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TO: **Portfolio Committee on Water and
Sanitation
Nosipho Bavuma**

pcws@parliament.gov.za

FROM: **The Biodiversity Law Centre**

khanya@biodiversitylaw.org

tabitha@biodiversitylaw.org

lara@biodiversitylaw.org

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Dear Nosipho Bavuma

RE: DRAFT NATIONAL WATER ACT AMENDMENT BILL [B1-2026] (“the Amendment Bill”)

1. Thank you for the opportunity to comment on the National Water Amendment Bill [B1-2026] (“**the Amendment Bill**”).
2. These comments are submitted by the Biodiversity Law Centre (“**BLC**”) and Natural Justice.
3. The BLC is a non-profit law centre that uses the law to protect and restore indigenous species and ecosystems that support sustainable livelihoods in Southern Africa. The BLC is particularly concerned with law and policy that give effect to section 24 of the Constitution, and the State’s obligations to protect the environment for present and future generations, by preventing pollution and ecological degradation, promoting conservation, and securing ecologically sustainable development.
4. Natural Justice is a pan-African non-profit organisation registered in South Africa and rooted in the struggles of communities in Africa. It is made up of “Lawyers for Communities and the Environment” and strives to enhance the collective rights of people and protect the sacred relationships that indigenous peoples and local communities have with nature. The work of Natural Justice is informed by the values, knowledge and self-determination of the communities whom we stand in solidarity with. Natural Justice works at the local, national, regional, and international levels with a wide range of partners ensuring that community rights and responsibilities are represented and respected on a broader scale and that gains made in international fora are fully upheld at lower levels.
5. These comments are endorsed by the **Southern African Faith Communities' Environment Institute and the Green Connection**.

6. The BLC's particular interest in the National Water Amendment Bill arises because of South Africa's exceptional biodiversity. The country ranks third most biodiverse in the world.¹ It is inseparable from, and overwhelmingly dependent upon, the health of its rivers, wetlands, estuaries and other aquatic ecosystems. Biodiversity is defined as—

'the variability among living organisms from all sources including...aquatic ecosystems and the ecological complexes of which they are part'.²

Freshwater and estuarine ecosystems are simultaneously the most biodiverse and the most threatened of the country's ecosystem realms: the National Biodiversity Assessment 2025 records that some 65% of river length and 86% of wetland ecosystem extent are now threatened, with over 90% of estuarine ecosystem types threatened and freshwater fish the most threatened species group in the country.³

7. These aquatic ecosystems are—

'foundational to the wellbeing of [South Africa's] people giv[ing] our people food, clean water, medicine and materials; support[ing] agriculture and fisheries; offer[ing] resilience against disasters; and provid[ing] the basis of a vibrant tourism industry while offering natural spaces for recreational and cultural activities.'⁴

8. Healthy rivers, wetlands and estuaries are not solely a conservation concern: they regulate flow, buffer floods and droughts, filter pollutants and recharge groundwater, and their continued degradation is, on SANBI's own assessment, 'a growing risk to the water supply on which households, agriculture and industry depend.'⁵ Biodiversity loss and water security are, in this sense, two descriptions of the same underlying crisis.
9. Biodiversity is also essential for climate change adaptation and mitigation.⁶
10. Under the Convention on Biological Diversity ("CBD")⁷, Parties, including South Africa, adopted the Kunming-Montreal Global Biodiversity Framework ("GBF")⁸ in response to biodiversity deteriorating worldwide at unprecedented rates,⁹ with the aim of galvanising urgent and transformative government action to halt and reverse biodiversity loss.¹⁰

¹ <https://www.biofin.org/south-africa>.

² National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA") section 1(1) definition of "biodiversity".

³ South African National Biodiversity Institute (SANBI). 2025. National Biodiversity Assessment 2025: The status of South Africa's biodiversity. Summary of Findings and Key Messages. Skowno, A.L., Poole, C.J., Besseling, N.A., Currie, J.C., Da Silva, J.M., Dayaram, A., Harris, L.R., Job, N., Monyeke, M.S., Mtshali, H., Raimondo, D.C., Sink, K.J., Van der Bank, M.G., Van der Colff, D., Van Niekerk, L., Von Staden, L. South African National Biodiversity Institute (an entity of the Department of Forestry, Fisheries and the Environment), Pretoria. <https://hdl.handle.net/20.500.12143/9467> ("2025 NBA").

⁴ 2025 NBA, Summary of Findings and Key Messages.

⁵ SANBI, "Healthy rivers and wetlands matter more than we think" (2026), <https://www.sanbi.org/news/healthy-rivers-and-wetlands-matter-more-than-we-think/>.

⁶ 2025 NBA at page 5.

⁷ United Nations. (1992). Convention on Biological Diversity. <https://www.cbd.int/convention/text/>.

⁸ Kunming-Montreal Global Biodiversity Framework UN Doc UNEP/CBD/COP/DEC/15/4 (2022).

⁹ GBF at section A 2.

¹⁰ GBF at section B 4. Among the GBF's goals for 2050 are:

Goal A: "Protect and restore", which includes that 'the integrity, connectivity and resilience of all ecosystems are maintained, enhanced, or restored, substantially increasing the area of natural ecosystems by 2050'.

11. The GBF sets interim targets to be reached by Parties by 2030, several of which bear directly on water security and aquatic ecosystems:
 - 11.1. Target 2, restore 30% of all degraded ecosystems, including inland water ecosystems;
 - 11.2. Target 3, effectively conserve 30% of land, sea and waters (including inland water ecosystems), recognising rivers, wetlands and estuaries as ecosystems requiring dedicated protection in their own right, not merely as a by-product of protecting land or species;
 - 11.3. Target 4, seeks to halt species extinction, protect genetic diversity, and manage human-wildlife conflicts by *'ensur[ing] urgent management actions to halt human induced extinction of known threatened species and for the recovery and conservation of species, in particular threatened species, to significantly reduce extinction risk'*;
 - 11.4. Target 7, which seeks to reduce pollution to levels that are not harmful to biodiversity and ecosystem function, including nutrient and other pollutant loads entering water resources;
 - 11.5. Target 8, which seeks to minimise the impacts of climate change on biodiversity and build resilience;
 - 11.6. Target 14, which seeks to integrate biodiversity in decision-making at every level; and
 - 11.7. Target 22, which seeks to ensure participation in decision-making and access to justice and information related to biodiversity for all.
12. NEMA requires international responsibilities relating to the environment to be discharged in the national interest,¹¹ bolstering the CBD and GBF's obligations on the State to protect ecosystems and the water security that they underpin. In relation to water resources specifically, this is reinforced by South Africa's obligations as a Contracting Party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat ("**the Ramsar Convention**")¹², under which South Africa has committed to the wise use of all wetlands within its territory (not only those formally designated as Ramsar sites), including maintenance of the ecological character and water regimes on which they depend. These international commitments inform the interpretive and administrative obligations imposed on the Minister and responsible authorities under the National Water Act ("**NWA**"),¹³ read with section 24 of the Constitution.
13. In its present form, the NWA recognises the links between water resources and biodiversity. Its purpose includes ensuring that South Africa's water resources are protected, used, developed, conserved, managed and controlled in ways which take into account the protection of aquatic and associated ecosystems and their biodiversity.¹⁴ The NWA further requires Reserve determinations for the water quantity and quality of water resources, including determinations of the ecological reserve (which relates to the water required to protect the water resource's aquatic ecosystems).¹⁵ In applying

Goal B: "Prosper with nature", being that 'biodiversity is sustainably used and managed and nature's contributions to people, including ecosystem functions and services, are valued, maintained and enhanced, with those currently in decline being restored, supporting the achievement of sustainable development for the benefit of present and future generations by 2050'.

¹¹ NEMA section 2(4)(n).

¹² Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, Iran, 1971), as amended by the 1982 Paris Protocol and the 1987 Regina Amendments; South Africa acceded on 12 March 1975.

¹³ Act 36 of 1998.

¹⁴ Section 2(g) of the NWA.

¹⁵ Explanatory note to Part 3 of Chapter 3 of the NWA.

the NWA and other environmental legislation, the courts have noted that human activities adversely affecting water resources have knock-on effects on the biodiversity dependent on these resources.¹⁶

14. Natural Justice's particular interest in the Amendment Bill is informed by Natural Justice's mandate as expressed above. In light of this, its core areas of interest are:
 - 14.1. The protection of Community and Customary water rights;
 - 14.2. The protection of Strategic Water Source Areas;
 - 14.3. Water Allocation Reform and Equity;
 - 14.4. Climate Responsive Water Governance;
 - 14.5. Accountability and Governance Reform;
 - 14.6. Small Scale farmers could be disproportionately harmed;
 - 14.7. Review of existing Mining Licences is discretionary rather than mandatory and this is a problem for water sustainability;
 - 14.8. Weak Gender Mainstreaming;
 - 14.9. Community consultation missing in water reallocation decisions;
 - 14.10. Climate change recognition is not supported by operational mechanisms;
 - 14.11. Risks associated with use-it-or-lose-it water allocations; and
 - 14.12. The three-year transitional window creates a race to extract risk.
15. These comments are prepared from the perspective of environmental and biodiversity law, and with regard to the constitutional framework. In particular section 24 of the Constitution (the environmental right), section 27 (access to water, read with the Bill's own redress objectives), and section 33 and the Promotion of Administrative Justice Act ("**PAJA**") principles of just administrative action, public participation and transparency.
16. It is in this context that our comments are aimed at addressing the above concerns that arise from the draft Amendment Bill. As such our comments are structured as follows:
 - 16.1. General comments:
 - 16.1.1. Biodiversity, sustainability, ecological integrity and access to water;
 - 16.1.2. Protection of customary and community-based water rights;
 - 16.1.3. Protection of water source areas and ecological sustainability;

¹⁶ See, for example, *Mining and Environmental Justice Community of South Africa and Others v MEC for Agriculture, Rural Development, Land and Environmental Affairs and Others* [2024] ZAMPMBHC 48 at para 33.7.iii.

- 16.1.4. Human rights and constitutional compliance;
- 16.1.5. Climate resilience, environmental resilience and long-term water security;
- 16.1.6. Accountability, transparency and implementation safeguards; and
- 16.1.7. Issues not addressed by the Bill.
- 16.2. Specific comments.
- 16.3. Conclusions and recommendations.

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GENERAL COMMENTS

17. The BLC's and Natural Justice's comments focus on biodiversity, the right to water and constitutional protections, the protection of water source areas, climate resilience and long-term water security, and accountability, public participation and transparency.

A. Biodiversity, sustainability, ecological integrity and access to water

18. This section addresses water ecosystems, including surface water, groundwater, groundwater-dependent ecosystems ("GDEs")¹⁷, wetlands, springs, ephemeral rivers, and the ecological integrity of hydrological systems as a whole.
19. In terms of this legal framework, water ecosystems are a legally protected interest or a protected entity, not merely water supply inputs. In particular:
- 19.1. Section 24 of the Constitution protects ecological systems and biodiversity;¹⁸
 - 19.2. Section 2(4)(r) of NEMA requires ecosystems to be protected as an integral part of sustainable development;¹⁹
 - 19.3. Sections 2²⁰ and 3²¹ water is used for the public benefit (i.e. not for profit) in a way that ensures the sustainability of the water ecosystem; and
 - 19.4. Sections 16-18 of the NWA render the Ecological Reserve (also called the Reserve) a binding legal constraint, not a discretionary policy consideration (any regulatory scheme that permits

¹⁷ Groundwater-Dependent Ecosystems ("GDEs") in South Africa are crucial natural systems like springs, wetlands, riparian zones, and specialised vegetation (e.g., *Acacia erioloba*) that rely on groundwater for survival, providing vital biodiversity and water security, especially in arid regions. Key examples include Table Mountain Group springs, Kalahari oases, and Kruger National Park's dry season habitats, but they face threats from abstraction, climate change, and invasive species, necessitating advanced mapping and integrated management. See <https://gwd.org.za/abstract/groundwater-dependent-ecosystems-table-mountain-group-sandstones-and-potential-impact#:~:text=These%20ecosystems%20include%20many%20specialised.resource%20and%20land%20management%20agencies>.

¹⁸ Section 24: Everyone has the right (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -

- i. prevent pollution and ecological degradation;
- ii. promote conservation; and
- iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

¹⁹ Section 2(4)(r): Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands. and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

²⁰ Section 2: Purpose of Act.—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) meeting the basic human needs of present and future generations;
- (d) promoting the efficient, sustainable and beneficial use of water in the public interest;
- (e) facilitating social and economic development;
- (f) providing for growing demand for water use;
- (g) protecting aquatic and associated ecosystems and their biological diversity;
- (h) reducing and preventing pollution and degradation of water resources;
- (k) managing floods and droughts,

²¹ Section 3: Public trusteeship of nation's water resources.—(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 and equitable 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.

activities likely to impair water ecosystems without first determining, protecting and enforcing the Ecological Reserve is *per se* unlawful).

20. The comments in this section proceed from a single organising principle: biodiversity, ecological integrity, the sustainable use of water, and equitable access to water are not four separate policy objectives to be traded off against one another. They are legally and functionally interdependent, and the Amendment Bill should be assessed, and where necessary amended, on this basis.
21. Water security is not simply a question of volume. A resource that delivers sufficient litres but has lost the ecological functioning that governs its quality, its seasonal availability, and its capacity to regulate floods and droughts, is not secure; it is a depleting system masquerading as a stable one. The processes that render water usable, in the quantities and at the quality required to sustain human life, agriculture, industry and ecosystems alike, are themselves biodiversity-dependent: wetlands and riparian vegetation filter pollutants and attenuate floods; intact catchment vegetation regulates infiltration, run-off and baseflow; functioning aquatic food webs maintain water quality; and GDEs sustain the recharge and discharge processes on which both surface and groundwater users ultimately depend. Sustainable water use is therefore not achievable independently of biodiversity protection; it is a downstream consequence of it.
22. This interdependence is already embedded, if imperfectly operationalised, in South Africa's constitutional and statutory framework. Section 24(b) of the Constitution does not treat pollution prevention, conservation and sustainable development as separable rights: it links them in a single, cascading formulation, requiring the State to take reasonable legislative and other measures that prevent ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. The right of access to water in section 27 of the Constitution cannot be read in isolation from section 24: a right of access to a resource that is being ecologically degraded is not a durable right, but a right to diminishing returns.
23. The concept of sustainable development itself, as defined in NEMA, requires the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations.²² Water resource governance is a "development" function within this meaning. The Constitutional Court has confirmed that sustainable development is the very mechanism by which environmental protection and socio-economic development are reconciled, and that the concept implies a continuity that gives rise to both inter-generational and intra-generational equity concerns.²³
24. Intergenerational equity is not an abstract ideal in this context, but a concrete legal constraint on how present-generation water users and the State may treat water resources. The section 3(1) public trusteeship duty discussed above is, by definition, owed to beneficiaries who are not limited to those alive today. The public trusteeship model in the NWA therefore already imports an intergenerational equity component into the NWA.
25. Biodiversity is central to discharging this trust. It is not a co-equal, competing interest to be balanced against water access and use, but the substrate on which sustainable water access and use depend. Ecological integrity is not achieved through a single indicator, such as a resource quality objective calibrated to present-day water chemistry, but through the protection of the diversity of species, habitats and ecological processes that keep aquatic systems resilient to shocks, whether these are floods, droughts, pollution incidents, or the compounding pressures of climate change (discussed

²² National Environmental Management Act 107 of 1998 ("**NEMA**") section 1(1), definition of "sustainable development".

²³ *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 (6) SA 4 (CC).

further below). Depleted biodiversity is an early warning sign that the underlying ecological processes sustaining water security are already compromised, often well before this is reflected in resource-quantity measurements or licence-level water-quality data.

26. Consistent with this principle, the Amendment Bill's equity and access reforms and its biodiversity and ecological protections should not be treated as being in tension. The equity provisions discussed below (reallocation under new section 25A, the redress mandate in amended section 27, and the use-it-or-lose-it curtailment power in new section 34A) all concern how already-authorised, ecologically sustainable water use is shared among users; none of them can be read as authorising water use beyond what ecological integrity allows, since the Ecological Reserve is, and under the Amendment Bill remains, a prior charge on every water resource before any allocation for other use may be made. Expanding access to water for previously disadvantaged communities, and protecting the ecological integrity of water resources, are properly conceived as the same constitutional project: durable, meaningful access to water for present and future generations, including generations of South Africans who have historically been denied it.
27. Assessed against this framework, several of the shortcomings in the Amendment Bill identified elsewhere in this submission are not merely technical drafting gaps, but instances of the Bill treating water security as separable from ecological integrity and biodiversity when, for the reasons set out above, it is not. These include: the extension of the national water resource strategy review cycle from five to ten years; the absence of any biodiversity criterion in the classification system and resource quality objectives under sections 12 and 13; the absence, under Chapter 3A, of equivalent recognition for water resources of high ecological or biodiversity importance (as distinct from water-supply importance); and the absence of a provision addressing groundwater-dependent ecosystems. Detailed recommendations addressing each of these gaps are made in the "Specific Comments" section below.

B. Protection of customary and community-based water rights

28. The notification mechanism for strategic water source area declaration relies on Government Gazette publication. Gazette publication is a low-access notification mechanism, particularly for rural and peri-urban communities who are often most directly affected by activities within or near source areas, but who have limited access to print media and formal government information channels.
29. Constitutional jurisprudence on public participation, including the Constitutional Court's guidance on what constitutes meaningful participation, requires that affected communities be given a genuine opportunity to engage. Gazette notification alone does not meet this standard for communities where literacy, language access, and physical distance from government offices create barriers to participation.
30. The prohibitions in Chapter 3A, and specifically section 20D, of the Amendment Bill apply to water use activities without differentiating between large-scale commercial operators and small-scale subsistence or emerging users. A small-scale farmer who has been cultivating land within what is later declared a strategic water source area may find their activities restricted without compensation or alternative provision. This is an environmental justice concern that is not addressed in the Bill. The transformation mandate in other parts of the Bill is undermined if source area protection falls disproportionately on small-scale users who lack the legal and financial capacity to relocate or adapt.
31. The Amendment Bill references racial and gender discrimination throughout, including in the equity provisions, the fit and proper person test context, and the water user association transformation

strategy requirement. However, no provision specifically addresses the particular vulnerabilities of women water users, including the relationship between land tenure (often insecure for women) and water access, the role of women in smallholder and subsistence agriculture, or the need for gender-disaggregated data in water allocation monitoring.

32. International frameworks including the UN Sustainable Development Goals, the CEDAW General Recommendation No. 39 on the rights of indigenous women and girls,²⁴ and the African Union Protocol on Women's Rights all recognise that water access intersects with gender in ways that require targeted governance responses. The Amendment Bill's gender language is aspirational rather than operational.

C. Protection of water source areas and ecological sustainability

33. In terms of background and context, the NWA contains no equivalent provision to Chapter 3A. The protection of strategically important catchments and recharge areas has been managed, imperfectly, through the licensing framework and through land-use planning instruments outside the water law framework. The introduction of Chapter 3A is therefore one of the most substantively ambitious innovations in the Amendment Bill.
34. Strategic water source areas in South Africa (including the Drakensberg, Cape Fold Mountains, and portions of the Mpumalanga Escarpment) are documented as supplying a disproportionately large share of national surface water runoff relative to their land area. Their protection is of critical national importance for food security, municipal water supply, ecological integrity, and climate resilience. The legal framework for their protection has historically been fragmented, relying on overlapping and sometimes conflicting provisions of water law, environmental law, and mineral law.
35. Chapter 3A is a genuinely important addition to the legislative framework. The recognition that water source areas contribute substantially to developmental needs far from the source is ecologically sound and is consistent with the ecosystem services valuation approach that informs international best practice in water source protection. Furthermore, the identification process in section 20A is procedurally sound: it requires scientific criteria, risk categorisation, threat assessment, and public comment. This supports procedural environmental justice and creates a record that can be tested in judicial review proceedings.
36. However, there is a critical gap in the current draft framework of the Amendment Bill. We have identified the most significant gap in Chapter 3A is the three-year window between the Act's commencement and the mandatory publication of the initial list of declared strategic water source areas. During this period, section 98(8) explicitly preserves the entitlement of existing holders to continue activities relating to mining, forestry, and agriculture until their areas are declared.
37. This creates a structural perverse incentive. Operators aware that their operational area is likely to be declared a strategic water source area have an incentive to expand their footprint, intensify activities, or lock in water use prior to declaration. The Bill provides no mechanism to prevent this. A race-to-extract dynamic during the transition period could cause irreversible damage to the very resources the Act seeks to protect.
38. This is because the three-year identification period in section 20A, read with the transitional protection in section 98(8), creates an unmanaged window during which this risk can materialise, and because physical damage to a strategic water source area (through dewatering, land clearing, or

²⁴ UN Committee on the Elimination of Discrimination against Women (CEDAW), available at <https://www.refworld.org/legal/general/cedaw/2022/en/149168>.

contamination, etc.) may be irreversible. The Amendment Bill needs a transitional freeze mechanism to prevent this outcome.

39. Section 20B(1) states that the Minister 'may' prescribe the manner, extent, and procedure for reviewing existing mining water use licences prior to commencement. The use of discretionary language 'may' for a review process that is central to the Bill's protective objective is legally insufficient. The review of existing licences, including those in declared high-risk source areas should be mandatory, not discretionary, and immediate (i.e. not contingent on a three-year window). Without this, the protective framework applies fully only to new applicants while existing operators in the most sensitive areas face only an optional review process.
40. In terms of definitional vagueness, the terms 'high risk,' 'threatened,' and 'vulnerable' are used repeatedly in sections 20B, 20C, and 20D but are not defined in the Amendment Bill's definitions clause in section 1, nor are they defined within Chapter 3A itself. The Amendment Bill provides that risk categories will be specified in the Gazette notice under section 20A(2)(a)(ii), but this defers definitional certainty to subordinate instruments that have not yet been drafted and may be subject to change without parliamentary scrutiny.
41. This level of definitional vagueness is problematic for several reasons:
 - 41.1. It creates uncertainty for landowners and operators about their obligations;
 - 41.2. It risks inconsistent administrative application across different regions and responsible authorities;
 - 41.3. It creates grounds for legal challenge by operators who dispute how their areas have been categorised; and
 - 41.4. It potentially allows the executive to set thresholds that are administratively convenient rather than ecologically sound.
42. Sections 20C and 20D specify a 32-metre setback as a specific, quantified requirement. This level of specificity is generally desirable since it reduces administrative discretion and provides clear compliance benchmarks. However, the scientific basis for the 32-metre figure is not specified in the Amendment Bill or its explanatory memorandum.
43. This matters for two reasons. First, a setback that cannot be defended with reference to published scientific evidence is vulnerable to legal challenge. Operators disputing the restriction may argue that the figure is arbitrary. Second, 32 metres may be adequate for some source area types and insufficient for others. A single numerical standard applied uniformly across diverse ecological contexts risks being both over-protective in low-sensitivity areas and under-protective in high-sensitivity areas. The regulations to be issued under section 20A(5) should specify the scientific basis and allow for variation by source area type and risk category. This is discussed further below, under the "Specific Comments" section.
44. There appears to be no requirement for independent monitoring or enforcement mechanisms in chapter 3A. Chapter 3A creates prohibitions but provides no dedicated monitoring or enforcement mechanism. The responsible authority remains the primary enforcement body. While this is consistent with the general approach of the NWA, the Department of Water and Sanitation's ("**DWS; the Department**") capacity constraints are well-documented and raise serious questions about whether paper protections will translate into meaningful on-the-ground compliance, particularly in remote water source areas where monitoring infrastructure is limited.

The Amendment Bill does not adequately protect Strategic Water Source Areas (“SWSAs”)

45. South Africa is fundamentally water scarce.²⁵ Climate change is expected to exacerbate this scarcity.²⁶ In this context, the need to protect our SWSAs, which are vital ecological infrastructure for water security,²⁷ cannot be overstated.
46. At present, 22 surface water SWSAs and 37 groundwater SWSAs of national importance have been identified and delineated (including transboundary SWSAs)²⁸ by the Water Research Commission (“WRC”).²⁹ The SWSAs within South Africa are critical (both within and beyond South Africa’s borders)³⁰ for ensuring that the right to access water is fulfilled,³¹ for growing food and for generating electricity,³² as well as for long-term adaptation to climate change impacts.³³
47. The protection of SWSAs therefore contributes to the fulfilment of several GBF targets stated above, including the conservation of waters of particular importance for ecosystem functions and services,³⁴ and the minimising of climate change impacts on biodiversity and building of climate change resilience.³⁵
48. However, SWSAs are under threat. For example, while mining occupies a relatively small area within SWSAs, mining has disproportionate impacts on SWSAs’ water quality.³⁶ The 2025 National Biodiversity Assessment (“**2025 NBA**”)³⁷ also points to SWSAs being negatively impacted by invasive plants,³⁸ and calls for the careful management and restoration of SWSAs in order to maintain their critical role in the face of these threats.³⁹ Accordingly, the 2023 National Water Resource Strategy

²⁵ *Redefine Retail (Pty) Ltd v City of Tshwane Metropolitan Municipality and Others* [2026] ZAGPPHC 700 at para 13.

²⁶ Climate Risk Profile: South Africa (2021): The World Bank Group
https://climateknowledgeportal.worldbank.org/sites/default/files/country-profiles/15932-WB_South%20Africa%20Country%20Profile-WEB.pdf at page 12.

²⁷ South African National Biodiversity Institute (SANBI). 2025. *National Biodiversity Assessment 2025: The status of South Africa’s biodiversity. Summary of Findings and Key Messages*. Skowno, A.L., Poole, C.J., Besseling, N.A., Currie, J.C., Da Silva, J.M., Dayaram, A., Harris, L.R., Job, N., Monyeki, M.S., Mtshali, H., Raimondo, D.C., Sink, K.J., Van der Bank, M.G., Van der Colff, D., Van Niekerk, L., Von Staden, L. South African National Biodiversity Institute (an entity of the Department of Forestry, Fisheries and the Environment), Pretoria. <https://hdl.handle.net/20.500.12143/9467> (“**2025 NBA**”) at page 5.

²⁸ Le Maitre, D.C., Seyler, H., Holland, M., Smith-Adao, L., Nel, J.L., Maherry, A. and Witthüser, K. (2018) *Identification, Delineation and Importance of the Strategic Water Source Areas of South Africa, Lesotho and Swaziland for Surface Water and Groundwater*. Report No. TT 743/1/18, Water Research Commission, Pretoria (“**WRC 2018 SWSA Report**”) at page v.

²⁹ Several SWSAs fall within Lesotho and Eswatini. See WRC 2018 SWSA Report at page 51.

³⁰ *Mining and Environmental Justice Community of South Africa and Others v MEC for Agriculture, Rural Development, Land and Environmental Affairs and Others* [2024] ZAMPMBHC 48 at para 9 speaks to the regional role of SWSAs.

³¹ Section 27(1)(b) of the Constitution.

³² Water Research Commission (undated report) ‘SWSAs: Vital for South Africa’s Water, Food and Energy Security’
https://www.wrc.org.za/wp-content/uploads/mdocs/Source%20water_web.pdf (“**WRC Undated SWSA Report**”) at page 7.

³³ 2025 NBA at page 52.

³⁴ Target 3 of the GBF Targets.

³⁵ Target 8 of the GBF Targets.

³⁶ WRC Undated SWSA Report at pages 13 and 31.

³⁷ South African National Biodiversity Institute (SANBI). 2025. *National Biodiversity Assessment 2025: The status of South Africa’s biodiversity. Summary of Findings and Key Messages*. Skowno, A.L., Poole, C.J., Besseling, N.A., Currie, J.C., Da Silva, J.M., Dayaram, A., Harris, L.R., Job, N., Monyeki, M.S., Mtshali, H., Raimondo, D.C., Sink, K.J., Van der Bank, M.G., Van der Colff, D., Van Niekerk, L., Von Staden, L. South African National Biodiversity Institute (an entity of the Department of Forestry, Fisheries and the Environment), Pretoria. <https://hdl.handle.net/20.500.12143/9467> (“**2025 NBA**”).

³⁸ 2025 NBA at page 34.

³⁹ 2025 NBA at page 44.

(“**2023 NWRS**”), the blueprint for water resources management in terms of the NWA,⁴⁰ stresses that the rehabilitation and protection of SWSAs is central to its water resource management framework.⁴¹

49. We are therefore encouraged that the Amendment Bill seeks to include SWSAs within the NWA’s legislative framework, and we welcome the resulting prohibitions and restrictions of certain threatening activities within these SWSAs. However, we take issue with certain aspects of these provisions, which we have discussed above and which we provide specific comment on under the “Specific Comments” section below. These issues include:
- 49.1. The three-year period in section 20A(1) for the Minister to identify, map and categorise intended SWSAs delays the operation of the proposed prohibitions and restrictions on threatening activities within these areas (see the discussion above);
 - 49.2. Section 20A(4) allows the Minister to amend the list of declared SWSAs without any public participation procedure;
 - 49.3. Chapter 3A omits references to, and as a result does not protect, Freshwater Ecosystem Priority Areas (“**FEPAs**”); and
 - 49.4. The Bill does not prohibit certain onshore exploration or production activities within SWSAs, allowing them to continue to the detriment of these areas.
50. Chapter 3A additionally does not protect SWSAs from fracking and other onshore exploration and production activities. We submit that the exploration and production of onshore petroleum resources requiring fracturing technology (“**fracking**”) should be included in the Amendment Bill as a prohibited activity within SWSAs. The Amendment Bill provides for fracking, its draft section 37(1)(f) proposes making fracking, as well as certain other onshore exploration and production activities, a controlled activity.⁴² Under the NWA, a controlled activity is one that has ‘a detrimental impact on water resources’ and which requires specific authorisation in terms of the NWA.⁴³ We welcome the legislative inclusion of fracking as a controlled activity,⁴⁴ and the recognition of its risks to water resources.
51. However, we are of the view that making fracking a controlled activity does not go far enough to protect water resources that it may detrimentally impact, particularly regarding SWSAs and FEPAs. This is especially because several existing recognised SWSAs overlap areas identified as having potential for shale gas extraction.⁴⁵ Similarly to the Amendment Bill’s prohibitions and restrictions on the granting of WULs for mining, forestry and agriculture within SWSAs, the Amendment Bill should be amended to prohibit the granting of WULs for fracking within SWSAs.
52. Given the above concerns, recommendations regarding sections 20(A)(2) and (6) are made under the “Specific Comments” section below.

⁴⁰ 2023 NWRS at page 5 (pdf page 8).

⁴¹ See further the 2023 NWRS, which (a) includes as a strategic action investment in ecological infrastructure, especially SWSAs (page 52); (b) makes SWSAs’ protection a guiding principle (page 63); (c) deems the rehabilitate and protect ecological infrastructure, including SWSAs, as a Strategic Objective (page 73).

⁴² Clause 20(c) of the Amendment Bill.

⁴³ Explanatory note of Part 5 of Chapter 4 of the NWA read with section 37(2) of the NWA.

⁴⁴ We note that the Minister already exercised their power under section 38 of the NWA, and declared fracking a controlled activity in GN 999 in GG 39299 dated 16 October 2016, and welcome the Amendment Bill’s reinforcement of this.

⁴⁵ Water Research Commission (undated report) *SWSAs: Vital for South Africa’s Water, Food and Energy Security* https://www.wrc.org.za/wp-content/uploads/mdocs/Source%20water_web.pdf at page 14

D. Human rights and constitutional compliance

53. The NWA contains substantial equity provisions. Section 2(b) and (c) establish promoting equitable access and redressing the results of past racial and gender discrimination as core purposes. Section 27(1)(b) requires responsible authorities to consider the need to redress discrimination when issuing licences. The compulsory licensing process in sections 43 to 48 provides a mechanism for systematic reallocation. The reserve concept protects basic human needs as priority.
54. The Amendment Bill expands the equity framework in several significant ways. Clause 13 amends section 27 to impose an affirmative obligation on responsible authorities to advance redress when making licensing decisions, going beyond the existing requirement to merely 'take into account' the need for redress. The same clause empowers responsible authorities to set aside specific water volumes in each water management area to achieve this redress objective. Other clauses appear to have strengthened the NWA, namely:
 - 54.1. Clause 11 inserts a new section 25A giving the Minister power to reallocate water between sectors, provinces, and catchments in the public interest, after consultation with affected sectors, provinces, and catchment management agencies.
 - 54.2. Clause 12 empowers the Minister to prescribe regulations specifying the criteria for addressing past racial and gender discrimination in water use allocation decisions.
 - 54.3. Clause 10 amends section 25 to prohibit the private trading of water use entitlements and to require that any surrendered entitlement revert to the Minister as public trustee, rather than being transferable between private parties.
 - 54.4. Clauses 15 and 16 make consequential amendments to sections 29 and 32 to give effect to the prohibition on water trading.
 - 54.5. Clause 19 introduces section 34A, empowering the responsible authority to curtail water entitlements where users have failed to exercise the full existing lawful use volume — the 'use-it-or-lose-it' principle.
55. The equity provisions detailed above represent a genuine and important shift from the existing framework in the NWA. The change from 'take into account' to 'advance' redress in section 27(3) imposes a more direct obligation on responsible authorities. The prohibition on private water trading is particularly important from an equity perspective. Without this prohibition, there is a real risk that market mechanisms would entrench rather than correct historical water inequity: wealthier operators would be able to purchase entitlements from other private holders at market rates, bypassing the equity-driven licensing process and potentially concentrating water access further. The Amendment Bill correctly identifies this risk and closes this pathway.
56. However, there are gaps in the current draft framework regarding ministerial reallocation without community consultation. These include:
 - 56.1. Section 25A(2) requires the Minister to consult 'any affected water sector, province or catchment management agency' before making a reallocation decision. This list of consultees does not include affected communities. Reallocation between sectors or catchments can have profound consequences for communities who depend on existing water allocations for their livelihoods and basic water supply. The absence of a mandatory community consultation requirement is a significant procedural gap that risks constitutional challenge under section 33 of the Constitution (just administrative action) and under section 4 of the PAJA.

- 56.2. Another gap is the “use-it-or-lose-it” principle. It presents a risk for emerging and small-scale users. Section 34A empowers the responsible authority to curtail water entitlements where users have failed to exercise the full existing lawful use volume for any period specified by the Minister. While this provision is aimed at large commercial operators who hold water entitlements without using them (thereby preventing reallocation), it is drafted in terms that apply equally to small-scale users, emerging farmers, and new black water users who may face non-use periods due to capital constraints, equipment failure, drought, crop failure, or other circumstances beyond their control. The use-it-or-lose-it curtailment power in section 34A does not distinguish between large commercial operators holding unused entitlements as strategic reserves and small-scale or emerging farmers unable to exercise entitlements due to resource constraints. Without a protective carve-out, this provision risks cancelling equity entitlements recently allocated to emerging farmers, directly contradicting the Amendment Bill's transformation objectives.
- 56.3. The Amendment Bill's equity provisions are merely aspirational without a monitoring and accountability framework. There is no requirement for responsible authorities to report on equity outcomes in licensing decisions. There are no numerical targets for water allocation reform. There is no public reporting obligation on progress toward redress objectives. Without these elements, the strengthened equity provisions risk becoming unenforceable mandates that improve the legal architecture without changing on-the-ground outcomes.
57. Based on the above, several recommendations are made in the “Specific Comments” section related to sections 25A(2) and 34A(2).

E. Climate resilience, environmental resilience and long-term water security

58. South Africa is among the driest countries in the world. Average annual rainfall is approximately 450mm, roughly half the global average of 860mm, and just 8% of the country's land area (much of it corresponding to the strategic water source areas that Chapter 3A of the Amendment Bill seeks to protect) generates roughly half of the country's total surface water run-off.⁴⁶ Climate resilience and long-term water security are not, in this context, a peripheral or aspirational concern: they are close to existential for a country with this little structural margin for error.
59. Climate change is compounding this pre-existing structural scarcity. Rainfall is projected to become more erratic and more concentrated in extreme events, with parts of the country projected to become drier on average even as the frequency and severity of flooding increases elsewhere. South Africa is already warming at roughly twice the global average rate.⁴⁷ These are not marginal shifts to an otherwise stable baseline: they are shifts to a baseline that was already water-scarce and unevenly distributed before accounting for climate change at all, and that is addressed in the country's own climate policy instruments.⁴⁸
60. The relationship between this climate vulnerability and biodiversity, discussed above under “Biodiversity, sustainability, ecological integrity and access to water”, is direct rather than incidental:

⁴⁶ South Africa's average annual rainfall is approximately 450mm, roughly half the global average of 860mm, and approximately 8% of the country's land area generates roughly half of national surface water run-off. See World Resources Institute, “How South African Cities Are Building Water Resilience” (2026) <https://www.wri.org/insights/managing-extremes-how-south-african-cities-are-tackling-water-crises>; Department of Water and Sanitation, National Water Resource Strategy.

⁴⁷ South Africa First Nationally Determined Contribution under the Paris Agreement, September 2021. See at <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/South%20Africa%20First/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

⁴⁸ The National Development Plan, the National Climate Change Response White Paper, the National Climate Change Adaptation, the Low Emission Development Strategy 2050.

functioning ecosystems are more resilient to climate shocks and enable the ongoing provision of climate-regulating ecosystem services, including flood attenuation, drought buffering and the moderation of run-off extremes; the converse is equally true, so that failure to build climate resilience into water resource governance will itself accelerate the loss of the very biodiversity that water security depends on. A recent IPBES-IPCC (United Nations Intergovernmental Panel on Climate Change, “IPCC”) co-sponsored report on biodiversity and climate change put this succinctly:⁴⁹

‘Increased atmospheric greenhouse gas concentrations lead to increased mean temperatures, altered precipitation regimes, increased frequency of extreme weather events, and oxygen depletion and acidification of aquatic environments, most of which adversely affect biodiversity. Reciprocally, changes in biodiversity affect the climate system, especially through their impacts on the nitrogen, carbon and water cycles. These interactions can generate complex feedbacks between climate, biodiversity and humans that may produce more pronounced and less predictable outcomes. Ignoring the inseparable nature of climate, biodiversity, and human quality of life will result in non-optimal solutions to either crisis.’

61. Strategic water source areas, which the Amendment Bill’s new Chapter 3A seeks to protect, are important to this picture for exactly this reason: because they generate a high proportion of the share of the country’s run-off relative to their land area, degradation or climate-driven decline in these specific catchments has a magnified effect on national water security, and it is the ecological integrity of these areas (their vegetation cover, wetland extent and intact biodiversity) that allows them to continue performing this function under increasing climate stress. Protecting these areas is, in this sense, as much a climate resilience measure as it is a biodiversity or water-supply measure, and a further illustration of the interdependence addressed above.
62. It is against this background that the Amendment Bill’s recognition of climate change in the Act’s purpose clause, addressed in the paragraphs that follow, must be assessed: not as a general statement of environmental concern, but as a response to a specific, well-documented and accelerating threat to South Africa’s water security that is inseparable from the ongoing degradation of the ecosystems that regulate that security.
63. In addition, the explicit recognition of climate change and climate variability in the Act’s purpose clause is a genuine and legally meaningful improvement. Legislative purpose clauses are not merely declaratory — they guide judicial interpretation of ambiguous provisions, inform the exercise of administrative discretion, and establish policy intent that can be invoked in legal challenges to inadequate governmental action. The addition of this language creates a stronger foundation for communities and civil society organisations to hold the State accountable for climate-responsive water management.
64. However, the improvement is largely symbolic at the purpose level and is directly contradicted by an operational change elsewhere in the Amendment Bill. For example, the extension of the national water resource strategy review cycle from five years to ten years in Clause 3 is structurally inconsistent with the newly stated purpose of managing climate variability and change. A strategy that can remain in force for a decade without mandatory revision is an inadequate tool for responding to a phenomenon

⁴⁹ Pörtner, H.O., Scholes, R.J., Agard, J., Archer, E., Arneth, A., Bai, X., Barnes, D., Burrows, M., Chan, L., Cheung, W.L., Diamond, S., Donatti, C., Duarte, C., Eisenhauer, N., Foden, W., Gasalla, M. A., Handa, C., Hickler, T., Hoegh-Guldberg, O., Ichii, K., Jacob, U., Insarov, G., Kiessling, W., Leadley, P., Leemans, R., Levin, L., Lim, M., Maharaj, S., Managi, S., Marquet, P. A., McElwee, P., Midgley, G., Oberdorff, T., Obura, D., Osman, E., Pandit, R., Pascual, U., Pires, A. P. F., Popp, A., Reyes-García, V., Sankaran, M., Settele, J., Shin, Y. J., Sintayehu, D. W., Smith, P., Steiner, N., Strassburg, B., Sukumar, R., Trisos, C., Val, A.L., Wu, J., Aldrian, E., Parmesan, C., Pichs-Madruga, R., Roberts, D.C., Rogers, A.D., Díaz, S., Fischer, M., Hashimoto, S., Lavorel, S., Wu, N., Ngo, H.T. 2021. IPBES-IPCC co-sponsored workshop report on biodiversity and climate change; IPBES and IPCC. DOI:10.5281/zenodo.4782538.

characterised by increasing unpredictability and accelerating change. This inconsistency should be resolved before enactment.

65. The Amendment Bill does not cascade climate recognition into operational provisions. There is no requirement that water use licences explicitly account for projected climate change impacts on water availability. There is no mechanism for climate-triggered review of existing licences when significant hydrological changes are detected. There are no provisions requiring catchment management strategies to include climate adaptation plans. The Reserve determination framework, which protects ecological flows, is not linked to climate projections. These are significant omissions in a country that is projected to experience some of the most severe hydrological impacts of climate change on the African continent.
66. There may be an argument from officials that a five-year cycle has not functioned as intended, that national water resource strategy reviews have historically been delayed, under-resourced, and poorly implemented. Officials may argue that a longer statutory period would provide greater stability and reduce uncertainty for long-term investors, including those in water infrastructure critical to communities, than more frequent revisions would. However, while these are valid practical concerns, the Amendment Bill can entrench a smarter framework that is capable of providing stability while enabling responsiveness within a 5-year review cycle. Moreover, implementation failings cannot justify the compromising of water sources.
67. Communities dependent on rain-fed agriculture face the most direct risk from climate-driven water stress. Informal settlements in flood-prone areas, often located there due to historical dispossession, face increasing flood risk without governance frameworks that can adapt quickly enough. Rural communities relying on springs, ephemeral streams, and shallow groundwater (resources highly sensitive to rainfall pattern changes) may find their water sources failing between strategy review cycles.
68. The failure to include climate adaptation provisions in licence conditions means that new authorisations may be granted based on water availability assessments that rapidly become obsolete within years, exposing both licence holders and the resource to unforeseen risk.
69. In light of the above, recommendations have been made in the “Specific Comments” section below. In addition, it is recommended that the following also be included in the Amendment Bill:
 - 69.1. Add a climate-triggered early review mechanism;
 - 69.2. Require climate adaptation sections in all catchment management strategies;
 - 69.3. Link Reserve determinations to updated climate projections; and
 - 69.4. Require climate impact assessment as part of all major water use licence applications.
70. The Amendment Bill creates an opportunity to pioneer a climate-adaptive water governance model that could position South Africa as a global leader in climate-responsive resource management. A dedicated climate and water monitoring protocol, linked to the existing national monitoring systems in Chapter 14 of the NWA, could provide the evidence base for adaptive strategy reviews without requiring a wholesale rewrite of the strategy framework. The Department should consider establishing a formal climate-water monitoring partnership with universities and research institutions, reporting publicly every two years.

F. Accountability, transparency and implementation safeguards

71. Transparency and accountability are fundamental in a constitutional democracy like South Africa.⁵⁰ The public has an interest in knowing how, and on what basis, the significant new discretionary powers the Amendment Bill confers on the Minister and responsible authorities are exercised, including the power to reallocate water between sectors and catchments, to curtail existing entitlements, to determine whether an applicant is a “fit and proper person”, and to declare and manage strategic water source areas. These powers must be grounded in the constitutional right to an environment not harmful to health or wellbeing.⁵¹ The State, as custodian holding the environment and (under the NWA specifically, the nation’s water resources) in public trust,⁵² has the corresponding duty to protect and fulfil this right through transparent and accountable decision-making.⁵³
72. The importance of transparency and accountability in environmental matters is reflected in the NEMA principles in that –
- 72.1. decisions must be taken openly and transparently, and access to information must be provided in accordance with the law;⁵⁴
- 72.2. the social, economic and environmental impacts of activities, including disadvantages and benefits, be considered, assessed and evaluated, and that decisions be appropriate in the light of such consideration;⁵⁵
- 72.3. the participation of all interested and affected parties in environmental governance be promoted, with participation by vulnerable and disadvantaged persons ensured, and opportunities created for people to develop the understanding, skills and capacity necessary for equitable and effective participation;⁵⁶ and
- 72.4. community wellbeing and empowerment must be promoted through environmental education, raising environmental awareness, knowledge sharing and other appropriate means.⁵⁷
73. Measured against these principles, several of the significant new and expanded decision-making powers the Amendment Bill confers fall short of the transparency and accountability that the NEMA principles, and the constitutional foundations discussed above, require.
74. Reasons for licensing decisions remain reactive rather than proactive. Substituted section 42 continues to require a responsible authority to give written reasons for a licensing decision only “at the request of” the applicant or an objector, rather than requiring reasons to be published as a matter of course. For decisions with significant public interest implications, such as licences relating to strategic water source areas, this places the onus on interested and affected parties to know that a decision has been made and to actively request reasons, rather than on the responsible authority to explain itself.
75. The new section 25A empowers the Minister to reallocate water between sectors, provinces and catchments “in the public interest”, after consultation with affected sectors, provinces or catchment management agencies. However, it imposes no obligation to publish the reasons for a reallocation

⁵⁰ *Public Protector v South African Reserve Bank* (CCT107/18) 2019 (6) SA 253 (CC).

⁵¹ Section 24(a) of the Constitution.

⁵² See references in sections 28(5)(e) and 30(6)(d) of NEMA.

⁵³ Section 7(2) of the Constitution.

⁵⁴ Section 2(4)(k) of NEMA.

⁵⁵ Section 2(4)(i) of NEMA.

⁵⁶ Section 2(4)(f) of NEMA.

⁵⁷ Section 2(4)(h) of NEMA.

decision, the criteria applied, or the outcome of the consultation process, whether before or after the decision is made.

76. The new section 34A empowers a responsible authority to curtail a person's existing lawful water use by written notice where the person has failed to exercise the full entitlement. Unlike the existing power to suspend or withdraw an entitlement under section 54, which expressly requires that the person concerned be given an opportunity to make representations before a suspension or withdrawal is imposed, section 34A contains no equivalent procedural safeguard. This is a significant, and in our submission unintended, inconsistency between two closely related enforcement powers in the same Act.
77. None of the significant new powers introduced by the Amendment Bill (reallocation under section 25A, curtailment under section 34A, the fit and proper person determination under section 27A, or the declaration and management of strategic water source areas under Chapter 3A) are accompanied by a requirement for public reporting on how frequently, and on what basis, the power has been exercised. Without such reporting, neither Parliament nor the public can readily assess whether these powers are being used consistently, rationally, and in a manner that advances, rather than undermines, the Amendment Bill's own equity and biodiversity objectives.
78. These gaps compound one another. A power exercised without a requirement to give reasons, without a requirement to consult affected communities, without a procedural right to be heard, and without any public reporting obligation, is a power that is, in practice, largely insulated from accountability regardless of how carefully its substantive criteria are drafted. Recommendations addressing sections 25A and 34A are made in the "Specific Comments" section below. The remainder of this section considers a further, specific accountability gap: the governance of water user associations.

In terms of transformation

79. In terms of background and context, the failure to reform the water allocation regime since 1998 is one of the most significant governance failures in post-apartheid South Africa. Despite unambiguous constitutional and statutory mandates, the patterns of water access in South Africa remain substantially shaped by the discriminatory allocation decisions of the pre-democratic era. Large-scale commercial agriculture, historically dominated by white landowners, continues to hold the majority of licensed water entitlements in most catchments. The compulsory licensing process envisaged in sections 43 to 48 of the NWA has been initiated in very few catchments.
80. This failure is not purely legislative. It reflects institutional capacity constraints, the complexity of hydrological and socio-economic assessment required for reallocation, and the political economy of water. However, clearer and more mandatory legislative provisions can create better conditions for implementation, reduce legal uncertainty that has contributed to administrative paralysis, and give affected communities stronger grounds for accountability demands.
81. The above challenge requires the Department to approach the governance of water user associations with accountability, transparency and implementation in mind. The transformation strategy requirement in section 93(2A) is a meaningful addition to the governance framework. It moves from the existing approach, which assumed transformation would occur through market mechanisms and voluntary change, to a mandatory planning obligation. The requirement for a detailed strategy addresses one of the most consistent criticisms of water user association governance: that transformation commitments are made at the level of general principle without being translated into operational plans with measurable targets and timelines.

82. The one-vote-per-entitlement system in amended Schedule 5, item 15 is clearer and more equitable than the previous menu of options, which allowed water user associations to adopt voting systems that weighted votes by volume of water entitlement, effectively giving large commercial users disproportionate governance power. The mandatory model constitution is a positive change. Previously, associations could depart from the model constitution as long as they provided an explanation. This departure was frequently used to create bespoke governance arrangements that entrenched existing power structures. The mandatory basis requirement reduces this risk.
83. The transformation strategy requirement in section 93(2A) requires that the constitution include a strategy to achieve transformation with regards to racial and gender representation in all components of the association. However, the provision specifies no minimum content, no numerical targets or target ranges, no timelines for achievement, no reporting obligations, and no consequences for failure to implement. A strategy document that meets none of these requirements technically satisfies the statutory obligation. For the transformation strategy to be meaningful, it requires minimum content standards, a review and reporting mechanism, and consequences for persistent non-compliance.

Public participation in WULAs

84. Section 41(4) of the NWA presently provides that, in the context of a WULA, a responsible authority⁵⁸ may require the applicant, at any stage of the application process, to conduct a public participation process including:
 - 84.1. notifying the public of the WULA in newspapers and other media and allowing the lodging of written objections;⁵⁹
 - 84.2. taking steps that the responsible authority may direct to alert IAPs of the WULA;⁶⁰ and
 - 84.3. satisfying the responsible authority that the WULA will not adversely affect the interests of any other person with an interest in the land.⁶¹
85. The wording of the section suggests that these public participation provisions are discretionary, whereas NEMA⁶² and the courts⁶³ dictate that they are not. This should be clarified and public participation requirements strengthened.
86. In light of this, recommendations are made in the “Specific Comments” section below.

G. Issues not addressed by the Bill

87. Groundwater and aquifer protection receive minimal attention. The definition of “waterwork” is amended to include boreholes more explicitly, and the definition of “aquifer” in the NWA is unchanged.

⁵⁸ Section 1 of the NWA defines a “responsible authority”, in relation to a specific power or duty in respect of water uses as follows

–
(a) if that power or duty has been assigned by the Minister to a catchment management agency, that catchment management agency; or

(b) if that power or duty has not been so assigned, the Minister.’

⁵⁹ Section 41(4)(a) of the NWA.

⁶⁰ Section 41(4)(b) of the NWA.

⁶¹ Section 41(4)(c) of the NWA.

⁶² NEMA, sections 2(4)(k), (i), (f), and (h).

⁶³ See for example, *Fuel Retailers and Thungela Operations (Pty) Ltd v Chief Director, Water Use License Management: Department of Water and Sanitation and Others* (WT04/22/GP) [2023] ZAWT 1.

However, no new provisions address aquifer protection, sustainable yield management, or the interaction between surface water and groundwater systems. This is a critical gap. Groundwater is increasingly relied upon as surface water availability becomes less reliable, particularly under climate change stresses. In many rural and semi-arid areas of South Africa, groundwater is the primary or sole source of drinking water. Unregulated extraction and contamination of aquifer systems pose a direct threat to basic water security for millions of people. The Amendment Bill represents an opportunity to introduce a statutory aquifer protection framework that was not contemplated in 1998 but which is now urgently needed.

88. To address this gap, it is recommended that the Amendment Bill should include provisions for: (1) mandatory sustainable yield assessments before significant new groundwater use is authorised; (2) groundwater source protection zones analogous to the strategic water source area framework introduced for surface water; and (3) regular public reporting on aquifer levels and quality in priority areas.
89. The Amendment Bill deletes “sea outfall” from the definition of water use in section 21(f) but introduces no new wastewater governance mechanisms. Municipal sewage and industrial wastewater discharges, including the phenomenon of non-functional wastewater treatment works, represent arguably the most acute water quality crisis in South Africa. Rivers and wetlands across the country are receiving untreated or partially treated sewage due to the failure of municipal wastewater infrastructure.
90. To address this gap, it is recommended that the Amendment Bill should introduce a dedicated framework for responding to chronic municipal wastewater non-compliance, including: (1) a requirement for annual wastewater treatment works performance reporting in a publicly accessible format; (2) a graduated intervention framework from technical support to ministerial takeover; and (3) a dedicated remediation fund supported by penalty revenues and national fiscal transfers.
91. Chapter 10 of the NWA, which deals with international water management, is entirely unchanged by the Amendment Bill. South Africa shares several major river systems with neighbouring countries, including the Orange/Senqu (shared with Lesotho, Namibia, and Botswana), the Limpopo (shared with Zimbabwe, Botswana, and Mozambique), and the Incomati/Komati (shared with Swaziland and Mozambique).
92. Climate change is materially altering flows in all of these systems. Increased drought frequency, changing precipitation patterns, and upstream development pressures create complex governance challenges that the existing Chapter 10 framework (designed in 1998) may be inadequate to address. The Amendment Bill should have initiated a review of international water management obligations and frameworks. This remains an unaddressed gap.
93. Section 27 of the Constitution establishes the right of access to sufficient water as a fundamental constitutional right. The NWA does not directly reference this right, treating it as an external constitutional parameter rather than an operational legislative principle. The Amendment Bill does not change this approach. This is a significant omission. The Reserve framework is essential for protecting both ecological integrity and basic human needs, but it must operate alongside, and in a manner that supports, the progressive realisation of every person’s right of access to sufficient water, while remaining cognisant of the need to preserve the integrity of water sources for present and future generations. The Amendment Bill should have introduced provisions that more directly operationalise the section 27 right in the context of water resource management, including provisions ensuring that

water allocation decisions do not undermine access to basic water supply for communities served by the resource in question.

94. The Amendment Bill is silent on how any of its new obligations (water source area protection, equity reallocation, transformation of water user associations, compliance monitoring) will be funded. The Memorandum of Objects states that *'the Bill does not create new financial obligations for the Department'* and that *'all the activities in the Bill will be accommodated within the existing budget.'* This statement is difficult to accept if implementation of the Amendment Bill is to happen.
95. The establishment of a monitoring framework for strategic water source areas, the enhanced public participation processes, the equity reporting requirements, the capacity to conduct existing licence reviews in declared source areas — all of these represent real resource demands. Without dedicated funding mechanisms, the risk is that new obligations are created on paper but remain unimplemented in practice, which would be the worst of both outcomes. As it stands, many of the issues with access to water and water protection are due to a lack of implementation, which can have budgetary roots. It is therefore recommended that an independent fiscal impact assessment of the Amendment Bill's implementation requirements should be conducted and published before enactment. The assessment should identify the additional resources required for each major new obligation, propose funding mechanisms including a dedicated Water Source Area Protection Fund, and establish a minimum budget floor for compliance monitoring activities. It should also include current budgetary deficits.

SPECIFIC COMMENTS

96. The specific comments in this section are set out below, including suggested wording and closing gaps in the existing Act that have not been addressed in the Amendment Bill. “Clauses” refer to clauses in the Amendment Bill and “sections” refer to sections in the NWA.

Clause/ section	Current formulation	Comment/ suggested change
Clause 1 (amending section 1) - clause 1(f)	“strategic water source area” means areas of land that either supplies a disproportionately large quantity of mean annual surface water runoff in relation to the land areas and is scientifically considered nationally important or has high groundwater recharge and where the groundwater forms a nationally important resource, or a land area that meets both criteria;	Freshwater Ecosystem Priority Areas (“FEPAs”) are defined as – ‘strategic spatial priorities for conserving freshwater ecosystems and associated biodiversity, determined through a process of systematic biodiversity planning and identified using data on freshwater ecosystem types, species and ecological processes.’⁶⁴ The definition of “strategic water source area” itself includes ecological/biodiversity importance, which extends to FEPA-identified areas. This should be explicitly included in the definition of SWSAs in order to add clarity and greater strategic protection. <i>Suggested wording:</i> “strategic water source area” means areas of land that— (a) either supplies a disproportionately large quantity of mean annual surface water run-off in relation to the land area and is scientifically considered nationally important; or (b) has high groundwater recharge and where the groundwater forms a nationally important resource; or (c) is identified as nationally or provincially important for the maintenance of freshwater biodiversity in the most recent Freshwater Ecosystem Priority Area assessment, National Wetland Map, or National Biodiversity Assessment published by the South African National Biodiversity Institute; or (d) meets any combination of paragraphs (a), (b) and (c);
Clause 3 (amending section 5)	3. Section 5 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:	Section 5(4)(b) currently requires the National Water Resource Strategy (“NWRS”) to be reviewed by the Minister “at intervals of not more than five years”. The NWRS is the Act’s foundational framework document. It governs the protection, use, development,

⁶⁴ Atlas of Freshwater Ecosystem Priority Areas in South Africa: Maps to support sustainable development of water resources. August 2011. WRC Report No. TT 500/11 (“**FEPA Atlas**”) at page 60.

	“(b) must be reviewed <u>by the Minister</u> at intervals of not more than [five] 10 years.”	conservation, management and control of all water resources in South Africa and every organ of state and water management institution must give effect to it. Extending its review cycle to a decade materially weakens the state's capacity to respond to changing hydrological, ecological, climatic and socio-economic conditions. The extension sits uneasily alongside the Bill's own stated objectives. Clause 2 of the Bill amends the purpose provision (s 2) to add "managing climate variability, and change, extreme events such as floods and droughts" (s 2(k)) and a new purpose of "promoting effective water conservation and water demand management" (s 2(l)). A strategy document that is revisited once a decade is a poor vehicle for managing variability and extreme events that, by their nature, require more responsive, adaptive planning. The classification of water resources and resource quality objectives and the Reserve are, under the Bill, also placed on a 10-year review cycle. Layering a 10-year NWRS cycle on top of 10-year classification and Reserve cycles compounds the risk that the entire protective framework becomes static for a full decade at a time, precisely as climate impacts on water availability are accelerating. Section 24 of the Constitution requires reasonable legislative and other measures that prevent ecological degradation, promote conservation and secure ecologically sustainable development. A framework instrument reviewed only once a decade is difficult to reconcile with the responsiveness that reasonableness under s 24 implies, particularly for a resource as variable and climate-sensitive as water. <u>Recommended position:</u> Retain the five-year review period in section 5(4)(b). If administrative capacity genuinely necessitates a longer ordinary cycle, propose in the alternative that the Bill introduce a mandatory trigger for interim review (for example, on declaration of a national disaster/drought, on receipt of materially new scientific data, or on a material deviation between projected and actual water availability), so the strategy is not fixed for ten years irrespective of changed circumstances. Section 5(4)(b) deals with the strategy review period, and could be reworded in the following manner: <i>“The strategy review period must be reviewed by the Minister at intervals of not more than 10 years, provided that the Minister must initiate an early review where credible scientific evidence indicates that climate change or climate variability has materially altered water availability in any water management</i>
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		<i>area, or where the Department's own monitoring systems indicate a significant and sustained departure from the hydrological baselines on which the current strategy is founded."</i> The above-mentioned wording retains 5-year baseline review with 10-year maximum for well-resourced cycles.
Section 6 of NWA	6. Contents of national water resource strategy. (1) The national water resource strategy must, subject to section 5(4)(a)— (a) set out the strategies, objectives, plans, guidelines and procedures of the Minister and institutional arrangements relating to the protection, use, development, conservation, management and control of water resources within the framework of existing relevant government policy in order to achieve— (i) the purpose of this Act; and (ii) any compulsory national standards prescribed under section 9 (1) of the Water Services Act, 1997 (Act No.108 of 1997); (b) provide for at least— (i) the requirements of the Reserve and identify, where appropriate, water resources from which particular requirements must be met; (ii) international rights and obligations; (iii) actions to be taken to meet projected future water needs; and (iv) water use of strategic importance;	Section 6 of the NWA provides for the contents of the National Water Resource Strategy ("NWRS"). Presently, section 6 of the NWA does not provide for the funding required for the implementation of the NWRS. Historically, the implementation of past iterations of the NWRS has been limited by a lack of provisions for the funding of its implementation.⁶⁵ We submit that to ensure that future NWRSs are readily implementable, the Amendment Bill must propose an addition to section 6(1) of the NWA that requires an NWRS to provide a framework for the funding required for its implementation. <i>Suggested wording:</i> Section (6)(1) The national water resource strategy must, subject to section 5(4)(a) ... <u>(m) provide a framework for the funding required for its implementation.</u>

⁶⁵ For example, the 2023 NWRS records at page 90 that 'ineffective financial management...is currently impacting negatively on the financial viability of water infrastructure, water management and water and sanitation services institutions.' The 2023 NWRS goes on to refer to need to develop a further document, namely the National Water Investment Framework, in order to determine how the 2023 NWRS's implementation will be funded.

	(c) establish water management areas and determine their boundaries; (d) contain estimates of present and future water requirements; (e) state the total quantity of water available within each water management area; (f) state water management area surpluses or deficits; (g) provide for intercatchment water transfers between surplus water management areas and deficit water management areas; (h) set out principles relating to water conservation and water demand management; (i) state the objectives in respect of water quality to be achieved through the classification system for water resources provided for in this Act; (j) contain objectives for the establishment of institutions to undertake water resource management; (k) determine the interrelationship between institutions involved in water resource management; and (l) promote the management of catchments within a water management area in a holistic and integrated manner.	
Section 9 of NWA	9. Contents of catchment management strategy. A catchment management strategy must— (a) take into account the class of water resources and resource quality objectives contemplated in Chapter 3,	Section 9 of the NWA provides for the contents of a catchment management strategy (“CMS”). As is the case with the NWA’s provisions on the NWRS (set out above), section 9 of the NWA does not require a CMS to provide for the funding required for its implementation. We submit that to ensure that future CMSs’ are readily implementable, the Amendment Bill must propose an addition to section 9(1) of the NWA that requires a CMS to provide a framework for the funding required for its implementation.

	the requirements of the Reserve and, where applicable, international obligations; (b) not be in conflict with the national water resource strategy; (c) set out the strategies, objectives, plans, guidelines and procedures of the catchment management agency for the protection, use, development, conservation, management and control of water resources within its water management area; (d) take into account the geology, demography, land use, climate, vegetation and waterworks within its water management area; (e) contain water allocation plans which are subject to section 23, and which must set out principles for allocating water, taking into account the factors mentioned in section 27(1); (f) take account of any relevant national or regional plans prepared in terms of any other law, including any development plan adopted in terms of the Water Services Act, 1997 (Act No. 108 of 1997); (g) enable the public to participate in managing the water resources within its water management area; (h) take into account the needs and expectations of existing and potential water users; and (i) set out the institutions to be established.	<u>Suggested wording:</u> 'Section (9)(1) A catchment management strategy must – ... <u>(i) provide a framework for the funding required for its implementation.'</u>
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Sections 12 and 13 of NWA (suggested additions to the Bill)	12. Prescription of classification system (1) As soon as is reasonably practicable, the Minister must prescribe a system for classifying water resources. (2) The system for classifying water resources may— (a) establish guidelines and procedures for determining different classes of water resources; (b) in respect of each class of water resource— (i) establish procedures for determining the Reserve; (ii) establish procedures which are designed to satisfy the water quality requirements of water users as far as is reasonably possible, without significantly altering the natural water quality characteristics of the resource; (iii) set out water uses for instream or landbased activities which activities must be regulated or prohibited in order to protect the water resource; and (c) provide for such other matters relating to the protection, use, development, conservation, management and control of water resources, as the Minister considers necessary. 13. Determination of class of water resources and resource quality objectives (1) As soon as reasonably practicable after the Minister has prescribed a system for classifying water resources the Minister must, subject to subsection (4), by notice in	Section 12 empowers the Minister to prescribe a system for classifying water resources, which may establish procedures for determining the Reserve, procedures to satisfy water quality requirements, and water uses that must be regulated or prohibited to protect the water resource. Section 13 requires the Minister to determine, for every significant water resource, a class and resource quality objectives ("RQOs"), which may relate to the Reserve, instream flow, water level, the presence of substances, the characteristics and quality of the resource and its instream/riparian habitat, and "the characteristics and distribution of aquatic biota" (s 13(3)(f)). The purpose clause already commits the Act to "protecting aquatic and associated ecosystems and their biological diversity" (s 2(g)). Sections 12 and 13, however (as the primary technical and legal mechanisms that translate that purpose into binding, enforceable standards) refer to biodiversity only obliquely, through "the characteristics and distribution of aquatic biota". This falls short of requiring the classification system or RQOs to have express regard to ecological importance, sensitivity, or the conservation status of dependent ecosystems and species. The Bill is a missed opportunity in this respect. It inserts a detailed new Chapter 3A establishing machinery to identify and protect "strategic water source areas" defined by their importance for water supply (runoff and groundwater recharge), including a requirement to publish "relevant scientific data" underpinning that identification (new s20A(2)(a)(i)). No equivalent recognition or process is extended to water resources of high ecological or biodiversity importance. For example, resources associated with National Freshwater Ecosystem Priority Areas or threatened or protected ecosystems and species identified under NEMBA. Without an express biodiversity criterion, there is a real risk that classification and RQO-setting proceed on a narrow water-quantity/quality basis while ecologically critical but low-yield systems (which are often exactly the systems of highest conservation value) are deprioritised. <i>Suggested amendment: section 12(2)</i> Insert an express biodiversity criterion into the matters the classification system may address, for e.g.: <u>"in respect of each class of water resource, require that biodiversity, including threatened or protected ecosystems and species dependent on the water resource, and any applicable freshwater ecosystem priority area, be taken into account in determining the class of the water resource."</u> <i>Suggested amendment: section 13(3)</i> Insert a new paragraph, e.g. <u>"(fA) the biodiversity and ecological integrity of the water resource, including any threatened or protected ecosystems or species dependent on it;"</u> and require, under s 13(4), that any relevant biodiversity assessment or spatial biodiversity plan (such as a bioregional plan under NEMBA or a freshwater ecosystem priority area designation) be identified and taken into account, and disclosed as part of the public notice process.
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	the Gazette, determine for all or part of every significant water resource— (a) a class in accordance with the prescribed classification system; and (b) resource quality objectives based on the class determined in terms of paragraph (a). (2) A notice in terms of subsection (1) must state the geographical area in respect of which the resource quality objectives will apply, the requirements for achieving the objectives, and the dates from which the objectives will apply. (3) The objectives determined in terms of subsection (1) may relate to— (a) the Reserve; (b) the instream flow; (c) the water level; (d) the presence and concentration of particular substances in the water; (e) the characteristics and quality of the water resource and the instream and riparian habitat; (f) the characteristics and distribution of aquatic biota; (g) the regulation or prohibition of instream or landbased activities which may affect the quantity of water in or quality of the water resource; and (h) any other characteristic, of the water resource in question.	
Section 14 of NWA (suggested addition to the Bill)	14. Preliminary determination of class or resource quality objectives. (1) Until— (a) a system for classifying water resources has been prescribed; or (b) a class of a water resource or	Section 14 allows the Minister, until a classification system has been prescribed or a class/RQOs finally determined under s 13, to make a "preliminary determination" of the class or RQOs of a water resource. A section 13 determination "supersedes" a preliminary determination (s 14(2)), implying that, until then, the preliminary determination is legally operative (including for purposes of authorising water use before a class or RQOs have been finally determined (s 22(5)(d))).

	resource quality objectives has been determined, the Minister may, for all or part of a water resource make a preliminary determination of the class or resource quality objectives. (2) A determination in terms of section 13 supersedes a preliminary determination.	Section 13(4) requires the Minister, before making a full determination, to publish the proposed class, proposed RQOs, the geographical area affected, and the requirements for compliance, and to invite and consider written comment over a period of at least 60 days. Section 14 imposes no equivalent obligation. A preliminary determination may remain legally operative for an indefinite period, since the Act sets no deadline for finalising a s 13 determination. It may be made without any disclosure of the scientific basis for that determination, and without any opportunity for interested and affected parties to comment. This is a material transparency and accountability gap given the legal consequences that flow from a preliminary determination, including that it may found the basis on which water use is authorised in the interim (s 22(5)(d)). The right of access to information (s 32 of the Constitution, given effect through the Promotion of Access to Information Act (“PAIA”)⁶⁶), and the participatory and precautionary principles reflected in s 2 of NEMA, support a disclosure obligation proportionate to the significance and potential duration of a preliminary determination, even where a full 60-day public comment process (as under s 13(4)) may not be administratively feasible for genuinely time-sensitive preliminary determinations. <i>Suggested amendment</i> Insert a new subsection, e.g. section 14(1A): “The Minister must, as soon as practicable after making a preliminary determination under subsection (1), publish that determination, together with the scientific data, assessment or other information on which it is based, by notice in the Gazette or by any other means reasonably calculated to bring it to the attention of interested and affected persons.”
Clause 6 (creating section 18A)	6. The following section is hereby inserted after section 18 of the principal Act: “Review of Reserve 18A. The Reserve, as determined in terms of section 16, may be reviewed by the Minister at intervals of not more than 10 years.”.	We welcome that the Amendment Bill allows for the 10-year review of the Reserve by the Minister. We note that the Reserve (being the quantity and quality of water required to satisfy basic human needs and protect aquatic ecosystems)⁶⁷ is subject to impacts of climate change, necessitating a periodic review. Accordingly, the Amendment Bill should provide for the compulsory review of the Reserve, rather than allowing the Minister discretion to do so. Further, we submit that, considering the importance of the Reserve in maintaining water sources and the sustainability thereof, a 10-year review period is far too long. A shorter review period is needed in order to ensure that the Reserve is protected and so that decisions about water use are based on the most up to date scientific information.

⁶⁶ Act 2 of 2000.

⁶⁷ Per the definition of the “Reserve” in section 1 of the NWA.

		<i>Suggested revised wording:</i> Review of Reserve 18A. The Reserve, as determined in terms of section 16, may <u>must</u> be reviewed by the Minister at intervals of not more than 40 <u>5</u> years.'
Clause 7 (creating section 20A)	20A. (1) The Minister must, within three years of the commencement of this Chapter, by notice in the <i>Gazette</i>, publish— (a) a list of areas identified as strategic water source areas; and (b) a map indicating the geographical location and size of each strategic water source area. (2) The notice must— (a) specify— (i) the criteria used to identify the strategic water source areas, (ii) the risk category relating to each strategic water source area; (iii) the major threats faced by each strategic water source area; and (iv) the importance of each strategic water source area; and (b) invite written public comments, on intended declaration of the identified areas as strategic water source areas, to be submitted to the Minister within 30 days after publication of the notice. (3) The Minister must, after considering any public comments received pursuant to the invitation referred to in subsection (2)(b), publish the final list of declared strategic water source areas including the details in subsections (1)(b) and (2)(a). (4) The Minister may, where necessary, amend the list of declared strategic	As set out in the general comments above, we propose that section 20A should be amended to – 1. Provide for community notification of the proposed list of SWSAs; 2. Provide for a public participation procedure where the Minister seeks to amend the published list of declared SWSAs, as is required for the initial declaration of the final list of SWSAs under section 20A(4) of the Amendment Bill; 3. Provide for a transitional freeze mechanism; and 4. Provide for interim SWSAs, being the existing recognised SWSAs identified on the national web based environmental screening tool, pending the Minister's publication of the proposed list of SWSAs under section 20A(2) of the Amendment Bill. We therefore propose the following amendments and the addition of new subsections (5), (7) and (8). Suggested addition of section 20A(2)(c) which deals with community notification of the intended SWSAs: '(2)... <i>(c) The notice must be published in at least two newspapers widely circulating in the affected area and must be translated into the predominant official language of that area. The responsible authority must take reasonable steps, appropriate to local conditions, to ensure that affected communities, including those with limited access to print media or formal government channels, are informed of the proposed declaration, the implications thereof for land and water use in the area, and their right to submit written comments.'</i> Suggested addition of a new section 20A(5) to provide for public participation for the amendment of the list of SWSAs: Noting the importance of SWSAs for water security, food security, power generation and development, we are of the view that the public must be notified ahead of the Minister exercising their power to amend the list of declared SWSAs, as set out in proposed section 20A(4) of the Amendment Bill. The public must also have an opportunity to comment on any such proposed amendment. To give effect to

	water source areas, where the circumstances that led to the declaration of those strategic water source areas have changed or improved scientific data becomes available. (5) 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 strategic water source areas, which specify— (a) activities which are prohibited from being conducted in and around strategic water source areas; and (b) activities which are restricted when being conducted in and around strategic water source areas.	procedural fairness, the Amendment Bill should require that any Ministerial amendment of the list of declared SWSAs is subject to a notice and comment procedure, just as the Amendment Bill requires for the Minister’s initial declaration of SWSAs. <u><i>‘(5) Before amending the list of declared strategic water source areas under subsection (4), the Minister must –</i></u> <u><i>(a) publish in the Gazette, and in at least two newspapers widely circulating in the affected area, translated into the predominant official language of that area, a notice that –</i></u> <u><i>(i) states their intention to amend the list;</i></u> <u><i>(ii) specifies the reasons that the amendment of the list is necessary; and</i></u> <u><i>(iii) invites written public comments on the intended amendment to be submitted to the Minister within 30 days after publication of the notice;</i></u> <u><i>(b) take reasonable steps, appropriate to local conditions, to ensure that affected communities, including those with limited access to print media or formal government channels, are informed of the proposed amendment, the implications thereof for land and water use in the area, and their right to submit written comments;</i></u> <u><i>(c) after considering any public comments received, decide whether to amend the list of declared strategic water source areas; and</i></u> <u><i>(d) publish in the Gazette the amended list of declared strategic water source areas including the details in subsections (1)(b) and (2)(a).’</i></u> <u>As a result of this additional subsection to the Amendment Bill, the provision in subsection (5) of the Amendment Bill will need to be renumbered as subsection (6) –</u> <u><i>‘(6) (5) 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 strategic water source areas, which specify—</i></u> <u><i>(a) activities which are prohibited from being conducted in and around strategic water source areas; and</i></u> <u><i>(b) activities which are restricted when being conducted in and around strategic water source areas.’</i></u> Suggested insertion of section 20A(7) which deals with a transitional freeze: <u><i>‘(7) From the date of publication of a notice under subsection (2) until the date of publication of the final list under subsection (3), no new water use licence application for open cast or underground mining, onshore oil and gas exploration and production, forestry plantation establishment, or large-scale agricultural development within a proposed strategic water source area identified in the notice shall be</i></u>
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		<i>accepted for processing by the responsible authority. Existing licensees may continue to operate within the scope of their existing authorisations during this period but may not expand the footprint or volume of their authorised activities.'</i> Suggested addition of section 20A(8) which caters for the protection of existing recognised SWSAs ahead of the subsection (2) notice: <i>'(8) Pending the Minister's publication of the proposed list of declared strategic water source areas in terms of subsection (2), the prohibitions and restrictions in sections 20B, 20C, 20D and 20E apply in respect of the strategic water source areas identified on the national web based environmental screening tool.'</i>
Clause 7 (creating section 20B)	Open cast and underground mining: 20B (1) The Minister may, in accordance with section 49, prescribe the manner, extent and procedure of reviewing a water use licence granted for mining activities contemplated in subsection (1), prior to the commencement of this Chapter. (2) The responsible authority may not issue a water use licence for any water use activity listed in section 21, relating to open cast mining or underground mining within a strategic water source area identified in terms of section 20A and categorised as high risk.	Section 20B(1) itself contains a drafting error: it empowers the Minister to prescribe a review process for "mining activities contemplated in subsection (1)", but subsection (1) is the review-prescription provision itself, and the mining activities in question are in fact described in subsection (2). The cross-reference should read "subsection (2)". We have five further concerns with this section, each of which is addressed in turn below. <i>Issue 1: Compulsory, not discretionary, review.</i> Unlike sections 20C(2) and 20D(2), which both require the Minister to prescribe the manner, extent and form of reviewing a water use licence granted for forestry or agricultural activities prior to the commencement of Chapter 3A, section 20B(1) merely provides the Minister with a discretion to do so for mining. Mining water use licences carry materially higher risk to strategic water source areas than forestry or agricultural licences (including, <i>inter alia</i>, acid mine drainage, tailings failure, and permanent aquifer drawdown) and there is no principled basis for treating review of these licences as discretionary when the equivalent review of forestry and agricultural licences is mandatory. "May" should be substituted with "must", consistent with sections 20C(2) and 20D(2). <i>Issue 2: No setback buffer.</i> Sections 20C and 20D each prohibit a licence within a strategic water source area unless a 32-metre setback has been established (ss 20C(1)(b), 20D(1)(b)). Section 20B contains no equivalent setback mechanism: the only qualification on the mining prohibition is the "high risk" categorisation addressed in Issue 3 below. This is a significant gap, given that the physical impact pathways of mining and prospecting (groundwater drawdown, seepage, acid mine drainage migration, subsidence) typically extend further, and are harder to contain, than the surface-water impacts a forestry or agricultural setback is designed to address. A setback requirement should be included in section 20B. For the reasons given in our comments on sections 20C and 20D, however, a fixed 32-

		metre figure is unlikely to be scientifically defensible for mining and prospecting specifically. A larger, risk-based setback, informed by hydrogeological assessment, should be considered rather than the mechanical reuse of the 32-metre figure applied to forestry and agriculture. <i>Issue 3: The “high risk” qualification should be removed.</i> Section 20B(2) prohibits a mining licence only within a strategic water source area “categorised as high risk” (a categorisation made by the Minister under section 20A(2)(a)(ii)). Sections 20C and 20D contain no equivalent limitation: they apply to any strategic water source area that is “threatened by or vulnerable to” the relevant activity, regardless of its formal risk category. There is no principled reason for mining, of all the regulated activities in Chapter 3A, to be subject to a narrower protective scope than forestry or agriculture. The “and categorised as high risk” qualifier should be deleted from section 20B(2) so that the prohibition applies to all strategic water source areas identified under section 20A, consistent with sections 20C and 20D. <i>Issue 4: Prospecting should be brought within scope.</i> Section 20B, as drafted, applies only to “open cast mining or underground mining”. It does not extend to prospecting, notwithstanding that prospecting activities (drilling, trenching, access road construction, and the associated water use) can themselves cause significant impacts on a strategic water source area, and that prospecting is frequently the precursor to a full mining right. “Prospecting” should be added to the scope of section 20B throughout. <i>Issue 5: The Department’s own 2030 vision supports an absolute prohibition, not merely a conditional one.</i> The Department of Water and Sanitation’s own National Water Resource Strategy, Third Edition (“NWRS-3”, approved March 2023), records as part of its 2030 vision for economic infrastructure the objective to “exclude watercourses from all mining activities in strategic water source areas”. This is a materially stronger position than the conditional, setback- and risk-category-qualified prohibitions in either the current section 20B or in sections 20C and 20D: it calls not for buffers, risk-tiering, or case-by-case review, but for the outright exclusion of mining from these watercourses. Given that this is the Department’s own stated policy position, adopted only three years before this Bill was introduced, we submit that section 20B should go further than sections 20C and 20D and impose an absolute prohibition on the grant of a water use licence for prospecting, open cast mining or underground mining within any strategic water source area identified under section 20A, without the setback or risk-category qualifications applicable to forestry and agriculture. <i>Recommended wording:</i> “20B. Open cast and underground mining, and prospecting
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		(1) The Minister must, prior to the commencement of this Chapter, prescribe the manner, extent and procedure for reviewing a water use licence granted for prospecting, open cast mining or underground mining activities contemplated in subsection (2). (2) The responsible authority may not issue a water use licence for any water use activity listed in section 21, relating to prospecting, open cast mining or underground mining, within a strategic water source area identified in terms of section 20A."
Clause 7 (creating section 20C)	Forestry plantations: 20C (1) A water use licence may not be granted in respect of forestry plantations or incidental activities within those strategic water source areas— (a) which are threatened by or vulnerable to streamflow reduction activities within or adjacent to a strategic water source area; or (b) where a 32-metre setback from the strategic water source area has not been established. (2) The Minister must prescribe the manner, extent and form of reviewing water use licence granted for such afforestation 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 identified under section 21, if the water use is— (a) for streamflow reduction activities within the identified strategic water source area; or (b) for any forestry plantations or activities incidental thereto.	We have two main concerns with this section. <i>Concern 1: The adequacy of a fixed 32-metre setback.</i> The new section 20C(1) provides that a water use licence may not be granted for forestry plantations or incidental activities within a strategic water source area which (a) is threatened by or vulnerable to streamflow reduction activities within or adjacent to the area, or (b) where a 32-metre setback from the strategic water source area has not been established. Section 20C(3) separately provides that the responsible authority may not issue a water use licence for streamflow reduction activities within the identified area, or for any forestry plantations or activities incidental thereto, without the qualification present in subsection (1)(b). The available buffer-zone science does not support a single, fixed setback distance as an adequate, generally applicable proxy for protecting water resource quality and biodiversity. Effective buffer width depends on slope, soil erodibility, vegetation cover, watercourse order and sensitivity, and the ecological value of the receiving system. Internationally, minimum widths of around 30 metres are commonly cited as a floor for water-quality protection alone, with considerably wider buffers (often 100 metres or more) recommended where terrestrial biodiversity and habitat connectivity functions are also a management objective. South Africa's own Water Research Commission buffer-zone guideline (developed for exactly this purpose, in relation to rivers, wetlands and estuaries) recommends a risk-based, site-specific methodology rather than a single fixed distance, precisely because slope, soils and ecological sensitivity vary too widely across catchments for one number to be protective everywhere. Strategic water source areas, as defined in the new Chapter 3A, will, by definition, span highly variable terrain; from steep, high-rainfall mountain catchments to gently sloping interior catchments. A uniform 32-metre figure is unlikely to be adequate in some settings and unnecessarily restrictive in others. Neither the Bill nor its explanatory memorandum discloses a scientific or technical basis for the 32-metre figure specifically, in contrast to the science-based approach the Bill itself prescribes for identifying strategic water source areas in the first place (new s 20A(2)(a)(i), requiring publication of "relevant scientific data"). The absence of an equivalent basis for the setback distance is a rationality concern.

		<i>Suggested amendment</i> Replace the fixed 32-metre figure with a requirement that the responsible authority determine a scientifically defensible, risk-based setback (having regard to slope, soil type, watercourse sensitivity and ecological importance, consistent with the WRC/DWS buffer-zone methodology), with a stated minimum (32 metres, or a larger figure more consistent with biodiversity-protection literature) operating only as a regulatory floor. In the alternative, at minimum require the Minister to publish the technical basis for the 32-metre figure before Chapter 3A takes effect. <i>Concern 2: Inconsistency between clause 20C and the Bill's explanatory memorandum.</i> Paragraph 3.7(c) of the memorandum on the objects of the Bill describes section 20C as providing for limitations or refusal of a licence relating to forestry plantations "where a 32-meter setback from the water source area has been established". This is the opposite of what section 20C(1)(b) itself provides: the clause refuses a licence where a setback has not been established, not where one has been established. Read literally, the memorandum's wording would perversely reward an applicant for failing to establish a buffer. This is flagged as a drafting inconsistency between the substantive clause and its own explanatory memorandum that should be corrected before the Bill proceeds, since an inaccurate memorandum (even though not part of the enacted law) risks being used to mischaracterise legislative intent in any future interpretive dispute, and its presence undermines confidence in the technical care taken elsewhere in the Bill.
Clause 7 (creating section 20D)	Agriculture. 20D (1) A water use licence may not be granted in respect of agricultural activities within those strategic water source areas— (a) which are threatened by or vulnerable to water use activities for agricultural purposes; or (b) where a 32-meter setback from the strategic water source area has not been established. (2) The Minister must prescribe the manner, extent and form of reviewing a water use licence granted for agriculture and other incidental activities as contemplated in subsection (1), prior to the commencement of	Section 20D mirrors section 20C for agricultural activities: subsection (1) refuses a licence for agricultural activities within a strategic water source area that is vulnerable to agricultural water use, or where a 32-metre setback has not been established; subsection (3) separately provides that a licence may not be issued for "any ploughing or activities incidental thereto, unless a 32-metre setback has been established." The comments made above on the adequacy of a fixed 32-metre setback apply equally here and are not repeated. The same inconsistency with the Bill's explanatory memorandum arises. Paragraph 3.7(d) again inverting the actual legal effect of the clause, which refuses a licence where a setback has not been established. Section 20D(3) narrows the operative prohibition to "ploughing" and activities incidental thereto, whereas subsection (1) refers more broadly to "agricultural activities". Ploughing is only one agricultural water use; others (for example irrigation infrastructure, on-farm water storage, or livestock-related water use) are not captured by the narrower wording in subsection (3). This drafting gap may

	this Chapter. (3) The responsible authority may not issue a water use licence for any water use activity identified under section 21, for any ploughing or activities incidental thereto, unless a 32-meter setback has been established.	unintentionally exclude a range of agricultural water uses from the setback requirement, undermining the provision's evident purpose of protecting strategic water source areas from the range of impacts associated with agriculture generally, not ploughing alone. <i>Suggested amendment:</i> Align section 20D(3) with the broader "agricultural activities" language used in subsection (1), so the setback requirement applies to the full range of agricultural water uses, not ploughing alone.
Insertion of section 20E in terms of clause 7	<i>Currently not in the NWA or Amendment Bill.</i>	To further the purpose of the Amendment Bill's addition of Chapter 3A, being the protection of SWSAs, we submit that Chapter 3A must be supplemented to prohibit the granting of WULs for certain onshore exploration and production activities within a SWSA. As stated in the general comments above, we welcome that clause 20 of the Amendment Bill bolsters the Minister's prior declaration of certain onshore exploration and production activities as controlled activities by including these activities in the NWA's section 37(1) list of controlled activities. However, noting that the Department's own policy position is that such exploration and production activities may have 'huge implications' on groundwater quality and the quantity of water supply,⁶⁸ we are of the view that this inclusion, and the resulting condition that such exploration and production requires authorisation under the NWA,⁶⁹ does not go far enough to protect water resources from their implications, particularly in SWSAs. We therefore propose that the Amendment Bill include a prohibition of the granting of a WUL within SWSAs in respect of the exploration or production of onshore naturally occurring hydrocarbons that require stimulation, including but not limited to, fracturing or underground gasification, extraction of oil, and any activity incidental thereto that may impact detrimentally on the water resource. <i>Suggested additional section 20E:</i> <u>"Onshore exploration or production of onshore naturally occurring hydrocarbons that require stimulation, including but not limited to, fracturing or underground gasification and extraction of oil</u> 20E. The responsible authority may not issue a water use licence for any water use activity listed in section 21, relating to the exploration or production of onshore naturally occurring hydrocarbons that <u>require stimulation, including but not limited to, fracturing or underground gasification, extraction of oil, and any activity incidental thereto within a strategic water source area identified in terms of section 20A."</u>

⁶⁸ 2023 NWRS at page 44 (pdf page 61).

⁶⁹ Section 37(2) of the NWA.

Clause 8 (amending section 21)	8. Section 21 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph: “(f) discharging waste or water containing waste into a water resource through a pipe, canal, sewer [, sea outfall] or other conduit;”.	Clause 8 deletes "sea outfall" from section 21(f). The memorandum (para 3.8) explains this on the basis that regulation of marine sea-outfall discharges is mandated to the Department of Forestry, Fisheries and the Environment ("DFFE"), while DWS' mandate is limited to estuaries as a category of watercourse. The Bill's own amended definitions contradict a clean jurisdictional separation. The amended definition of "estuary" (clause 1(b)) is now anchored to tidal influence and salinity rather than simple enclosure, and the amended definition of "watercourse" (clause 1(g)) continues to include estuaries. Sea outfalls typically discharge at or near the coastal margin, including at or near estuary mouths, and the interface between estuarine and marine waters is not a clean line: tidal exchange, currents and mixing zones mean a marine sea-outfall discharge can and does affect water quality within a "watercourse", including an estuary. Removing "sea outfall" from section 21(f) does not, by itself, transfer regulatory competence to DFFE; it simply removes that activity from the scope of a "water use" requiring authorisation under the NWA. Unless there is a clear, comprehensive, and operative parallel mechanism under DFFE's governing legislation that addresses water-quality impacts specifically (as distinct from marine and coastal environmental impacts more broadly), the amendment risks creating a regulatory gap rather than a clean handover of function. Section 2 of the NWA and section 24 of the Constitution call for a holistic, integrated approach to water resource protection. Deleting "sea outfall" without first confirming an unambiguous statutory basis for DFFE's water-quality mandate over such discharges, and a formal cooperative-governance mechanism between DWS and DFFE (consistent with Chapter 3 of the Constitution and the cooperative-governance principle already reflected in the NWA), risks under-regulation of a source of pollution with direct implications for coastal and estuarine water resources and biodiversity. <i>Suggestion:</i> Retain "sea outfall" in section 21(f). In the alternative, make its removal conditional on, and commence it simultaneously with, confirmed and gazetted regulatory arrangements between DWS and DFFE (for example a joint regulatory framework or memorandum of understanding under section 26) that ensure no sea-outfall discharge activity escapes regulation for water-quality purposes.
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Clause 9 (amending section 22)	Clause 9 of the Amendment Bill proposes the repeal of sections 22(6) – 22(10) of the NWA.	The existing lawful water uses (“ ELWUS ”), referred to in section 22(6) – (10) of the NWA, are the result of historical inequities in land and water allocations in South Africa. ⁷⁰ ELWU’s remain valid water uses in terms of section 34 of the NWA. With 30 years since the promulgation of the Constitution, and 28 years since the commencement of the NWA, the BLC and Natural Justice support the Amendment Bill’s repeal of the NWA provisions providing for compensation for a lapsed ELWU.
Clause 11 (inserting section 25A)	11. The following section is hereby inserted after section 25 of the principal Act: “Reallocation of water by Minister 25A. (1) The Minister may, in the public interest, reallocate water between water sectors, provinces or catchments. (2) The Minister must make a decision for a reallocation referred to in subsection (1), after consultation with any affected water sector, province or catchment management agency. (3) The Minister in making a decision to reallocate water must consider all relevant factors relating to the water resource, including those listed in section 27(1).”.	Suggested rewording of section 25A(2) dealing with community consultation in reallocation: <i>“The Minister must make a decision for a reallocation referred to in subsection (1), after meaningful consultation with any affected water sector, province, catchment management agency, and affected communities. Consultation with affected communities must include accessible engagement processes appropriate to local conditions, and must be conducted in the predominant official language of the affected area.”</i>
Clause 13 (amending section 27)	13. Section 27 of the principal Act is hereby amended— (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) whether the applicant is a fit and proper person as contemplated in section 27A;”; and	Clause 13 of the Amendment Bill proposes the substitution of section 27(1)(b) of the NWA, to require a responsible authority issuing a General Authorisation (“ GA ”) or WUL to take into account “whether the applicant is a fit and proper person as contemplated in section 27A”. We note that the 2023 NWRS records high levels of illegal water use and pollution, and a lack of capacity to deal with these contraventions. ⁷¹ We therefore welcome that the Amendment Bill proposes the addition of the concept of a “fit and proper person” (being one who has not contravened the NWA, any directive issued under the NWA, or any legislation applicable to water resources management and water pollution) through section 27A to the NWA. To reinforce the proposed section 27A, we propose that the Amendment Bill

⁷⁰ See for example Viljoen G, Moolman J and Olivier N (2024). ‘Critical reflections on existing lawful water uses (ELUs) in South African water law’ in *Water SA* <https://scielo.org.za/pdf/wsa/v50n4/01.pdf> at page 323, and Murombo T (2026) ‘Transforming water resource governance in South Africa using an ‘untransformed’ law: the courts and the National Water Act of 1998’ in *Water Policy* Vol 28 No 3 at pages 414 and 416.

⁷¹ 2023 NWRS at page 46 (pdf page 63).

	(b) by the addition of the following subsections: “(3) A responsible authority must, when considering an application for water use authorisation, advance the redress of past racial and gender discrimination when making a decision to issue a licence or general authorisation. (4) A responsible authority, after taking into account the demographic composition of the water users, in particular a water management area, may set aside a certain volume of water in each water management area to achieve the redress contemplated in subsection(3).”.	provide that if an applicant for a GA or WUL is not a fit and proper person in terms of section 27A, they cannot be granted a GA or WUL. In our view this is more clearly prohibitive than the current Amendment Bill’s wording of proposed section 27(1)(b), which merely makes whether the applicant is a fit and proper person under section 27A a factor to consider in the granting of a GA or WUL. <i>Suggested revised wording:</i> 1. <u>Deletion of section 27(1)(b) of the Amendment Bill –</u> <u>“(b) whether the applicant is a fit and proper person as contemplated in section 27A;”;</u> 2. <u>Addition of new section 27(5) to the Amendment Bill –</u> <u>“(5) A responsible authority may not issue a general authorisation or licence to an applicant who is not a fit and proper person as contemplated in section 27A”.</u>
Clause 14 (creating section 27A)	14. The following section is hereby inserted in the principal Act after section 27: “Fit and proper person 27A. (1) In order to determine whether a person is a fit and proper person for the purposes of section 27(1)(b), when issuing a licence or general authorisation, a responsible authority must consider all relevant factors.	Clause 13 of the Amendment Bill proposes the addition of section 27A of the NWA. As stated above in the specific comment on section 27 of the NWA (clause 13 of the Amendment Bill), we welcome the Amendment Bill’s proposed addition of section 27A(2)(a), which rewards GA and WUL applicants’ past compliance (and penalise non-compliance) with the NWA and legislation applicable to water resources management and water pollution. However, there is a gap in the scope of legislation relevant to determining whether a GA or WUL applicant is a fit and proper person in section 27A, which should logically also include all environmental management legislation, being all ‘specific environmental management Acts’ as defined in NEMA.⁷² <i>Suggested revised wording:</i> “Fit and proper person

⁷² Under section 1 of NEMA, as amended, the following legislation are specific environmental management Acts –

- (a) the Environment Conservation Act, 1989 (Act 73 of 1989);
- (b) the National Water Act, 1998 (Act 36 of 1998);
- (c) the National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003);
- (d) the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004);
- (e) the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004);
- (f) the National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008);
- (g) the National Environmental Management: Waste Act, 2008 (Act 59 of 2008);
- (h) the World Heritage Convention Act, 1999 (Act 49 of 1999); and
- (i) the Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965).

	(2) The factors contemplated in subsection (1), which disqualify a person from being considered a fit and proper person include whether that person— (a) has contravened or failed to comply with this Act, any directive issued in terms of this Act, or any legislation applicable to water resources management and water pollution; (b) is or has been a director or senior manager of a company, firm or a juristic person which has been found guilty of contravening or failed to comply with this Act, any directive issued in terms of this Act, or any legislation applicable to water resources management and water pollution; or (c) has held a water use licence or is entitled to continue with an existing lawful water use in terms of section 34, and that licence or entitlement has been suspended or revoked.”.	27A ... (2) The factors contemplated in subsection (1), which disqualify a person from being considered a fit and proper person include whether that person— (a) has contravened or failed to comply with this Act, any directive issued in terms of this Act, <u>any specific environmental management Act</u>, or any legislation applicable to water resources management and water pollution; (b) is or has been a director or senior manager of a company, firm or a juristic person which has been found guilty of contravening or failed to comply with this Act, any directive issued in terms of this Act, <u>any specific environmental management Act</u>, or any legislation applicable to water resources management and water pollution; or’
Section 28(1)(e) of the NWA	28. Essential requirements of licences. (1) A licence contemplated in this Chapter must specify— (e) the licence period, which may not exceed forty years; (f) the review periods during which the licence may be reviewed under section 49, which must be at intervals of not more than five years.	Section 28(1)(e) requires a water use licence to specify "the licence period, which may not exceed forty years". Section 28(1)(f) separately requires the licence to specify review periods of not more than five years, but a review under section 49 may only amend the conditions of a licence, not its period (s 49(2)). The Bill does not amend section 28. A licence period of up to 40 years sits awkwardly against a national water resource strategy that the Bill proposes to place on a 10-year review cycle (clause 3), and classification/ Reserve determinations that the Bill places on parallel 10-year cycles (new ss 15A, 18A). A licence can therefore span four full NWRS cycles and four full classification/ Reserve review cycles, with the licence period itself immune from adjustment on review (s 49(2)). This risks locking in historical allocations well beyond the planning horizon of the instruments meant to guide how water should be allocated. While mindful not to unduly burden the state’s administrative system, a shorter maximum licence period would better align individual licences with the periodic strategy, classification and Reserve review cycles, and would

		support more responsive reallocation of water in the public interest. This would be consistent with the Bill's own emphasis on redress and its "use-it-or-lose-it"/reallocation provisions. <i>Suggestion:</i> A differentiated approach is recommended; one that has shorter maximum periods for licences in strategic water source areas or over-allocated catchments, with longer periods elsewhere.
Clauses 16-17 (amending sections 32-33)	Clauses 16 and 17 of the Amendment Bill proposes the repeal of provisions in section 32 and 33 of the NWA that presently allow the declaration of ELWUs.	As stated above in the specific comment on section 22 of the NWA (clause 9 of the Amendment Bill), ELWUs are the result of historical inequities in land and water allocations in South Africa. ELWUs, as provided for in the NWA, were meant to be a 'transitional and temporary' entitlement. ⁷³ With 30 years since the promulgation of the Constitution, and 28 years since the commencement of the NWA, the BLC and Natural Justice support the Amendment Bill repealing a responsible authority's power to continue declaring ELWUs.
Clause 18 (amending section 34)	18. Section 34 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph: "(aA) any new conditions or obligations, necessary to protect the water resources and the environment, which the responsible authority may impose;"	Clause 18 of the Amendment Bill proposes amending section 34(1) of the NWA. We support that the Amendment Bill reinforces ELWUs being subject to the NWA's framework by allowing a responsible authority to impose on ELWUs new conditions or obligations, as necessary to protect the water resources and the environment. In addition, as motivated for in the General Comments above, we also suggest the following: Suggested rewording of section 34A(2) dealing with protective carve out for resource constrained users within the notion of the use-it-or-lose-it scenario: <i>"A responsible authority exercising the power under subsection (1) must have regard to the financial, infrastructural, and operational circumstances of the entitlement holder and must not curtail an entitlement held by a small-scale, subsistence, or emerging farmer where non-exercise of the full entitlement volume resulted from circumstances beyond that person's reasonable control, including drought, crop failure, equipment breakdown, or lack of access to credit for infrastructure development, provided that the entitlement holder notifies the responsible authority of such circumstances within the period specified by the Minister."</i>

⁷³ See Murombo T (2026) 'Transforming water resource governance in South Africa using an 'untransformed' law: the courts and the National Water Act of 1998' in *Water Policy* Vol 28 No 3 at page 416.

Section 41(4) and (5) of the NWA	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; (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. (5) The Minister must align and integrate the process for consideration of a water use licence with the timeframes and processes applicable to applications for— (a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); and (b) environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No.107 of	Section 41(4) and (5) of the NWA provides for the public participation processes within a WULA. Per the above general comment regarding public participation in the WULA process, section 41(4) of the NWA should be amended to oblige a responsible authority to require a WUL applicant to follow the public participation process that section 41(4) and (5) sets out. <i>Suggested revised wording:</i> <u>41 Procedure for licence applications</u> --- '(4) A responsible authority may^{must}, 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; (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. (5) The Minister must align and integrate the process for consideration of a water use licence with the timeframes and processes applicable to applications for— (a) licences, permits or rights for prospecting, exploration, mining and production in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002); and (b) environmental authorisations in terms of the National Environmental Management Act, 1998 (Act No.107 of 1998) or any specific environmental management act.'
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	1998) or any specific environmental management act.	
Section 93(2A)	<i>Not currently provided for in the NWA or Amendment Bill.</i>	Suggested rewording of section 93(2A) dealing with transformation Strategy Minimum Standards: <i>“The strategy required by this subsection must include — (a) an assessment of the current racial and gender composition of the association's membership, management committee, and employees; (b) measurable targets for achieving representative racial and gender composition in each of those components, informed by the demographic profile of the water management area; (c) a timeframe of not more than five years for achieving those targets; (d) specific measures to be implemented to achieve the targets, including outreach, capacity building, and any necessary amendments to membership criteria; and (e) provision for annual reporting to the Minister on progress against the targets, to be included in the association's annual report.”</i>
Section 121(a) of the NWA	121. Factors to be considered in declaring dam or category of dams with safety risk. In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider— (a) the need to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams’	The NWA imposes certain requirements on a declared category of dams, or a dam, with a safety risk, including that such a dam owner must register the dam,⁷⁴ and the application of the dam safety regulations.⁷⁵ Presently, section 121(a) of the NWA does not require the Minister to consider the need to protect the environment in declaring a category of dams, or a dam, to be a category of dams, or a dam, with a safety risk. This omission means that the Minister is not required to take into account the impacts of possible dam failure on surrounding ecosystems and biodiversity in declaring a category of dams or a dam as a safety risk. This is inconsistent with the NWA’s section 2(g) purpose of ensuring that South Africa’s water resources are protected, used, developed, conserved, managed and controlled in ways that protect aquatic and associated ecosystems and their biological diversity. To remedy this, we propose the following amendment: <i>Suggested revised wording</i> ‘121. Factors to be considered in declaring dam or category of dams with safety risk In declaring a category of dams or a dam to be a category of dams or a dam with a safety risk, the Minister must consider (a) the need to protect the public, property, <u>environment</u> and the resource quality against the potential hazard posed by the dam or category of dams;

⁷⁴ Section 120(1) of the NWA.

⁷⁵ Regulations Regarding the Safety of Dams in terms of section 123(1) of the NWA in GNR 139 in GG 35062 dated 24 February 2012.

Clause 33 (amending section 151)	33. Section 151 of the principal Act is hereby amended— (a) by the substitution for subsection (2) of the following subsection: <u>“(2) A person convicted of an offence in terms of subsection (1)(a), (c), (d), (e), (h), (i) or (j) 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.”</u>; and (b) by the addition of the following subsection: <u>“(3) Any person convicted of an offence in terms of subsection (1)(b), (f), (g), (k), (l), or (m) is liable—</u> <u>(a) in the case of a first conviction, to a fine of R1 million and one year imprisonment or any other sentence the court consider appropriate; and</u> <u>(b) in the case of a second or subsequent conviction, to a fine of maximum R5 million or five years imprisonment or to both such fine and such imprisonment or any other sentence the court consider appropriate.”</u>	Formatting error: section 151(2)(b): the last bracket for “b” is missing. Clause 33 substitutes section 151(2) to provide that a person convicted of an offence under section 151(1)(a), (c), (d), (e), (h), (i) or (j) is liable to a fine not exceeding R10 million or imprisonment not exceeding 10 years, or both. A new section 151(3) provides that a person convicted of an offence under section 151(1)(b), (f), (g), (k), (l) or (m) is liable, on first conviction, to a fine of R1 million and one year's imprisonment (or such other sentence as the court considers appropriate), and on second or subsequent conviction, to a fine not exceeding R5 million or imprisonment not exceeding five years, or both, or such other sentence as the court considers appropriate. The general increase in penalties is welcomed as a strengthening of deterrence, consistent with the Bill's broader compliance-focused amendments, including the new personal liability of directors and municipal managers under section 156A. All of this is a welcome reform. However, the Bill nonetheless creates a materially lower penalty tier for offences under section 151(1)(b), (f), (g), (k), (l) and (m), capping even a second or subsequent conviction at R5 million or five years. Without visibility of the underlying list of offences in section 151(1) itself (which the Bill does not amend), it is difficult to assess whether this tiering reflects a defensible distinction in the severity or environmental consequence of the underlying conduct or is simply carried over from the pre-existing structure without fresh scrutiny. Water resource offences that fall into the lower tier can nonetheless cause severe and sometimes irreversible ecological harm, and a capped fine (particularly R1 million on a first conviction) may be treated by a well-resourced commercial or corporate offender as an acceptable cost of doing business rather than a genuine deterrent. These amounts will also depreciate over the years. Other jurisdictions that have recently reformed water-pollution penalty regimes have moved toward materially higher maxima, particularly for corporate and repeat offenders, and in some cases toward penalties calculated as a function of turnover or the financial benefit obtained from the offence, rather than a fixed cap. This approach avoids the fixed-cap ceiling becoming a routine cost of business for high-turnover entities and is proportionate. <i>Suggested amendment:</i> (i) Increase the maximum fine and imprisonment period available under section 151(3), particularly on second or subsequent conviction, so the gap between the two tiers is not so wide as to undermine deterrence for the lower-tier offences; (ii) introduce a turnover-based or profit-disgorgement-based penalty option, in addition to the fixed caps (natural persons), for corporate offenders.
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CONCLUSIONS AND RECOMMENDATIONS

97. The Amendment Bill represents a meaningful, but incomplete, step toward strengthening the protection, equitable use and sustainable management of South Africa's water resources. We welcome the Amendment Bill's strengthened equity and redress provisions, its explicit recognition of climate variability and change, its new protections for strategic water source areas, and its increased penalties for water-related offences. However, as set out in detail above, the Amendment Bill does not adequately integrate biodiversity and ecological integrity into its core mechanisms, leaves significant gaps in transparency, accountability and funding for implementation, and remains silent on several pressing issues, including groundwater protection, wastewater governance, and international water management.
98. Additional recommendations include:
- 98.1. Integrate biodiversity and ecological considerations explicitly into the classification system (sections 12 and 13) and into the definition of "strategic water source area", including by recognising Freshwater Ecosystem Priority Areas and other nationally recognised biodiversity priority datasets.
 - 98.2. Retain the five-year review period for the national water resource strategy in section 5(4)(b) and require both the national water resource strategy and catchment management strategies to include a funding framework for their implementation (sections 6 and 9).
 - 98.3. Strengthen Chapter 3A by making the review of mining water use licences compulsory, extending setback and scope protections (including to prospecting) under section 20B, removing the "high risk" qualifier, correcting the internal inconsistencies identified in sections 20C and 20D, and adopting a more accessible public notification process than Gazette publication alone.
 - 98.4. Retain "sea outfall" within the definition of water use in section 21, pending confirmed, harmonised regulatory arrangements between the Department and the Department of Forestry, Fisheries and the Environment.
 - 98.5. Strengthen procedural safeguards and public accountability around the Amendment Bill's new discretionary powers, including proactive publication of reasons for licensing decisions (section 42), a right to make representations before curtailment under section 34A, and mandatory public reporting on the exercise of the reallocation, curtailment, and fit-and-proper-person powers — the scope of the latter should in turn be broadened under section 27A to include contraventions of all specific environmental management Acts, not only the NWA.
 - 98.6. Commission and publish an independent fiscal impact assessment of the Amendment Bill's implementation requirements before enactment, including a dedicated funding mechanism for strategic water source area protection and compliance monitoring.
 - 98.7. Address the significant gaps left unaddressed by the Amendment Bill, namely groundwater and aquifer protection, chronic municipal wastewater non-compliance, the adequacy of Chapter 10's international water management framework, and the operationalisation of the section 27 constitutional right of access to water.
99. It is submitted that, subject to the amendments proposed in this submission, the Amendment Bill can meaningfully strengthen the protection, equitable use and long-term sustainability of South Africa's water resources, consistent with the State's obligations under sections 24 and 27 of the Constitution.

We would welcome the opportunity to engage further with the Department on any of the matters raised in this submission.

100. Kindly advise as to whether oral hearings will be held in respect of the Amendment Bill and if so, the details of such hearing.

101. Please do not hesitate to contact us if you require further information or clarity on these submissions.

Yours faithfully,

BIODIVERSITY LAW CENTRE NPC

Per:

Tabitha Paine

Senior Attorney

And

Khanya Sidzumo

Attorney

And

NATURAL JUSTICE

Per:

Allan Basajjasubi

Attorney