapter specifically for the protection of water source areas is welcomed and highly supported. We reiterate our comments submitted in relation to the definition of "water source areas" above and submit that the Chapter's terminology should be consistent with the Masterplan, and NWRS3 and the reports published on the identification and delineation of *strategic water source areas*, as well as the existing efforts underway towards achieving their protection. We make this submission in relation to the whole of Chapter 3A. We submit that the paragraph introducing the Chapter should, when describing these areas, mirror the definition.

		(a) the geographical location of each water source area: and **(b) the major threats faced by each water source area.** **(2) The Minister may, where necessary, amend the list of identified water source areas, especially where the circumstances that led to the identification of those water source areas have changed.** **(3) The Minister must, within three years of the commencement of this chapter, publish in the Gazette, regulations for the management of activities within and around water source areas, which specify –** **(a) activities which are prohibited from being conducted in and around water source areas; and** **(b) activities which are restricted when being conducted in and around water source areas.** **(4) The Minister may review the regulations contemplated in subsection (3) at the time of reviewing the national water resource strategy.**	In relation to section 20A(1), we submit that Minister must have regard to the substantive scientific research already published which identifies and delineates the 22 strategic water source areas in South Africa and the threats they face. We refer again to the Water Research Commission 2018 report, "*Identification, delineation and importance of the strategic water source areas of South Africa, Lesotho and Swaziland for surface water and groundwater* (**Project no. K5/2431**)." Therefore, we submit that as the identification, delineation and maps have already been published, together with the threats facing each of the SWSAs, the timeframes for publishing the Notice contemplated by section 20A(1) should not be longer than six months from the commencement of the Chapter. We submit that section 20A(2), that empowers the Minister to amend the list of identified water source areas where the circumstances that led to such identification has changed, is somewhat vague given that the basis for their identification is their mean annual runoff or recharge. What circumstances are anticipated and what factors should the Minister take into account? We submit that a public participation process should be prescribed in relation to a decision under this provision. The timeframe for the publication of regulations under 20A(3) is too long considering the urgent need to protect strategic water source areas, given the

			proliferation of activities that are inconsistent with their protection. Coal mining in the Enkangala-Drakensberg SWSA is one example. It is imperative that these Regulations are published sooner if we are to strengthen our response to and resilience to climate change impacts.
		PART 2: **GENERAL PROHIBITIONS AND RESTRICTIONS WITHIN WATER SOURCE AREAS** **Open Cast and underground mining** **20B. (1) all open cast mining and underground mining which may lead to acid rock drainage or acid mine drainage is prohibited, particularly, for those water source areas which are threatened by or vulnerable to mining.** **(2) The Minister shall publish a notice prescribing the review of water use licence granted on mining activities contemplated in subsection (1) prior to the commencement of this Chapter.** **(3) The responsible authority <u>may</u> not issue a water use licence for any water use activity identified under section 21, relating to open cast mining or underground mining within the identified water source area.**	We highly support the inclusion of this Part, without which, the water supply from the areas in question will continue to be compromised by the activities referred to. We submit in relation to 20B that the prohibition must extend to oil and gas extraction given the impacts of those activities on water resources. South Africa's geologic framework hosts critical groundwater resources and contamination of that groundwater from total dissolved solids and methane in the extraction process is a serious risk. Drilling – a core activity for gas extraction – dramatically increases aquifer interconnectivity through intersecting fractures and therefore the migration pathways for that contamination. Additionally unevaluated contaminants impose hidden risks. Surface water resources interact with the geologic framework. The groundwater in turn is at risk from surface water contamination, for example from the contaminated water produced in the extraction process. Further, we submit that the framing of the prohibition is critical for legal certainty and to ensure enforceability. We propose the following wording in

			relation to the proposed 20B (with analogous wording for 20C and 20D): **"(1) Despite other legislation, no person may conduct open cast or underground mining or oil and gas extraction in strategic water source areas.** **(2) The Minister, after consultation with the Cabinet member responsible for mineral resources and energy, must review all mining and oil and gas activities which were lawfully conducted in areas indicated in subsection (1) immediately before this section took effect;.** **(3) The responsible authority may not issue a water use licence for any water use identified under section 21 where that water use relates to open cast or underground mining or oil and gas extraction within strategic water source areas."** Should the above submission not be acceptable to the Minister, then we submit that the Act should contain a provision to achieve the protection of SWSAs that is analogous to section 24(2A) of NEMA and which empowers the Minister to declare restrictions and prohibitions on water uses in SWSAs. We submit in this regard that to conserve the resources of the Department, of applicants for WULs and of civil society interested and participating in those applications, that the Act should prohibit applications for WULs in SWSAs, it should also prohibit acceptance of those applications by the responsible authority. This will ensure that resources are not

			wastefully and fruitlessly expended on processing such applications. Should the Department retain the current wording in 20B(2), the timeframes for the publication of a Notice reviewing such water use licences should be stipulated. Additionally, the subsection should stipulate that the review shall empower the Minister to prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the water resource or for the protection of the SWSA concerned. Additionally we submit that the Department should have regard to the NEM: Protected Areas Act: Biodiversity Policy and Strategy for SA: Strategy on Buffer Zones for National Parks with a view to taking the factors referred to therein into account in developing prescribed buffer zones for SWSAs for activities associated with mining, oil and gas extraction, forestry and agriculture. Appropriately sized buffers should also take into account current and future threats to the SWSA. Certainty in relation to activities permitted in buffer zones will also assist where the Department does not have sufficient resources to monitor and enforce compliance with water use licence and water law.
		Forestry Plantations **20C. (1) a water use licence shall not be granted within those water source areas which are threatened by or vulnerable to –**	We make submissions in relation to 20C that are analogous with our submissions on 20B.

		(a) streamflow reduction activities within or adjacent to a water source area; or **(b) forestry plantations or incidental activities where a 32 meter setback from the water source area has not been established.** **(2) The Minister must publish a notice prescribing the review of water use licences granted for such afforestation activities as contemplated in subparagraphs (a) and (b), prior to the commencement of this chapter.** **(3) The responsible authority may not issue a water use licence for any water use activity identified under section 21 if the water use is –** **(a) for streamflow reduction activities within the identified water source area; or** **(b) for any forestry plantations or activities incidental thereto.**	
		Agriculture **20D. (1) a water use licence <u>may</u> not be granted within those water source areas which are threatened by or vulnerable to agriculture, particularly where a 32 meter setback from the water source area has not been established.** **(2) The Minister must publish a notice prescribing the review of water use licences granted for agriculture and other incidental activities as contemplated in subsection (1) prior to the commencement of this chapter.** **(3) The responsible authority may not issue a water use licence for any water use activity under section**	We make submissions in relation to 20D that are analogous with our submissions on 20B.

		21 for any ploughing or activities incidental thereto, unless a 32 meter setback has been established.	
		General prohibitions and restrictions **20E. The Minister may prescribe any further prohibitions or restrictions relating to other threats that may be faced by water source areas, if it is in the public interest and it is considered necessary to do so.**	This provision is supported. IPCC report 2023 found that Southern African Region is anticipated to experience droughts and water shortages. To redress past discrimination and to ensure that the people have access to water under these circumstances, section 20E should be enhanced specifically to address the challenges of climate change and the threat to access to clean water supply for people and the reserve. The Minister should consider the circumstances in which private water intensive users should be prohibited from conducting their activities in these threatened areas.
Section 25		**9.** Section 25 of the principal Act is hereby amended— *(a)* by the substitution for subsection (1) of the following: **Transfer of water use authorisations and prohibition of water trading** "(1) A water management institution may, at the request of a person authorised to use water for irrigation under this Act, allow that person **[on a temporary basis]** on application under the Act to transfer water for a period not exceeding 24 calendar months, to another land belongs to the same person so authorized [and] on such conditions as the water management institution may determine**[,to]** the use of some or all of the water transferred for the same or different purpose **[, or**	We support the proposed amendments to section 25. We submit that the failure on the part of authorised water users to obtain approval of the responsible authority to transfer entitlements under the NWA is a frequent problem, with egregious consequences, and the current s.25 does not have the effect of either empowering the responsible authority to approve or refuse transfer applications which in turn has the effect of failure by the responsible authority to stop abuse of this practice. The amendment of the section should go some way to address this. We submit that transfers in terms of the section should be subject to public participation processes and that this should reflect from the wording of the section.

		to allow the use of some or all of that water] in the same vicinity **[for the same or similar purpose"]**. *(b)* by the substitution in subsection (2) of the following paragraph: "(2) A person holding an entitlement to use water from a water resource in respect of any land may surrender that entitlement or part of that entitlement – *(a)* in order to facilitate **[a particular]** <u>his or her own</u> licence application under section 41 for the use of water from the same resource in respect of other land <u>belongs to him or her in terms of subsection 1</u>; and *(b)* on condition that the surrender only becomes effective if and when such application is granted. *(c)* by the insertion in subsection (2) immediately after paragraph *(b)* of the following paragraph: <u>"(2A) The water use connected with surrender of entitlement is prohibited from trading in any form of nature, and such water must be surrendered to the National Government, acting through the Minister, unless the Minister directs otherwise"</u>	We likewise support the amendments that are intended to prohibit water trading. We submit that the proposed amendments should be enhanced through clear language for legal certainty and that empowers the responsible authority to enforce compliance. This submission pertains in particular to the notion in the Act of a "successor in title" (eg see section 34 and section 51). While Ministerial approval is required under s.11 of the MPRDA for the transfer of rights under that Act, there is no similar requirement under the NWA. We submit that this needs to be addressed. The responsible authority must be satisfied that the holder of the WUL is a fit and proper person capable of fulfilment of the obligations in the licence. Holders should not be permitted to "pass title" without the consent of the responsible authority. Section 25 of the Act needs to be enhanced to address this.
<u>10. Section 25A</u> *New insertion*		<u>"Reallocation of water by Minister 25A.</u>	It is important to bear in mind that often in water use allocation there are competing interests between private water users and communities living in and

		(1) The Minister may in the public interest allocate water between water sectors, provinces or catchments. (2) Before making an allocation referred to in subsection f1V the Minister must consult with any affected water sector, province or catchment management agency, and inform them of the intention to allocate. (3) The Minister may make a decision to allocate water only after having taking into consideration all relevant factors, including those listed in section 27(1 V .	around the water catchment area. When the Minister considers a reallocation of water, it is imperative that a proper public participation process be undertaken which includes consultation with affected communities before the Minister can make a decision. It is our experience that communities frequently suffer little to no access to water as development projects or private water use is prioritised over their needs, and indeed basic rights in terms of s.27 of the Constitution. A reallocation of water must thus be fair and just and take into account the needs and interests of all affected communities in that water catchment area.
11. Section 26	**26. Regulations on use of water** (1) Subject to subsection (4), the Minister may make regulations – (a) limiting or restricting the purpose, manner or extent of water use; (b) requiring that the use of water from a water resource be monitored, measured and recorded; (c) requiring that any water use be registered with the responsible authority; (d) prescribing the outcome of effect which must be achieved by the installation and operation of any waterwork; (e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;	Section 26 of the principal Act is hereby amended (a) by the deletion in subsection (1) for paragraph (I) of the following paragraph: **[“(I) relating to transactions in respect of authorisations to use water, including but not limited to –** **(i) the circumstances under which a transaction may be permitted;** **(ii) the conditions subject to which a transaction may take place; and** **(iii) the procedure to deal with a transaction;”]** (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (n), and the substitution of the full stop at the end of paragraph (o) of the expression and” ; and (c) by the addition in subsection (1) of the following paragraph: **“(p) prescribing the criteria that must be considered when redressing the results of past racial and gender discrimination in relation to water use.”.**	In relation to section 26(1)(p), it is important that the proposed Regulations take into account the specific impacts of water and water pollution on women particularly those living in remote or rural areas where water is not easily accessible as they are most affected by the unavailability of water both in terms of the quality and quantity of water. Addressing gender discrimination in this regard involves ensuring access to clean water and also limiting as much as possible all the obstacles they may face in the process of accessing such water for example the need to have to walk for long distances to reach a water source.

	(f) requiring qualifications for the registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life g) regulating or prohibiting any activity in order to protect a water resource or instream or riparian habitat; (h) prescribing waste standards with specify the quantity, quality and temperature of waste which may be discharged or deposited into or allowed to enter a water resource; (i) prescribing the outcome or effect which must be achieved through management practices for the treatment of waste, or any class of waste, before it is discharged or deposited into or allowed to enter a water resource; (j) requiring that waste discharged or deposited into or allowed to enter a water resource be monitored and analysed, and prescribing methods for such monitoring and analysis; (k) prescribing procedural requirements for licence applications; (l) relating to transactions in respect of authorisations to use water, including but not limited to –		

	(i) the circumstances under which a transaction may be permitted; (ii) the conditions subject to which a transaction may take place; and (iii) (iii) the procedure to deal with a transaction; (m) prescribing methods for making a volumetric determination of water to be ascribed to a stream flow reduction activity for purposes of water use allocation and the imposition of charges; (n) prescribing procedures for the allocation of water by means of public tender or auction; and (o) prescribing – (i) procedures for obtaining; and (ii) the required contents of, assessments of the likely effect which any proposed licence may have on the quality of the water resource in question.		
27. Considerations for issue of general authorisations and licences	**27. Considerations for issue of general authorisations and licences** (1) In issuing a general authorisation or licence a responsible authority must take into account all relevant factors, including – (a) existing lawful water uses;	Amendment of section 27 of Act 36 of 1998 12. Section 27 of the principal Act is hereby amended— (a) by the deletion in subsection (1) of paragraph (b)\ and **(**b) by the addition of the following subsection: "(3) A responsible authority must prioritise the redress of past racial and gender discrimination	The prioritisation of redressing the past discrimination is paramount, and the inclusion of section (3) is welcomed. However, redressing the past discrimination cannot be done solely though setting aside of certain volume of water in each water management areas envisaged by section 27(3). Often in a water use application, there are competing interests of private water users versus the communities who rely on the catchment.

	(b) the need to redress the results of past racial and gender discrimination; (c) efficient and beneficial use of water in the public interest; (d) the socio-economic impact – (i) of the water use or uses if authorised; or (ii) of the failure to authorise the water use or uses; (e) any catchment management strategy applicable to the relevant water resource; (f) the likely effect of the water use to be authorised on the water resource and on other water users; (g) the class and the resource quality objectives of the water resource; (h) investments already made and to be made by the water user in respect of the water use in question; (i) the strategic importance of the water use to be authorised; (j) the quality of water in the water resource which may be required for the Reserve and for meeting international obligations; and	<u>when issuing a licence or general authorisation and set aside a certain volume of water in each water management area to achieve this redress</u>.".	Communities' rights due to past racial discrimination are often compromised for private development and gains, and this cannot be rectified through allocation being set aside. Part of redressing the past discrimination is to ensure that the water that communities have access to is clean water that is not compromised, and this cannot be solved through water allocation alone. As such, consideration of redressing the past discrimination under section (1)(b) should not be deleted, and must be considered by the decision maker when issuing a water use licence, and should be listed in terms of section 27(1). As such, we recommend that section 1(b) be kept, in addition to the new paragraph 27(3) insertion. We submit that it is necessary for the responsible authority to take into account the compliance history of applicants for WULs and that section 27 requires enhancement in this respect with the insertion of a new section 27(1)(l). While we submit that this has inherent value in and of itself, the requirement may also serve as a deterrent to existing holders from non-compliance.

	(k) the probable duration of any undertaking for which a water use is to be authorised		
30. Security by applicant (unchanged)	**30. Security by applicant** (1) A responsible authority may, if it is necessary for the protection of the water resource or property, require the applicant to give security in respect of any obligation or potential obligation arising from a licence to be issued under this Act. (2) The security referred to in subsection (1) may include any of the following: (i) A letter of credit from a bank; (ii) a surety or a bank guarantee; (iv) a bond; (iv) an insurance policy; or (v) any other appropriate form of security. (3) The responsible authority must determine the type, extent and duration of any security required. (4) The duration of the security may extend beyond the time period specified in the licence in question. (5) If the responsible authority requires security in the form of an insurance policy, it may require that it be jointly insured under or be a beneficiary of the insurance policy and where appropriate, the responsible authority must be regarded as having an		Given the egregious impacts of certain activities on water – such as coal and gold mining, industrial agriculture, forestry, among others – we submit that this section needs to be enhanced. In practice we frequently see the abandonment of projects once they cease to be profitable and before the pollution and other impacts of the project have been treated and rehabilitated. We submit that while the discretion in s.30(1) might be retained, the phrase "if it is necessary for the protection of the water resource or property" must be deleted because it inappropriately fetters the discretion in favour of polluters. Additionally, we submit that the section should be enhanced to empower the responsible authority to require security in respect of any obligation or potential obligation arising from a licence <u>from a licence holder</u> and not merely at the application stage from an applicant.

	insurable interest in the subject matter of the insurance policy.		
32. Definition of existing lawful water use	(1) An existing lawful water use means a water use – (a) which has taken place at any time during a period of two years immediately before the date of commencement of this Act and which - (i) was authorised by or under any law which was in force immediately before the date of commencement of this Act;	**14.** Section 32 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph *(b)*.	This proposed deletion is supported.
33. Declaration of water use as existing lawful water use	(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32(1)(a), declared to be an existing lawful water use. (2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32(1)(a), to be existing lawful water use. (3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use – (a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or (b) had not yet taken place at any time before the date of commencement of this Act but –	**15.** Section 33 of the principal Act is hereby repealed.	The repeal of this section is supported.

	(i) would have been lawful had it so taken place; and (ii) steps toward effecting the use had been taken in good faith before the date of commencement of this Act. (4) Section 41 applies to an application in terms of this section as if the application has been made in terms of that section.		
34. Authority to continue with existing lawful water use	**34. Authority to continue with existing lawful water use** (1) A person, or that person's successor-in-title, may continue with an existing lawful water use, subject to- (a) any existing conditions or obligations attaching to that use; (b) its replacement by a licence in terms of this Act; (c) or any other limitation or prohibition by or under this Act. (2) A responsible authority may, subject to any regulation made under section 26(1)*(c),* require the registration of an existing lawful water use.	Amendment of section 34 of Act 36 of 1998 16. Section 34 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph: <u>(aA) any new conditions or obligations, necessary to protect the water resources and the environment, which the responsible authority may impose:" ;</u>";and *(b)* by the addition of the following subsection: <u>(2A) A responsible authority may curtail a volume of water which becomes available as a result of failure by water users to exercise the full existing lawful use volume for any period specified by the Minister.</u>".	We submit that in the absence of any provision in the Act requiring the consent of the responsible authority for the transfer of title, that the phrase in section 34(1) "or that person's successor in title" must be deleted. We support the proposed insertion of paragraphs (aA) and (2A). We submit that the wording should be tweaked to cover not only the continuation of an existing lawful water use, but also apply to existing licence holders who have not yet commenced use. We issue this caution: in our work with communities affected by polluting activities, particularly mining and oil and gas extraction, there is limited to no environmental and water compliance monitoring and enforcement (CME) undertaken by the relevant Departments. This should be taken into account when additional conditions are imposed under this amended section in SWSAs. In our experience, water users - particularly mining companies – do not self-regulate in the absence of CME despite the strictness of licence conditions. There

			is frequent non-compliance with WULs and other licences to the detriment of water resources and people's lives and livelihoods and mining companies operate with impunity. It is therefore imperative that as these licence conditions are reviewed and potentially tightened, that the Department also prioritises increasing its CME capacity particularly for SWSAs.
17. Section 37, *Clause 17*	**37. Controlled activity** (1) The following are controlled activities: (a) irrigation of any land with waste or water containing waste generated though any industrial activity or by a waterwork; (b) an activity aimed at the modification of atmospheric precipitation; (c) a power generation activity which alters the flow regime of a water resource; (d) intentional recharging of an aquifer with any waste or water containing waste; and (e) an activity which has been declared as such under section 38. (2) No person may undertake a controlled activity unless such a person is authorised to do so by or under this Act.	**by the deletion in subsection (1) of "and" at the end of paragraph (d), the substitution for the full stop at the end of paragraph (e) of the expression and" and the addition of the following paragraph:** **(f) the exploration or production of onshore naturally occurring hydrocarbons that require stimulation, including but not limited to, fracturing and or underground gasification, to extract, and any activity incidental thereto that may impact detrimentally on the water resource."**	The proposed addition of paragraph (f) is strongly supported. We submit that, without a definition of "controlled activities" in the Act, a additional paragraph must be inserted into paragraph 37 as follows: "(g) an activity that has a detrimental impact on water resources"
40. Application for licence (unchanged)	**40. Application for licence** (1) A person who is required or wishes to obtain a licence to use water must		In order to conserve the resources of the Department, we submit that a new subsection (5) must be inserted into this section in relation to activities that are

	apply to the relevant responsible authority for a licence. (2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, that application must be regarded as being an application for a water use under this Act. (3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases. (4) A responsible authority may decline to consider a licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.		prohibited under Chapter 3A. We suggest the following: "(5) A responsible authority may not accept a licence application for a prohibited or restricted water use in a strategic water source area." The above will ensure certainty and prevent the expenditure of resources by the Department in processing such applications, by companies in preparing applications for licences in prohibited or restricted areas, and by civil society in opposing inappropriate licence applications. Our experience, and that of our partners, is that applicants and the environmental assessment practitioners (EAPs) who assist them with applications frequently ignore spatial overlays and planning tools and submit inappropriate applications in sensitive areas. The proposed provision would empower the responsible authority to stop such applications at the outset.
41. Procedure for licence applications (unchanged)	**41. Procedure for licence applications** (4) A responsible authority may, at any stage of the application process, require the applicant – (a) to give suitable notice in newspapers and other media – (i) describing the licence applied for; i) stating that written objections may be lodged against the application before a specified date,		In our work, and that of our partners, we frequently see cases where: 1) an applicant for a WUL does not conduct any public participation; 2) an applicant does not make the WUL application documents available to the public; and/or 3) IAPs only became aware of the project once the WUL is issued, or after the project has commenced. To add insult to injury, under section 148(1)(f), only persons who have lodged an objection to a WUL

	which must be not less than 60 days after the last publication of the notice; (iii) giving an address where written objections must be lodged; and (iv) containing such other particulars as the responsible authority may require; (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and (c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected. **……**		application are afforded the right of appeal. While s.148(1)(f) itself violates the Constitutional right to just administrative action, if notice of an application for a WUL is not mandatory, the violation of rights is compounded. A discretion to require a public participation process for an application for a WUL has no place in a Constitutional democracy where the water resources belong to the nation. S41(4) facilitates this failure of just administrative justice by virtue of the discretion given to the responsible authority in section 41(4). In this regard the Act is indeed facilitating the violation of Constitutional rights and must be amended. It is imperative that this section be brought into line with PAJA, NEMA and the Constitution, and that public participation is rendered mandatory, as is the provision all the information necessary for that participation to be meaningful, including the application and the expert reports, together with non-technical summaries thereof to enable meaningful engagement with the application. We therefore recommend that this provision be amended as follows: 41(4) A responsible authority **[may, at any stage]** must, at the commencement of the application process, require the applicant – (a) to give suitable notice in newspapers and other media, including on boards at the project site, local municipality, libraries and at local transport routes, as

			well as on local community radio stations in the two predominant languages used in the area– (i) describing the licence applied for and where copies of the application, together with the expert reports and non-technical summaries thereof will be provided; (ii) stating that written objections may be lodged against the application before a specified date, which must be not less than 60 days after the last publication of the notice; (iii) giving an address where written objections must be lodged; and (iv) containing such other particulars as the responsible authority may require; (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and (c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected.
	(6) Notwithstanding the provisions of section 148, any applicant for a water use licence arising out of the integration process contemplated in subsection (5), who is aggrieved by a decision of the responsible authority, may lodge an appeal to the Minister against the decision.		It is unclear why under s41(6) applicants have the exclusive right to elect to appeal to the Minister if aggrieved by a decision on a WUL application but IAPs do not have this right and are instead confined to appeals to the Water Tribunal. What is the rationale for this provision? We submit that the provision should be repealed or amended to include a right of IAPs to elect to appeal to the Minister if aggrieved by a decision on a WUL application.

Section 42: Reasons for decisions	**42. Reasons for decisions** After a responsible authority has reached a decision on a licence application, it must promptly – (a) notify the applicant and any person who has objected to the application; and (b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.	**42. (1) After a responsible authority has reached a decision on a licence application, it must promptly –** **(a) notify the applicant and any person who has objected to the application; and** **(b) at the request of any person contemplated in paragraph (a), give written reasons for its decision** **(2) A responsible authority may, at any stage that a responsible authority becomes aware that there is an investigation or court proceedings relating to the contravention of or failure to comply with this Act, defer a decision to issue a licence until such time that the investigation or court proceedings have been concluded and no wrong doing is found on the part of the Applicant.**	We submit that specific provision should be made to require the responsible authority to communicate the decision to defer the WUL process to the applicant and all IAPs. Furthermore, the responsible authority should also be required to communicate to the applicant and I&APs if the process resumes again.
49. Review and amendment of licences (unchanged)	(1) A responsible authority may review a licence only at the time periods stipulated for that purpose in the licence.		We submit the following be inserted into s49)1): (1) Subject to Chapter 3A, a **[A]** responsible authority may review a licence only at the time periods stipulated for that purpose in the licence.
51. Successor-in-title (unchanged)			We submit that the failure on the part of authorised water users to obtain approval of the responsible authority to transfer entitlements under the NWA is a frequent problem, with egregious consequences and must be addressed. The current s.51 does not have the effect of either empowering the responsible authority to approve or refuse transfer applications which in turn has the effect of failure by the responsible authority to stop abuse of this practice.

			We submit that transfers contemplated in the section should be subject to public participation processes and that this should reflect from the wording of the relevant section. (see our comments on s.25 above)
Section 52	**52. Procedure for earlier renewal or amendment of licences** (1) A licensee may, before the expiry date of a licence, apply to the responsible authority for the renewal or amendment of the licence. (2) Unless an application for the renewal or amendment of a licence is made in terms of section 50, it must – (a) be made in such form, contain such information and be accompanied by such processing fee as may be determined by the responsible authority; and (b) be dealt with according to the procedure as set out in section 41 (3) In considering an application to amend or renew a licence, the responsible authority must have regard to the same matters which it was required to consider when deciding the initial application for that licence. (4) A responsible authority may amend any condition of a licence by agreement with the licensee.	**the addition of the following subsection:** **"(5) upon receiving the application for the renewal of a licence, the responsible authority may issue an extension of the period of validity of the licence, which may not exceed six months, whilst considering the application.".**	Public participation must be a compulsory component for the earlier renewal or amendment of licences aligned with Environmental Impact Assessment Regulations. See our comments on s.41 above in this regard. The section should also be amended to include the consideration of new factors that may affect a decision. For instance, climate considerations in situations where it was not considered in the initial decision. Further, section 52(4) cannot provide for an agreement between the responsible authority and the licensee and thus must be amended as follows: "(4) If granting a renewal application, a **[A]** responsible authority may amend any condition of the original **[a]** licence **[by agreement with the licensee]** if necessary."
146. Establishment of The Water Tribunal	**146. Establishment of The Water Tribunal** (1) The Water Tribunal is hereby established.		We submit that there should be a requirement for appointments of members to the Water Tribunal in terms of section 146 and Schedule E of the NWA. Appeals to the Tribunal are wide appeals and should

	(2) The Tribunal is an independent body which – (a) has jurisdiction in all the provinces of the Republic; and (b) may conduct hearing anywhere in the Republic. (3) The Tribunal consists of a chairperson, a deputy chairperson and as many additional members as the Minister considers necessary. (4) Members of the Tribunal must have knowledge in law, engineering, water resource management or related fields of knowledge. (5) The chairperson, the deputy chairperson, and the additional members of the Tribunal are appointed by the Minister on the recommendation of the Judicial Service Commission contemplated in section 178 of the Constitution and the Water Research Commission established by section 2 of the Water Research (6) The chairperson and the deputy chairperson may be appointed in a full-time or part-time capacity while the additional members must be appointed in a part-time capacity. (7) The Minister must determine the employment conditions and the remuneration of the chairperson, the deputy chairperson and all other		be presided over by suitably qualified water and water law experts . Further, we take this opportunity to submit that the rules of procedure for the Water Tribunal require enhancement and clarity.

	members of the Tribunal in consultation with the Minister of Finance. (8) The Minister may, after consultation with the Judicial Service Commission or the Water Research Commission referred to in subsection (5), as the case may be, and after giving the member an opportunity to make representations and considering such representations, for good reason terminate the appointment of any member of the Tribunal.		
Section 148, as amended by s4 of Act 27 of 2014, *Clause 27*	148. Appeals to Water Tribunal (1) There is an appeal to the Water Tribunal – (a) against a directive issued by a catchment management agency under section 19(3) or 20(4)(d), by the recipient thereof; (b) against a claim by a catchment management agency for the recovery of costs under section 19(5) or 20(7) by the person affected thereby; (c) against the apportionment by a catchment management agency of a liability for costs under section 19(8) or 20(9), by a person affected thereby; (d) against a decision of a water management institution on the temporary transfer of a water use authorisation under section 25(1), by a person affected thereby;	**(a) by the substitution of subsection (1) of the following:** **(dA) a decision on the surrender of entitlement made under section 25, by a person affected thereby:** **(b) by the substitution of subsection (2) of the following:** **(2) An appeal under subsection (1) - (a) does not suspend a directive given under section 19(3), 20(4)(d), 53(1) or 118(3)fib), 118(3Vc):**	In terms of s.148(2) an appeal under subsection (1) – (a) does not suspend a directive given under section 19(3), 20(4)(d) or 53(1); and (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise. We submit that the section be amended to reflect that when exercising his or her discretion in terms of section 148(2)(b), the Minister must consider all relevant factors, which must include but be not limited to: a. the principles contained in section 2 of National Environmental Management Act 107 of 1998 (NEMA), section 24 of the Constitution as well as sections 2 and 3 of the National Water Act 36 of 1998 (NWA); b. whether exceptional circumstances exist to justify the upliftment; c. the harm that may be caused to the broader environment;

	(e) against a decision of a responsible authority on the verification of a water use under section 35 by a person affected thereby; (f) subject to section 41(6), against a decision of a responsible authority on an application for a licence under section 41, or on any other person who has timeously lodged a written objection against the application; (g) against a preliminary allocation schedule published by a responsible authority under section 46(1), by any interested person; subject to section 41(6), against the amendment of a condition of a licence by a responsible authority on review under section 49(2), by any person affected thereby; (i) against a decision of a responsible authority on an adjudication of claims made under section 51(1), by any person affected thereby; (j) against a directive issued by a responsible authority under section 53(1), by the recipient thereof; (k) against a claim by a water management institution for the recovery of costs under section 53(2)(a), by the person against whom the claim is made; (l) against a decision by a responsible authority on the suspension, withdrawal or reinstatement of an		d. the negative socio-economic impacts which may arise, including on local communities; e. climate change impacts on the affected water resources and communities and other downstream users relying on the water resources; and f. climate change impacts on the activities authorised under the water use licence under consideration and in turn on affected communities. Further, it is important to note that in terms of s.148(2) a WUL is suspended when an appeal is lodged with the Water Tribunal. But the NWA is silent about suspension of WULs on appeal to the Minister. Our comments on this must be read in the context of our comments above on s41(6): While there is existing law around suspensions – eg of EAs appealed under NEMA are suspended or judgments of courts being suspended on appeal, the discrepancy in s.148 creates legislative uncertainty which is undesirable. In addition, we propose that section 148 of the NWA should be amended to render it clear that a renewal/ amendment application for a WUL is appealable. It should be appealable, particularly given section 52(3) and the specific requirements of section 41(4). We propose that s148 be further amended to align the legal standing provisions before the Water Tribunal with PAJA and the Constitution: clarification and expansion of substantive mandate of Water

	entitlement under section 54, or on the surrender of a licence under section 55, by the person entitled to use water or by the licensee; and (m) against a declaration made by, directive given by or costs claimed by the Minister in respect of a dam with a safety risk under section 118(3) or (4). (2) An appeal under subsection (1) – (a) does not suspend a directive given under section 19(3), 20(4)(d) or 53(1); and (b) suspends any other relevant decision, direction, requirement, limitation, prohibition or allocation pending the disposal of the appeal, unless the Minister directs otherwise.		Tribunal (including expanded appeal grounds). In addition, public participation provision under s148(2) should be aligned with PAJA which allows interested and affected parties who did not initially register as objectors to the WUL to appeal a decision when they become aware of it. This right already exists through the various Water Tribunal and High Court decisions, in line with the Constitution. However, due to the lack of clarity in the NWA itself, there are repeated disputes around this issue, which can be avoided, if this section in the NWA is amended to bring it in line with PAJA and the Constitution. We submit this fosters more participation especially in affected communities that may not know about a WUL application due to inadequate public participation processes until a later stage.
Section 151, *Clause 28*	151. Offences (2) Any person who contravenes any provision of subsection (1) is guilty of an offence and liable, on the first conviction, to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.	**(a) by the substitution for subsection (2) of the following subsection** **"(2) A person convicted of an offence in terms of subsection (1) (a),(c),(d),(e),(h), (i) or (i) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment."; and** **by the addition of the following subsection:** **"(3) Any person convicted of an offence in terms of subsection (1)fb). (f). fa), (k). (I), (m). (n) or (o) is liable— (a) in the case of a first conviction, to a fine not exceeding R1 million or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment: and**	The addition of specific fines in the new proposed s151(3) for contraventions is commendable as it serves as a deterrent to potential offenders if the penalty is more clear.

		(a) in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.".	
Section 156A: New Section, *Clause 29*		**The following section is hereby inserted in the principal Act after section 156: "Apportionment of liability 156A.** **(1) Any person who is or was a director of a business entity at the time of the commission by that firm of an offence under section 151 or a person who is or was a municipal manager of a municipality at the time of the commission by that municipality of an offence under section 151 shall, himself or herself, be guilty of such offence and liable on conviction to the penalty specified in the relevant law,** **(2) Upon the conviction referred to in subsection (1), the court may make the following orders:** **(a) Recovering the amount of loss or damage (to rehabilitate or prevent damage);** **(b) determination of monetary value of any advantage gained as a consequence of the offence in question and recovery thereof; or** **(c) recovery of reasonable costs incurred for the investigation and prosecution of the offence"**	The inclusion of a provision holding directors and municipal managers personally liable for committing an offence under section s151 is highly commendable. It serves as a deterrent that has the potential to promote better compliance with licences and the law and ensures that directors or municipal managers make decisions that do not result in the detrimental use or pollution of water resources. In order to ensure the enforceability of this provision, it is submitted that the provisions should promote legal certainty and reasonability. In this regard, section 34 of NEMA is informative and, as the NWA is a SEMA, consistency with NEMA's provisions is advisable. We further submit that the section should not fetter the discretion of the Court and that subsection (2) ought to be worded in an inclusive manner as follows: "(2) Upon the conviction referred to in subsection (1), the court may make the following orders, including: (a) Recovering the amount of loss or damage (to rehabilitate or prevent damage); (b) determination of monetary value of any advantage gained as a consequence of the offence in question and recovery thereof; and **[or]**

			(c) recovery of reasonable costs incurred for the investigation and prosecution of the offence”