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Minister: Department of Water and Sanitation
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For attention: Chief Director: Water Use Licensing, Adv S Skosana
Per email: skosanam@dws.gov.za

**REVISION OF REGULATIONS REGARDING THE PROCEDURAL REQUIREMENTS FOR
WATER USE LICENSING APPLICATIONS AND AMENDMENTS PUBLISHED BY THE
DEPARTMENT OF WATER AND SANITATION IN GOVERNMENT GAZETTE 48630 OF 19
MAY 2023**

INTRODUCTION

BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations, and sectoral organisations. It represents South African business on macro-economic and high-level issues that affect it at the national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development, and transformation and to create an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive.

As a principal representative of business in South Africa, BUSA represents the views of its members in several national structures and bodies, both statutory and non-statutory. BUSA also represents businesses' interests in the National Economic Development and Labour Council (NEDLAC).

The Government Notice issued on 19 May 2023 for the proposed revision of regulations regarding the procedural requirements for water use licensing applications and amendments has reference. BUSA thanks the Department of Water and Sanitation (DWS) for the opportunity to make written submissions on behalf of its members on the proposed revised regulations. General comments on the proposed revised regulations are provided below and detailed comments are attached as Annexure 1 to this letter.

REGISTRATION NUMBER: 2014/042417/08

PRESIDENT: Bonang Mohale VICE PRESIDENT: Adrian Gore CEO: Cas Coovadia NEDLAC CONVENOR: Kaizer Moyane
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BUSA welcomes the reduction in the timeframe for licensing and developing the necessary regulatory framework to give effect to this. However, BUSA is concerned about the extent of the fundamental errors of law, as well the numerous typographical and grammatical mistakes that mean the proposed revised regulations are flawed and cannot be made law in their current form.

General issues of concern include:

- Inconsistency with the purposes of the NWA and contradiction of its provisions.
- Provisions are included that do not relate to procedural requirements for licence applications and go beyond the empowering provision under the NWA.
- Bad grammar, incorrect referencing and referencing of undefined terms is found throughout the document and creates a general sense of confusion.
- BUSA is not aware that a socio-economic impact assessment has been undertaken to inform the proposed revised regulations prior to their publication.

While BUSA and its members are fully supportive of the importance of transformation within the water sector and has actively engaged in initiatives to give effect to the Broad Based Black Economic Empowerment Act and its various codes, there is concern with provisions of Chapter 5 of the proposed revised regulations. Although section 27 of the NWA requires the responsible authority to consider all relevant factors before issuing a GA or licence, including those listed in section 27(1)(a)-(k) of the NWA, it appears that DWS has elevated only one requirement in section 27(1)(b). The NWA includes many provisions to facilitate the transformation of the water sector without additional regulatory burden, such as section 39 that would allow access to water by previously disadvantaged individuals with a reduced administrative requirement. In its current draft, Chapter 5 of the proposed revised regulations does not consider any existing transformation and partnership initiatives and may result in unintended consequences. Transformation and job creation requires investment in infrastructure, technological advancements, training, research and development, supportive policies and market development. However, due to the urgency to advance transformation, BUSA would encourage DWS to implement meaningful engagement with key stakeholders to reformulate the provision to mitigate risks to economic growth.

BUSA trusts that due consideration will be given to the comments in this submission and would appreciate receiving confirmation of comments that have been taken into account and reasons for those comments that have not been considered. Based on the numerous fundamental flaws in the proposed revised regulations, it is recommended that the DWS engage more widely with stakeholders and redraft the proposed revised regulations.

BUSA will be available for any further discussion or clarity required.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line.

Cas Coovadia
CHIEF EXECUTIVE OFFICER

Revision of regulations regarding the procedural requirements for water use licence applications and amendments – 19 May 2023

Annexure A

Regulation Clause	Comment	Recommendation
General	Headings and sub-headings do not correlate with what is in the body of the document, especially under Chapter 5 onward. Numerous typographical and grammatical mistakes	Careful review and editing required
Chapter 1: Definitions		
1(a): "Applicant" means a person or a representative of that person who makes an application for a water use licence or an application for an amendment of a water use licence in terms of the Act	It is not clear from the current definition that person refers to both natural and juristic persons as well as other types of business entities such as partnerships and trusts.	Proposed wording: "applicant" means a person (<i>natural or juristic, including trusts and partnerships</i>) or a representative of that person who makes an application for a water use licence or an application for an amendment of a water use licence in terms of the Act.

Regulation Clause	Comment	Recommendation
1(b): "Application for amendment" includes amendment request template in Annexure L, relevant registration form in Annexure D.	It is unclear what this definition refers to. There are different types of amendments provided for in the NWA. There is also no Annexure L attached to the Revised Regulations.	Proposal: <i>"application" means an application for a water use licence in terms of the Act.</i> This term should then be used consistently in the Regulations
1(d): "Cumulative impact" in relation to a water used, means the impact of a water use that in itself may not be significant, but may become significant when added to an existing and potential impact eventuating from similar or diverse water use activities or undertakings in the area		Recommended definition for "Cumulative impact" in relation to a water use, means the impact of a water use that in itself may not be significant, but may become significant when added to an existing and (or) potential impacts eventuating from similar or diverse water use activities or undertakings in the area. "Significant" needs to be defined and consulted on with stakeholders prior to finalisation of the regulations as this could be a substantive matter.
1(g): "Intra-catchment water use licence applications" means applications for projects that cross boundaries of one or more catchments	Intra-Catchment means within boundaries of single catchment area – Should the term not be "Inter-Catchment"?	The definition should be amended to "Inter-WMA water use licence applications". "Intra" means "within", but the rest of the regulation makes it clear that what is intended to be regulated are inter-catchment water uses, that is, water uses conducted in more than one catchment. The word "catchments" should be replaced by with "Water Management Areas". This makes more sense

Regulation Clause	Comment	Recommendation
		given the intention of regulation 6 and is more consistent with definitions contained in the NWA.
1(h): "multiple water use licence application" means a water use licence application with more than one water uses that are interlinked, provided the application belongs to one person and the water uses are exercised by that person		"Multiple water use licence application" means a water use licence application with more than one water uses that are interlinked, provided the application belongs to one applicant and the water uses are exercised by that applicant. Clarity is required on the meaning and intent of the clause as water uses may not be interlinked.
1(l): "sector"– means water use sector or an economic sector including mining, industry, agriculture, forestry, infrastructure and local government and private developments.	"sector"– Stats SA keeps SIC codes for economic sectors but it not 100% clear what 'water use sectors' are nor where this is defined and also the term "private development" is not defined. This term is not used elsewhere in the Revised Regulations. A definition of private development must be included in the regulations to rule out any ambiguity in respect of what constitutes a private development.	Define "water use sectors" and "private development"
1(n): "temporary transfer"- means a transfer of water use entitlement in terms of section 25(1) of the Act limited for an initial period of one year	Section 25 of the Act makes provision for the temporary transfer "...on such conditions as the water management institution may determine".	Remove maximum timeframe. This definition is inconsistent with intention and the power conferred on a responsible authority in

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with an option of applying for a further period of one year (maximum 2 years).	Section 25 does not prescribe a maximum timeframe.	section 25 of the NWA, which does not specify the meaning of "temporary". It is not legally competent for the Proposed Revised Regulations to impose a meaning of a term not stipulated in the NWA.
1(r): "Water use licence application" includes general information required in Annexure D, Checklists E and relevant specialist reports in Annexure F.	This definition is vague and cannot be regarded as an adequate definition.	A clear definition is required with regard to when an engagement with the DWS or a CMA is officially regarded as a water use licence application. There is no further reference to these Annexures elsewhere in the Proposed Revised Regulations. See detailed comments regarding Annexure D, E and F below
1(s): Additional definitions that are applicable to unconventional gas activities are found in Annexure F (9)	It is not legally competent to insert definitions in an Annex to the Proposed Amended Regulations.	All definitions should be included under sub-regulation 1 and there is no reason why they cannot be included there.
Purpose of these Regulations The purpose of these Regulations is to prescribe the procedure and requirements for water use licence applications as contemplated in Sections 41 of the Act, and for an amendment or renewal of water use licence as contemplated in Sections 50 and 52.		Only amendments dealt with under section 52 should be subject to these revised Regulations. Section 50 amendments are not required to follow the process set out in section 41 of the NWA unless that is specified under section 50(2)(b). It is clear that the legislature intended to provide for two different amendment processes; that contained in section 50 contemplates a different process in different circumstances than that provided for in section 52.

Regulation Clause	Comment	Recommendation
Chapter 2		
3. (1) When a period of days must, in terms of these Regulations, be reckoned from or after a particular day, that period must be reckoned as from the start of the day following that particular day to the end of the last day of the period. (2) For any action contemplated in terms of these Regulations for which a time frame is prescribed, the period of 15 December to 5 January must be excluded in the reckoning days. (3) Where a prescribed time frame is affected by the electronic system downtime, the timeframe must be extended by the number of days of the system downtime.	Challenges are introduced by viewing “electronic system downtime” as stopping the timer that may not be reasonable under all circumstances. Closure of the process from 15 December to 5 January makes no provision or guidance should any licence application becomes urgent and needs to be resolved during this period. There is no indication of how “electronic system downtime” will be measured or recorded (and by whom), or how and when news of such downtime will be communicated to applicants. This provision fails to promote accountability among those responsible for the functioning of the electronic system and provides no incentive for DWS to ensure that its systems are online and operational. It has been reported by industry that system downtime is a real concern. There is a call for official acknowledgement of downtime and authority will be allocated to compensate for the downtime.	There should be reasonable measures introduced to avoid the time frames being extended under all situations when the electronic system is down. This should not be an open ended time period. There should an option for “reasonable means” for submission of all applications in the event that the electronic system malfunctions, with an adjustment of the timeframes where manual systems are used. This sub-regulation must also place a positive obligation on the responsible authority to communicate the relevant electronic system down-time.
Chapter 3		

Regulation Clause	Comment	Recommendation
4(5): An applicant must have lawful access to a property(ies) in respect to the application.	Clarity required on how lawful access to properties will be verified.	These different types of legal ownership/access to land should be provided for in the regulations for clarity.
4(6): The water use licence shall lapse if the holder fails to exercise the authorised activities in terms of the licence within three years after the issuance of the licence.	This sub-regulation is unrelated to the procedural requirements for water use licence applications. It is not legally competent to impose in Proposed Revised Regulations a substantive provision of law not contained in the NWA. The three year period to start the water uses is a concern as some projects are run over a period of time with various initiation dates which maybe more than three years. Furthermore, construction of water infrastructure such as dams or water treatment plants could take longer than 3 years and the funding of such projects is usually subject to the activity having a valid water use licence in place. In the context of mining, three years is not feasible because mining projects take a long time to get off the ground. It must be considered that applications for a water use takes into account future expansion plans in order to ascertain the viability of a particular project, the water use applications are done for all the licences granted, applied for and future expansions. Therefore in this case the 3 years period is insufficient.	The validity of the WUL must be linked to the project duration and other licence timeframes. The regulation must propose a process for the water use licence holder to inform the department in instances when there are delays in the commencement of activities and the lapsing of the licence will be affected. Regulations should make provision for a deviation where circumstances beyond the control of a rights holder justify it. The DWS already has a review mechanism for WULs in place in terms of sections 28 and 49 of the NWA and can include conditions in a WUL in accordance with which an allocation or the validity period of a WUL can be reviewed, depending on the circumstances.

Regulation Clause	Comment	Recommendation
	What happens if vis major prevents the exercise of such rights, e.g. a drought? Water is a scarce resource and must be used productively but the regulations should make provision for a deviation where circumstances beyond the control of a rights holder justify it,	
4(7): The water use licence during production shall lapse if the holder fails to commence production of a regulated substance in terms of the licence within the three years after the issuance of the licence.	This sub-regulation is unrelated to the procedural requirements for water use licence applications. Further, the concepts of "a regulated substance" and "during production" are not defined in either the Revised Regulations or the NWA, so this provision is vague and lacks enforceability. It is not legally competent to impose in Proposed Revised Regulations a substantive provision of law not contained in in the NWA. What constitutes a regulated substance in terms of this regulation?	Requires consideration and revision, lack of clarity on the definition of regulated substance and production?
Alignment of authorisations of the Department with authorisations of other state Departments		
5(1): Water use licence applications that require authorisation(s) (a) in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA); and (b) in terms of National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) or any specific environmental	It is not clear when a water use licence application will "require authorisation(s)" in terms of the MPRDA or NEMA as this is not contemplated in sections 40 or 41 of the NWA, nor dealt with in the Proposed Revised Regulations. In terms of section 41, a responsible authority may require an applicant to provide an assessment by a competent person of the likely	

Regulation Clause	Comment	Recommendation
management act must be submitted and processed in an integrated manner.	effect of the proposed licence on the resource quality, but providing an assessment is not the same as requiring authorisation. Section 41(5) goes on to state that the Minister must align and integrate the process for consideration of a water use licence with the timeframes and processes applicable to applications for licences, permits or rights for prospecting, exploration, mining and production in terms of the MPRDA and environmental authorisations in terms of the NEMA, but no further substance is given to this provision and no clarity is provided by the Revised Regulations, so it is unclear at what stage these processes would be aligned and integrated. Although integration is mandated by this regulation, the mechanism for achieving that is not explained. This regulation contradicts the basic principles of staged environmental authorisation and the different processes that must be adopted for each of them. As one of the basic requirements of any EIA is the consideration of alternatives, including alternative sites (and potentially, therefore, alternative water sources), the EIA process should be reaching completion before the WULA process can commence. Furthermore, as the information requirements for an operational authorisation such as a WUL is much more	

Regulation Clause	Comment	Recommendation
	detailed than the information requirements for an authorisation like an EIA, these processes cannot run simultaneously, but should rather be properly dovetailed. By way of example- it makes no sense to spend millions on the detailed designs for a dam, which are required for a water use licence application, when the EIA has not yet been approved. We believe there is a misconception within the DWS that an EIA Report is sufficient as a water use licence application. There is no such word as "legislations".	
5(3): The responsible authority may determine reports that may be integrated to satisfy the requirements of these Regulations and that of the legislations referred to in sub-regulation (1).	Clarity required on how integrated reports will be decided upon and whether communication with various government departments has been conducted. Alignment with other departments is appreciated and supported.	Within the mining context, the reports and processes that should be integrated are known and these should be highlighted upfront in order to avoid duplicate requirements, these include reports required for the environmental authorisations, such as the reports on public participation process, environmental impact assessment (EIA), certain specialist studies etc. Integration between the requirement of these regulations and draft GN 704 should be sought, especially with regards to plans/reports required for WULAs that are already a requirement in terms of other legislation i.e. NEMA and its regulations, MPRDA. In line with the One Environmental System as envisaged for mining and related activities, DWS, DMRE and DFFE should coordinate their requirement for various

Regulation Clause	Comment	Recommendation
		reports into one report to avoid a situation where the same reports and studies are requested by different regulators.
6(1): Intra-catchment applications must be submitted to a provisional operations office or Catchment Management Agency (CMA) in which the majority of the water use activities are situated.	This sub-regulation should refer to "Inter-WMA water use licence applications" as this would be correct given the intention of this sub-regulation.	The sub-regulation requires rewording to make it clear if "majority of the water uses" refers to all water uses, or only to those water uses that require authorisation under a water use licence. The understanding is that the applications need to be lodged through the e WULAAS system, therefore Business would like some clarity in the required procedure of the intra catchment applications. It is therefore recommended that application should be done through the e WULAAS system. The timing of submitting the integrated report must be clear for.
6(2): The Provincial operations or CMA office where the application is submitted is responsible for assessment of the application and making a recommendation, in consultation with the provincial operations(s) or CMA where the other water uses are situated.	It is unclear to whom this recommendation should be made. Further, the sub-regulation, as currently drafted, contemplates a process in which the CMA of the area where most water uses will be conducted is empowered to overrule the one where fewer water uses are to be conducted. This may lead to irrational outcomes.	

Regulation Clause	Comment	Recommendation
6(3): The assessing provincial operations/CMA shall draft separate water use licences for each of the affected water management areas.	The requirement to compile separate WUL for a project will create additional work for the operating site and may initiate different requirements on the same operating site. One of the primary principles underpinning the NWA is the need for integration and co-ordination. This requirement appears to contradict the intention of section 22(4) of the NWA. If the intention is for two water use licences to be issued, it is unclear why an inter-catchment application must only be submitted to the CMA where the majority of the water use activities are situated. Having two entities issue different licences for the same activity is not only a duplication of efforts which will create a confusing process and an unnecessary administrative burden for the responsible authorities involved, but will be unduly onerous on water users and likely lead to contradictory licence conditions. It is unclear why two CMAs cannot cooperate to issue a single WUL.	
7(1): Any person who intends to apply for a water use authorisation must initiate a pre-application engagement with the Department by means of the e-WULAAS.	This provision is concerning as it purports to relate to all water use authorisations and therefore goes beyond the scope of section 26(1)(k) of the NWA, which is limited to prescribing procedural requirements for licence applications only. This is	

Regulation Clause	Comment	Recommendation
7(2): During the pre-application engagement contemplated in sub regulation (1) the responsible authority must advise the applicant on the need for an authorisation, type of authorisation and procedural requirements and required information for such.	apparently an attempt by DWS to legitimise its current policy of forcing water users who are lawfully entitled to use water under a GA or an ELU to submit to the e-WULAAS process. By its very name, the e-WULAAS relates only to water use licence applications. There is no "application" involved when a water user uses water under a GA or an ELU, unless it is for a declaration or verification of an ELU, but this is not specified, so there is therefore no rational explanation for why a water use which is lawful under a GA or an ELU requires a "preapplication engagement". Being forced to apply for a WUL where none is required places an enormous financial burden on applicants and will disproportionately affect poorer applicants. Significantly, regulation 7(1) does not stipulate a time period within which the responsible authority must engage with the applicant or advise the applicant on the need for an application, the type of authorisation, etc. Furthermore, the proposed Revised Regulations create a procedural gap with this simplistic requirement of only a pre-authorisation engagement, during which the responsible authority will advise the applicant on the need for an application, the type of authorisation, etc. Making the description of water uses applicable	

Regulation Clause	Comment	Recommendation
	to site-specific circumstances can be complex and requires proper investigation. This should be built out as a proper procedural step, as was indicated in the original Guideline for WULAs, published by the DWS in 2002, which indicated that a Water Use Assessment Report should be compiled that clearly (a) identifies activities that are regarded as water uses, and (b) determine which of these identified activities require authorisation under a WUL. The pre-application consultation should therefore be initiated by the submission of a Water Use Assessment Report, and not just by initiating a pre-application engagement, and the pre-application consultation should only be initiated where an application for a WUL is required, and not when the use is already authorised under a GA or as an ELU	
7 (3) During the pre-application enquiry the Department shall determine the need for a site inspection.	Use words consistently "engagement" versus "enquiry" and "site visit" versus "site inspection".	
7 (4) Should the site visit deemed necessary, such site visit shall take place on the date which shall be within forty (40) days of the pre application meeting.	What are the criteria for considering if a site inspection/visit is necessary? What resource is there if timeframes are not met?	
7(5): The applicant and the Department must agree on the date and time of the site inspection	This provision should refer to sub-regulation 7(4).	

Regulation Clause	Comment	Recommendation
meeting. The date agreed upon may be postponed by mutual agreement between the applicant and the Department provided the postponement will not result in the 40 days provided for in sub-regulation 5 being exceeded		
7(6) The site inspection may be attended by the relevant Department specialist and other relevant stakeholders deemed necessary by the Responsible authority.	Who are 'other relevant stake holders' which the authority may deem necessary to attend the inspection? This should be limited to officials employed by a competent authority or independent experts. Define "other relevant stakeholders" and their mandate.	"Relevant stakeholders" in this context should be defined.
7(7): The applicant must ensure safety of the Departmental official(s) during site inspection, failure which the Department may stop the meeting and vacate the premises thereof.		The department officials must comply with all safety requirements of the applicant before entering the site The use of the words "Department" versus "responsible authority" should be reconsidered throughout the draft regulations. The terms seem to be used interchangeably.
7(9): If a site inspection meeting was deemed not necessary, the Department must write a letter outlining the information requirements within 30 days receipt of the application.	The timeline to receive the requested information requirements of 30 days after application is agreed.	In both respects, the site visit or no site visit, the information request must be received using the e-WULAAS system.

Regulation Clause	Comment	Recommendation
7(10): The applicant can submit the application at any time after receipt of the letter of information requirements contemplated in sub-regulations 9 and 10, within a period of two (2) years.		Change numbering to "sub-regulations 8 and 9"
8(2): All applicants must use the electronic system in sub-regulation 4(4) for the submission of applications, accompanied by an applicable application processing fee contemplated in Annexure G .	The electronic Water Use Licence Application and Authorisation System (e-WULAAS) that the Department is currently using requires an overhaul as it does not function as it should. The forms used are not appropriately designed for an application for a licence to use water. For example, groundwater is not recognised as part of the water resource on many of the forms and the forms are extremely cumbersome. In addition, the map that the user of the e-WULAAS is required to use is not user friendly and does not capture coordinates correctly and there is no way that this incorrect information can be corrected. The e-WULAAS system can also not be used for the registration of water uses authorised under the GAs or which are ELUs, as these are completely different types of authorisations to a WUL, and this forced integration of two different types of water use entitlements creates significant problems for both the user and the Department. Further, the electronic system is very unstable and often does not function for days or sometimes weeks.	

Regulation Clause	Comment	Recommendation
9 (1) if an applicant intends applying for a multiple water use licence within the same catchment area for the same operation, the responsible authority may consolidate the water use applications into one.	Will the responsible authority consolidate licences after separate applications have been submitted or from the initiation of the separate applications?	
9(2): The Department may dispense with the requirements in terms of Section 22(3) of the National Water Act.	Clarification is required referring to dispensing with a requirement for a water use licence, what other authorisation would be agreed upon for use?	Timeframes for when the application will be addressed and completed should be provided.
9(3): Applicant who want their activities to be dispensed with the requirements must make a written request to the responsible authority. Such a request must be accompanied by an authorisation (from an applicable Department) against which the dispensation is requested.	Reference to “applicable department” is vague and further detail is required. The grammar needs attention. This sub-regulation does not contain any details regarding the form of the written request, timeframes within which such a request shall be submitted by the applicant or dealt with by the responsible authority. It is unclear whether such written application should be submitted on the e-WULAAS system, and what the detailed requirements for such an application process would entail. We are concerned about the capacity of DWS to process this type of application, and given the current challenges with processing applications, it is unlikely that once	

Regulation Clause	Comment	Recommendation
	such written request is submitted, it will be responded to.	
Chapter 4: Processing a water use licence		
10(1): Upon receipt of a water use licence application, the responsible authority must check whether all the required information and documents have been submitted as contemplated in sub-regulation 1(q).	Sub-regulation 1(q) does not specify “required information and documents” but contains the definition of “water use”. The basic required information and documentation must be clearly specified in the Proposed Revised Regulations. It is unclear if this clause refers to a “water use licence application” as described in sub-regulation 1(r) due to the issues with that definition mentioned above. Reference to sub-regulation 1(q) should be Regulation 7 “sub-regulations 8 and 9”	
10(2): The responsible authority must, in writing, and within 3 days of receipt of a water use licence application (a) Accept the application; or (b) Reject the application.		There should be an option that the responsible authority requests additional information if this is needed to avoid a situation whereby the application is rejected on the basis of insufficient information. Business suggest that rejection should be defined and differentiation between rejection and refusal be included in the definition section.
10(3): A rejection letter of an application contemplated in sub-regulation (2)(b) must	The required information as listed in the documented information request should not be	

Regulation Clause	Comment	Recommendation
indicate the information not provided, leading to rejection.	adjusted after the fact and rejection given on something not asked for should be avoided. A rejection letter that is provided must include the reasons, the basis for the rejection and what is missing for it to be accepted.	
10(4) A rejected application is deemed finalised. If the applicant still intends to pursue the activity, a new application must be submitted.	Subclause 10(4) makes no provision for rectifying an application or providing additional information, the process must be started afresh. This seems a bit harsh and cumbersome. A process can be built into the Regulations whereby the competent authority notifies the applicant of the defect or gap in the application and allows the applicant 30 days to rectify it. DWS regularly rejects applications for minor, non-substantive issues or based on information requirements that are only communicated after the application has been submitted. There is also no procedural opportunity created to rectify minor issues in an application before it is summarily rejected. This approach to licence applications is unfairly harsh and will result in unnecessary time and cost implications for applicants, especially poor or individual applicants without access to the resources of a large company. We also believe	A process should be built into the Regulations whereby the competent authority notifies the applicant of the defect or gap in the application and allows the applicant 30 days to rectify it. An appeal mechanism to address administrative errors in the rejection of an application should be included. A decision should be reversed if the decision was due to a clerical/administrative error and minor without involving a judicial process. The hierarchical appeal process should be reinstated and referenced here. Differentiation between rejected and refusal.

Regulation Clause	Comment	Recommendation
	there should be a requirement for the responsible authority to provide adequate reasons if an application is rejected. Further, the NWA makes provision for an appeal in these circumstances (section 148(1)(f)). It is not legally competent for the proposed draft regulations to purport to abolish a right of appeal provided for in the NWA. The obligation to make a new application imposes an unnecessary burden on the applicant.	
11 Assessment of a water use licence application and consideration of making a decision	What options are provided if the department requires additional information.	Department information request should be well defined to ensure no gaps for information are found Timeframe should be included for the authorities to assess the water use licence application.
11 (1) The responsible authority shall, on acceptable of a water use licence application, commence with the assessment of an application.	Clarity "relevant competent authorities or state department?	
11 (2) The responsible authority may request written comments from relevant competent authorities or state departments before making a decision on water use licence applications.	Relevant competent authorities or state department" should be replaced with "relevant authorities.	

Regulation Clause	Comment	Recommendation
11(3): The responsible authority may invite the applicant to present his or her specialist reports.	This provision contradicts section 41(2)(d) of the NWA, which states that the "responsible authority must afford the applicant an opportunity to make representations on any aspect of the licence application". The responsible authority therefore has no discretion in this regard and such an opportunity is also not limited to only the specialist reports, but entails any aspect of the WULA process, including the preparation of a draft WUL. We believe that if applicants are allowed to make such representations and such representations are then taken into account by the responsible authority, it will resolve any misunderstandings during the application process, thereby reducing errors in issued licences and saving both the Department and the Applicant time.	
11(4): The assessment of a water use licence application and consideration of a decision shall be finalised within the timeframes stipulated in Annexure A.	The approach is supported but it would be more useful to specify in the regulation who the competent authorities are and the specific activity on which comments would be requested. Further, asking for "comments" does not clarify the actual requirements that the competent authority needs to deliver. Annexure A indicates that the timeframe for the arrangements necessary for the preapplication consultation, site inspection, and public	

Regulation Clause	Comment	Recommendation
	participation is 0 days, but clause 7(4) indicates that the site visit must take place within 40 days of the preapplication engagement, and this is not indicated in Annexure A. These misalignments must be resolved.	
11(5): Any supporting documentation to a water use licence application which contains disclaimers which removes liability and or responsibility from the application will not be considered.	Supporting documentation is often conducted by third party consultants who rely on the data/information provided to them by the main applicant. The consultant uses/relies on the disclaimer as an assurance that they processed information received from the applicant. Removing the disclaimer will have the potential of removing key reports from being assessed as part of a WUL application.	
CHAPTER 5: CONSIDERATION OF A DECISION FOR WATER USE LICENCE APPLICATIONS TO PROMOTE EQUITY AND REDRESSING PAST RACIAL AND GENDER DISCRIMINATION	This new section of regulation dealing with transformation is highly problematic and probably unconstitutional in the way that it has been drafted. It is not the mandate of DWS to deal with transformation. The NWA only allows the authority to determine how water from the water resource will be allocated. It does not empower the authority to demand that an entity to whom a licence has been granted relinquishes its 'shares' to other persons. Section 27 of the NWA requires a responsible authority to consider <u>all</u> relevant factors before	

Regulation Clause	Comment	Recommendation
	issuing a GA or a licence, including those listed in section 27(1)(a)-(k). However, it is clear from the Revised Regulations that the DWS considers the requirement in section 27(1)(b) of the NWA ("the need to redress the results of past racial and gender discrimination") as the only or the dominant factor, or at least the most important factor, to be taken into consideration. The result is that the Revised Regulations are inconsistent with and/or contradictory to the NWA. The DWS and Water Tribunal have lost court cases when they tried previously to elevate this one factor above the other factors listed in section 27(1) (see <i>Guguletto Family Trust v Chief Director, Water Use, Department of Water Affairs and Forestry</i>, unreported case A556/10 (GNP), and <i>Makhanye NO vs Goede Boerdery Wellington</i> (All SA 526 (SCA) 30 November 2012). In these cases, the Courts correctly decided that the Department was wrong to take this approach. In <i>Guguletto</i>, the Court held at paragraph 22 that the department was "wrong in law" to regard equity as the overriding factor, because the correct approach was that all relevant factors, including the 11 mentioned in section 27, should be taken into account and then balanced "without attaching undue weight to any one". In the <i>Goede Boerdery Wellington</i> decision, the court held that "a decision maker,	

Regulation Clause	Comment	Recommendation
	who would not be able to add factors to a closed legislative list of factors, cannot on a whim decide to elevate one factor to pre-eminence" (Paragraph 40). This regulation also goes beyond the scope of the empowering provision, as it does not represent a procedural requirement for a WUL, but relates to a substantive aspect of a WUL application prescribed in the NWA. On 15 June 2023 DWS issued a media statement titled <i>Water and Sanitation clarifies Regulations on Procedural Requirement for Water Use Licence Applications</i> in which it is stated that "<i>the transformation requirements categories as envisaged in the current review of Regulations are only applicable to applications for new water use licenses and are not applicable to renewal of existing water use licenses, nor to the water use applications which will arise out of compulsory licensing</i>". However, this statement is contradicted by sub-regulation 12(2) the Proposed Revised Regulations. For the purpose of these comments, it is assumed that "transformation requirement categories" refers to regulation 12 under chapter 5 of the Revised Regulations (the numbering in the body of document does not correlate to the schedule on pages 2-4).	

Regulation Clause	Comment	Recommendation
	Regulation 12(1) (in the body of the document) states that the authority “shall give preference to applications from black people, followed by women”. The term “application” is not defined in the Revised Regulations nor in the NWA, so the if the DWS only intends for regulation 12 to apply to applications for new water use licences, it has failed to make any distinction between applications new water use licence applications and other applications under the NWA. There are a number of ‘applications’ provided for within the provisions of the NWA so currently, one would interpret regulation 12 as applying to all of them including amendment applications, renewal applications, compulsory licence applications, declarations of water use as ELUs and verifications of ELUs. Regulations 12(2) and 12(5) (in the body of the document) continue to refer to “applications”. Even if these sub-regulations were amended to include the word “applicant” (which is defined in the Proposed Revised Regulations) instead of “application”, the issue will not be remedied as the term “applicant” includes applicants for amendments of water use licences. The unfamiliarity of some DWS officials with the provisions of the NWA, and the opportunities offered by these provisions to facilitate the	

Regulation Clause	Comment	Recommendation
	transformation of the water sector leads to unnecessary regulation. For example, section 39 of the NWA is an existing mechanism for making GAs that can be used effectively for this purpose. In terms of section 39(1) of the NWA, the authority may generally, in relation to a specific water use or within a specified area authorise all or any category of persons to use water. GAs provide an opportunity to lighten the administrative burden with regard to the licensing of water use, while continuing to protect water resources in accordance with the objectives of the NWA, and could allow access to water by previously disadvantaged individuals. This mechanism to assist in transforming the water sector has, however, not been utilised for this purpose by the DWS and its failure to do so is to the detriment of previously disadvantaged individuals. The unfamiliarity of some DWS officials regarding the provisions of the NWA has been compounded by the manner in which statistics on authorised water use are kept by the DWS. It seems that those who keep the statistics on the demographics of authorised water uses, consider only water users that are authorised by means of WULs as authorised water users, and we are unaware of any statistics being kept or reported	

Regulation Clause	Comment	Recommendation
	on regarding the number and demographics of registered water users who use water under GAs, or the number and demographics of water users who use water under a verified and validated ELU. This lack of comprehensive record keeping therefore creates a misleading impression regarding the demographics of authorised water users, which is to the detriment of reform initiatives in the water sector. As a result, the Proposed Revised Regulations now introduce an effective quota system in Table 1 of the, which is, in our respectful view, unconstitutional. It is important to note that Table 1 is not aligned with the volumes allowed for in existing GAs, so it is not clear how Regulation 12 will apply to water uses which exceed the volumes in Table 1 of the Proposed Revised Regulations but which are authorised under a GA. It is also not clear what is meant by the terms “enterprise” or “shares” as used in Regulation 12(2) and whether the requirement to allocate shares to black people will apply only to juristic persons operated as profit companies or also to partnerships and sole proprietorships. It can therefore be rightly concluded that the introduction of regulation 12 is an attempt to	

Regulation Clause	Comment	Recommendation
	address injustices of the past by purporting to supersede the NWA, but fails to do so and will merely encourage corruption and fronting. Furthermore, the provisions of section 43(1)(a)(ii) read with section 45, 46 and 47 of the NWA enable the responsible authority to bring into force allocation schedules to achieve redress. It appears that Chapter 5 was inserted into these Proposed Revised Regulations to circumvent these legal requirements. This regulation also contradicts two Fundamental Principles in the 1997 White Paper on a New Water Policy for South Africa, namely Principle #4, which states that <i>"The location of the water resource in relation to land shall not in itself confer preferential rights to usage"</i> and Principle #20 which states that <i>"The conditions upon which authorisation is granted to use water shall take into consideration the investment made by the user in developing infrastructure to be able to use the water"</i>. It is also unclear on what scientific or statistical basis the metrics in cubic meters and hectares have been determined. Water abstraction for agricultural irrigation depends on the type of crop produced, in the various climatic regions of the country. Crop water requirements can average around 6,000 m³ /ha/a but can be as high as	

Regulation Clause	Comment	Recommendation
	12,200 m3/ha/a in the Olifants River (Western Cape) and 150,000 m3/ha/a in the Lower Orange River. Water required for industrial production depends on the type of product manufactured, and the type of industry, and the same is true for mining operations. As a result, the thresholds set out in Table 1 are arbitrary (and therefore irrational and unlawful under PAJA).	
12(1) The Responsible authority shall give preference to applications from black people followed by women.	This section seems to apply to natural persons applying in their own capacity. Clause 12 (1) simply states that preference must be given to black people, followed by women. We respectfully submit that this does not provide any greater clarity than the empowering provision itself as it is vague and does not address any of the foreseeable challenge. For instance, how will 'preference' be determined? Will the transformation imperative only be applied where there are competing claims to the same water resource? How will preference be given when there are no competing applications on the competent authority's table? Will targets be applied for each water management area? If so, what happens when you do not receive sufficient applications from HDIs to meet the target? Likewise, will applications be treated differently depending on when an application is made?	Proposed new wording: S12 (1) When considering an application, the competent authority must consider the circumstances of each application to assess the relevance and relative weight of each factor listed in section 27 of the Act to the application in question.

Regulation Clause	Comment	Recommendation
	Whether a target has been reached for the year or not? If so, the Department may open itself up to legal challenges. This approach is overly simplistic and Business is concerned that it could lead to arbitrary decision making and drawn out, costly litigation. One of the central challenges experienced by Business entities is the inconsistent application criteria by different competent authorities in different regions. The regulations provide an opportunity to rectify the situation by setting out a number of steps that can guide the competent authority in its decision making.	
12(2) All applications for consumptive water use submitted to the Department are expected to satisfactorily address section 27(1)(b) of the Act. Specifically, the enterprise in respect of the application must allocate share to black people in the proportions stipulate in Table 1.	Whilst we acknowledge that transformation must be a consideration, black shareholding cannot be the only or overriding criteria in the awarding of water licences. This approach runs contrary to the decision of the Supreme Court of Appeal in the Goede Wellington case. The Court confirmed that the transformation imperative must be applied within the context of all requirements contained in section 27 of the Act and the BBBEE framework. As the provision currently reads, it appears to be a peremptory requirement which runs contrary to the decision of the Supreme Court of Appeal. The Supreme Court also found that transformation	The competent authority must consider the need to redress the results of past racial and gender discrimination in tandem with all of the factors listed in section 27 of the Act. In this regard, the competent authority should be guided by following considerations; (a) the race and gender that the applicant identifies with where the applicant is a natural person; (b) The BBBEE score and any additional initiatives to promote transformation, inclusion or

Regulation Clause	Comment	Recommendation
	can happen in a number of ways. Redress need not focus solely on ownership. Whilst Business support the aim of water reform and equitable access, the end cannot justify arbitrary means. Business therefore advocate for flexibility in this approach and propose that more thought be given to this provision. Given the connection between water and land, this could have a material impact on food security, especially during the transition phase. A “balanced scorecard” approach similar to that applied in the existing BEE legislation could be considered, having regard to the fact that the use of water in both industry and agriculture has existential consequences for the country. Regulation 12(2) requires an “allocation of shares”, not the sale of shares – is it a donation of value that is required or is it envisaged that BEE transactions will be conducted to finance the entry to farming enterprises by Black People? If the latter, one concern is that the owners of enterprises particularly in the farming sector	diversity within the organisation where the applicant is a juristic person; (c) Competing interests for a water use entitlement from the same resource; (d) Any pending applications for a water use entitlement from the same resource from historically disadvantaged individuals or juristic entities and the BBBEE score, transformation and inclusion initiatives of those entities, including employee equity schemes; (e) Claims under the Restitution of Land Rights Act or the Land Reform (Labour Tenants) Act on the property in question; (f) Claims under the Restitution of Land Rights Act, the Land Reform (Labour Tenants) Act or other land reform initiatives in the water management area that may lead to future demand for water use entitlements by historically disadvantaged individuals; or (g) any other consideration or factor relevant to water reform. The competent authority may request the applicant to make written or oral submissions

Regulation Clause	Comment	Recommendation
	should be able to back their investment with further capital so that they can survive adverse farming events (i.e., weather, infestations, crop failures etc), and that they are not deeply indebted. Clarity is sought from the Department on how the incoming owners will be financed as it does not appear that BEE financings against the equity will be viable for the farming sector. It is not clear in Chapter 5 how the Department intends to address "Fronting" risks. Regulation 12(2): The use of the phrase "consumptive water uses" may have unintended consequences in that it could be interpreted to include sectors other than agriculture, the drafter may want to consider restricting the application of wording.	supporting the application. This may include, but is not limited to; (a) Proof of all existing lawful water use; (b) In the case of a natural person, information relating to the race or the gender that the person identifies with; (b) In the case of a juristic person; (i) an affidavit where the entity is an Exempted Micro Enterprise according to the prescripts of the Generic Codes of Good Practice or a sector code recognised under the Broad-Based Black Economic Empowerment Act; (ii) a BBBEE certificate where the entity is a Qualifying Small Enterprise or a Large Enterprise according to the prescripts of the Generic Codes of Good Practice or a sector code recognised under the Broad-Based Black Economic Empowerment Act; (c) An employment equity plan where applicable; (d) Proof of any employee equity or shareholding schemes and benefication completed (e) Proof of any other initiatives to support transformation, including corporate-social

Regulation Clause	Comment	Recommendation
		investment, socio-economic development initiatives or any other initiative or undertaking that supports transformation in the previous 5 – 10 years (f) Invoices, proof of payments, or affidavits showcasing the investments already made by the applicant in respect of the water use in the previous 5 – 10 years,
12(5): Applications from mining and related industries (regulated by means of MPRDA), State and state owned entities, 100% black owned are exempted to comply with sub-regulation (4)	The structure of this sentence gives the impression that mining related activities and state owned entities should be 100% black owned. This is not in line with the transformational target in terms of the mining charter. There are no sub-regulation (3) and (4) in chapter 5. If the intention was to exempt these entities from sub-regulation 2, then it will be in direct contradiction with Fundamental Principle #2 in the 1997 White Paper on a New Water Policy for South Africa, which states that "All water shall have a consistent status in law, irrespective of where it occurs". The grammar and numbering in regulation 12(5) is problematic.	Re-numbering needed Proposed re-wording is "Applications from mining and related industries (regulated by means of MPRDA), state- and state-owned entities, and/or 100 % black owned enterprises are exempted to comply with sub regulation (4)"

Regulation Clause	Comment	Recommendation
Table 1: Requirements for compliance to contribute to transformation for applicants	For the volume, is this based on water abstraction? For the area, is this based on land irrigated? Are these thresholds on per annum basis? Regulation 12 (Table 1: Requirements for compliance to contribute to transformation by applicants): Section 21 (d) appears to be applicable when using water in a way that reduces the stream flow (i.e., pumping water from a river to irrigate land). General comment: It is submitted that narrowing the focus of the regulation to the consideration of ownership as the only relevant factor in achieving this objective may not give effect to the requirements of the Act or, indeed, the prescripts of the Constitution. It is further submitted that the redress of past racial and gender discrimination as required by the Act are more effectively and wholistically achieved in a broad-based manner by addressing factors other than mere ownership such as job creation, skills	

Regulation Clause	Comment	Recommendation
	development, and the stimulation of economic activity in communities surrounding the premises in respect of which water use licenses are granted.	
13: Compulsory licensing	One aspect of compulsory licensing of water use in irrigation is the confirmation of the lawfulness of an existing allocation. The proposed regulation does not go far enough to address this challenge. The 60 days proposed for compulsory licensing is also totally inadequate. There are intricacies that must be considered. ELU is a “catch all” and includes several water uses that may not require a water use licence if that use commenced after the NWA came into operation.	We propose a sunset clause that will allow ELU holders to convert these to water licences over the period of 5 or 10 years. This will ensure legal certainty and to allow irrigation farmers still making use of ELU to prepare for the transition by structuring their businesses in a manner that will improve their licence applications.
13(1): A responsible authority shall issue a notice in a form of a gazette requiring persons to apply for a water use licence within 60 days in terms of section 43 of the Act, for one or more types of water used contemplated in section 21 of the Act.	In what circumstance would this be necessary? This is essentially a repetition of what is already stated in section 43 of the NWA and does not relate to procedural requirements for water use licence applications. The 60 days proposed for conversion is also totally inadequate.	A responsible authority shall issue a notice in a form of a gazette requiring persons to apply for a water use licence within 24 months in terms of section 43 of the Act, for one or more types of water uses contemplated in section 21 of the Act.
Chapter 6		

Regulation Clause	Comment	Recommendation
14(1): Applications for amendments or earlier renewal for a water use licence shall follow the same procedure outlined in regulation 7 and 8.	Clarity required on what would trigger an early renewal application. Would it not just be a renewal application? The timeframe given for submitting a renewal is rather long, why? Annexure B implies that there are three sections of the NWA under which a licence may be amended and that licences may only be renewed under section 52. This is incorrect, as section 52(2) implies that there are two processes for earlier renewals of licences. There is little sense in requiring simple amendments under section 158 or section 50 or renewals to follow a full blown licencing process and this contradicts the intention of sections 50, 52 and 158 of the NWA. There are also numerous issues with regulations 7 and 8, as discussed above and this will lead to unsatisfactory results, such as requiring a water user seeking a simple change in description of a property to which the licence applies to undergo the entire process set out in the Proposed Revised Regulations.	
14(2): Applications for earlier renewal must be initiated at least 250 days before the water use licence reaches its end date.	If the licence only needs to be renewed, it is unreasonable that it would take almost 9 months to accomplish this. This timeframe is also contradicted by the timeframes in Annexure B,	

Regulation Clause	Comment	Recommendation
	which indicate that it would only take 60 days to renew a licence.	
14(3): The timeframes for processing applications for amendment and earlier renewal of water use licence applications is shown Annexure B.	Grammatically incorrect. The timeframes listed in Annexure B have no unit indicated, and it is assumed that this refers to days, and not weeks. If it indeed refers to days, then the timeframes specified in Annexure B contradict the provisions of sub-regulation 14(2).	
Chapter 7		
15(1): Upon receipt of an application for amendment of a water use licence contemplated in sub regulation 12, the responsible authority must evaluate whether the application is properly contemplated and accompanied by relevant documents contemplated in sub regulation 12.	Incorrectly refers to sub-regulation 12 instead of sub-regulation 14. There are no documents contemplated in either sub-regulation 12 or 14, so it is unclear what "relevant documents" are referred to. An amendment request cannot be defined as a request to correct items in a WUL just received that are incorrect. How would this be handled?	Correct numbering and referencing should be applied.
15(2): The responsible authority must, in writing, and within 5 days of receipt of an application contemplated in sub regulations 14(3) - (a) accept the application; or (b) reject the application.	The timeframe of 5 days contradicts the timeframe of 3 days specified in Annexure B.	

Regulation Clause	Comment	Recommendation
15(4): If the application is rejected as contemplated in sub-regulation (2)(b), the responsible authority shall have no obligation to consider that application any further.	This would be problematic if the responsible authority rejected an application in error and would be unfair on the applicant if there was no way to rectify the matter. DWS regularly rejects applications for minor, non-substantive issues or based on information requirements that are only communicated after the application has been submitted. There is also no procedural opportunity created to rectify minor issues in an application before it is summarily rejected. This approach to licence applications is unfairly harsh and will result in unnecessary time and cost implications for applicants, especially poor or individual applicants without access to the resources of a large company. We also believe there should be a requirement for the responsible authority to provide adequate reasons if an application is rejected. Further, the NWA makes provision for an appeal in these circumstances (section 148(1)(f)). It is not legally competent for the proposed draft regulations to purport to abolish a right of appeal provided for in the NWA. The obligation to make a new application imposes an unnecessary burden on the applicant.	An appeal mechanism to address administrative errors in the rejection of an application should be included.

Regulation Clause	Comment	Recommendation
16(2): The assessment of the application and its consideration for a decision shall be finalised within the timeframes stipulated in Annexure B .	It is not clear if there is any practical difference between sub-regulation 14(3) and sub-regulation 16(2), but this appears to be a duplication.	No process is provided and this must be included.
Chapter 8		
17(1): An applicant applying for a water use licence, or an amendment of a water use licence or a condonation for late application for a compulsory licensing process, with the exception of applications for amendments in terms of section 158 of the Act, must pay a non-refundable application processing fee contemplated in Annexure G.	The process for condonation is not included in these draft regulations. The charging of a fee for an application for an amendment appears to contradict the intention of section 40(3) of the NWA, which relates only to processing a licence application. This sub-regulation also makes no distinction between amendments applied for under section 50, which are not required to follow the process set out in section 41, and amendments under section 52. Furthermore, Annexure G contains amounts that are up to a 150% increase of the current application fees, and it is unclear how these fees were determined. Coupled with the fact that the Proposed Revised Regulations allow the responsible authority to reject applications for apparently any reason, this represents a grossly unfair cost for potential water users and creates a barrier to water access for the poor.	The determination of a fee structure should be transparent and follow a consultative process with affected and interested parties prior to publication.

Regulation Clause	Comment	Recommendation
	The proposed application fee of R15,000 for a WUL application is considered to be excessive and should be aligned with the fee structure charged by other departments performing similar functions. Costs are excessive given the public mandate that the department performs. The amounts furthermore have the potential to increase without being pegged. Costs should be retained to ensure affordability regardless of the applicant or thresholds be introduced depending on who the applicant is. This is the first time the “condonation for late application for a compulsory licensing process” is discussed in the regulations. This should be defined.	
17(2): The payment receipt must be part of the application processing fee to be submitted to the Department. The payment can be made in cash in our Regional/ Or CMA offices or by making by making an Electronic Funds Transfer (EFT) payment via the online banking platform on details provided in Annexure G.”	The phrase “payment receipt must be part of the application processing fee” should be amended to read” proof of payment of the application processing fee should be included in the application documents”. the processing fee is not explicitly referred to, which should be if direct reference is being made thereto.	
17(3): The processing fee in sub-regulation 15(1) will be increased by CPI in 01 April of each year	This should refer to sub-regulation 17(1). It is also not clear whether a specific basket of goods under the CPI publication will be used or whether it will be CPI ‘All Items’. It is not clear if this will be	

Regulation Clause	Comment	Recommendation
	a year-on-year movement in the CPI and if so, which month to which month or if it will be the last available publication of the CPI or the CPI for a specified month. Different costs are associated with different sectors but this appears to be the same of processing irrespective of the sector.	
18(1): In terms of Section 40(3) of the Act, the responsible authority may waive the application processing fee on deserving cases.	"Deserving cases" needs to be clarified to ensure no unfairness is perceived on the side of the applicants. What are the criteria's that will be considered?	There should be minimum guidelines for when an application fee may be waived.
18(2): The application to waive the application processing fee should be submitted to the Department prior to making an application. Waiving of the application processing fee shall only be allowed in exceptional cases	These provisions do not provide for any practical procedure for making such an application, fail to identify an official or office responsible for deciding such an application and fail to provide timeframes within which a decision will be taken with regard to an application to waive such a processing fee. This facilitates a lack of accountability and will likely affect the poor of our country the most.	
18(3): The decision on the request to waive the application processing fee must be submitted with the application for a water use licence or an application for an amendment.	The National Water Act refers to "deserving cases". Clarity on the criteria for "deserving cases".	

Regulation Clause	Comment	Recommendation
19(1): Security by the applicant requirements in respect of mining related applications shall follow the National Environmental Management Act (107 of 1998) regulation 667 on financial provision as provided for in the Memorandum of Understanding between the responsible authority and the Department of Environmental, Forestry and Fisheries.	The Memorandum of Understanding between DWS and DFFE must be made available before comment can be made on this regulation. The DMRE should also be included in the MoU as an administrator of the minerals and petroleum resources in South Africa according to section 3 of the MPRDA It is unclear what "regulation 667 on financial provision as provided for in the Memorandum of Understanding between the responsible authority and the Department of Environmental, Forestry and Fisheries" refers to, as no such document is attached as an annexure to the Proposed Revised Regulations. In addition, security provided by mines under NEMA may not sufficiently address the long-term impacts of mining on water resources.	Amend name of department to Department of Forestry, Fisheries and the Environment
19(2): Other applicants who are required, as stipulated in Annexure , H I to provide security in respect of a particular water use licence application must complete and submit a form to the responsible authority as contemplated in Annexure H II.	The list of activities which require security is contained in Annexure H II and the deed of surety is contained in Annexure H I. This provision contradicts section 30(1) of the NWA, which entitles the responsible authority to request security if it is necessary for the protection of the water resource or property. This provision, therefore, essentially seeks to usurp the power of the responsible authority to decide on applications which require security and makes	

Regulation Clause	Comment	Recommendation
	security compulsory for certain applications, regardless of any case-specific circumstances. This provision also contradicts section 30 of the NWA, as Annexure H(I) only contains a deed of suretyship, which is only one form of security which may be requested by a responsible authority in terms of section 30(2)(i)-(v). the section on security should be clarified.	
19(3): The security by the applicant must specify items to be covered under the security and the respective amounts of money applicable too each item.	The requirements for mining are stipulated in NEMA Financial Provision Regulations. The manner in which this regulation is been written will bring confusion to the mining business community. Contradicts the provisions of section 30(3) of the NWA, which specifically states that the responsible authority (not the applicant) must determine the type, extent and duration of any security required. It is therefore necessary to provide a clear guideline and procedure in terms of which the responsible authority must makes this determination on a site-specific basis, and a process by means of which an applicant can give input into or query or appeal this determination, which has not been provided for in the Proposed Revised Regulations.	Reference to NEMA Financial Regulations as amended should be made and to avoid confusion.

Regulation Clause	Comment	Recommendation
19(4): The security shall be valid for a period of at least 5 years after water use licence activities have lapsed.	This provision contradicts the provisions of section 30(4) in the NWA, which states that the duration of the security may extend beyond the time period specified in the licence. This time period has to be determined on a site-specific basis in order to meet the requirement of reasonableness, therefore a blanket 5-year period is irrational (and therefore unlawful under PAJA).	
Chapter 9: Transfer of Water Use Authorisations Transfer of water use authorisations	Is this regulation meant to deal with transfers or surrenders?	This chapter requires redrafting or clarity.
20(1): A person (s) holding an entitlement to use water and wishes to surrender the entitlement or part of it, to facilitate a water use licence application must submit to the Department the following: i. Proof of water use entitlement to be transferred ii. Property details and proof of lawful access to the property, if not owning the property(ies) iii. Certified copy of identity document of the person holding the entitlement iv. Proof of water use debt clearance v. Surrender request letter	This sub-regulation appears to relate to permanent transfers provided for under section 25(2) of the NWA, but that is not made explicit in the wording of the text of the sub-regulation. The provision is also vague and does not provide for any practical procedure for such a process and no indication of whether it will run concurrently with the water use licence application in favour of which the right is being surrendered. It also fails to identify an official or office responsible for deciding such a request and fails to provide the timeframes within which a decision will be taken with regard to such a request. This facilitates a lack of accountability within the DWS.	

Regulation Clause	Comment	Recommendation
20(2): The temporary transfer of an entitlement for irrigation in terms of Section 25(1) of the Act will be processed and approved by a Water Management Institution.	This process is not a "licence application" in terms of the NWA and therefore, any procedural requirements contained in these Proposed Revised Regulations for this process are outside the scope of the empowering provision.	
20(3): A temporary transfer contemplated in sub regulation (2) is only limited to an initial period of one (1) year, with an option of applying for further period of one (1) year (i.e. a maximum of two (2) years).	This does not pertain to any procedural requirement for a licence application and usurps the power of a water management institution to decide on the length of such a transfer. There is no rational reason for limiting the time period of such a transfer or the number of times an entitlement may be transferred, Further, the Proposed Regulations cannot lawfully stipulate a restriction not imposed by the NWA. The time limits imposed in this sub-regulation do not accord with the provisions of the Act What is the process to make a transfer permanent?	
21(1): the public participation process, which the water use licence application is subjected to, aims to give all interested and affected parties an opportunity to submit written objections on the concerned application	Regulations 21 – 23 are fatally flawed because they make a public participation process compulsory for licence applications, which is not the intention of section 41(4) of the NWA, which gives the responsible authority a discretion in this regard. Further, the overall aim of public participation is not to give interested and affected parties (I&APs) an opportunity "to submit written objections" on an application, but to allow the	

Regulation Clause	Comment	Recommendation
	public to participate in the application and decision-making process, so that their concerns can be addressed as part of the application process. To view public participation only as an opportunity to raise objections is a confrontational approach that defeats the entire purpose of participatory governance.	
Chapter 10		
22(1): The categories of applications for which public participation (invitation for objections) must be conducted and the manner in which the public participation must be conducted is shown in Annexure C .	Annexure C makes little sense as there is no reference to section 21 of the NWA and not all section 21 water uses are covered. This creates unnecessary confusion. For example, all industries produce waste, and water uses such as the abstraction of water for industrial use is not listed. There also seems to be no limitation (and therefore rationality) to the extent of public participation required for different activities. This provision also limits the right of the responsible authority to enforce section 41(4)(b) of the NWA. Public participation should not only focus on objections and it is not correct only to emphasise the aspect of the process.	
22(2): Public participation that requires authorisations in terms of NEMA, MPRDA and the Act, must be conducted jointly. To this regard	While the co-ordination of public participation process is to be welcomed, the purpose of public participation is not to collect objections to the	Align references to public comment periods in these regulations with the other Acts, this includes how notice should be performed.

Regulation Clause	Comment	Recommendation
the advertisement pertaining to the Act must describe all the water uses to be applied for and indicate written objections can be submitted to the applicant within a period of 60 days of the advertisement.	application, but to obtain public input into the application, which comments from the public should then be addressed as part of the application to ensure participatory government. This provision also usurps the right of other officials to decide on reasonable public participation processes required for authorisations under the NEMA and the MPRDA. Further, regulations (which are subordinate legislation) do not trump statutes. It is therefore not lawful to compel coordination of applications made under other statutes through regulations made under the NWA.	
23(1): Public participation process must be conducted as contemplated in section 41(4) of the Act, as part of the water use licence application process.	This section of the Act goes beyond only focusing on objections. This requirement in the Regulations could be considered ultra vires as the Act does not make it an absolute requirements, but rather the responsible authorities decision, as the Act states "may" "A responsible authority may, at any stage of the application process require the applicant.	Where appropriate and relevant, this should be integrated with the public participation process for environmental authorisation in terms of NEMA.
23(2): Where a public participation process has already been undertaken as contemplated in sub-regulation 20(2) and that public participation process contains and covers all issues pertaining to water use activities, then that public participation process report must be submitted for	Sub-regulation 20(2) refers to permanent transfers under section 25(2) of the NWA. This appears to be a typographical error, as it is likely that was intended was a reference to regulation 22(2).	Water use activities should be changed to relevant water use licence application(s) as only the relevant water use is governed by the need for an application and licence.

Regulation Clause	Comment	Recommendation
the requirements of the water use licence application.	It is not clear that Regulations 292 requires this process to be undertaken.	It is recommended that the wording of this regulation be amended to "where public participation has already been undertaken as contemplated in sub regulation 22(2)not sub – regulation 20(2)....
23(3)(a) & (b): A notice of the application as contemplated in Annexure C must be provided to interested and affected parties by: a) fixing a written notice board at a visible and accessible place to the public at the boundary or on the fence of: i. the site where the water use activity to which the application relates is or is to be undertaken; or ii. any alternative site mentioned in the application. b) giving written notice to: i. the owner or person in control of that land, if the applicant is not the owner or person in control of that land; ii. the occupiers of the site where the water use is or is to be undertaken or an alternative site where the water use is to be undertaken; iii. owners and occupiers of land adjacent to the site where the water use is or is to be undertaken or an alternative site where the water use is to be undertaken; iv. the municipal councillor of the ward in which the water use is or is to be undertaken or an alternative site where the water use is to be undertaken and any	This demonstrates a lack of understanding of the difference between an authorisation such as an EIA, where alternatives are considered and investigated, and an operational authorisation such as a water use licence, where only one alternative is applied for, and a water use which is to be exercised on a specific property. The sub-regulation does not indicate if any or all of these methods should be followed and does not make provision for modern contactless electronic public participation by means of contact forms, web-based surveys, or radio, which have much larger target range than traditional printed media. *it is not clear why Annexure C provides requirements that are given in more detail in this sub regulation (3).	

Regulation Clause	Comment	Recommendation
organization of ratepayers that represent the community in the area;		
23(3)(b)(vi): any person who has submitted a valid land claim in respect of the area in which the water use activity will be conducted; or	Only a court can pronounce on whether a claim is valid or not, so the landowner should be the land claimant. There is sufficient case law which confirms that simply publishing a claim does not equal a "valid claim". The correct Act for this provision is the Restitution of Land Rights Act, 1998 – s 11 (7) not in the NWA regulations. Regulation 11(7) provides for notice to be given to the Commission if the land is to be sold, developed etc. This section needs to be amended to address any application regarding the use of the land, which is simply a notice informing the Commission of the intent and only if the Commission thinks the application is an attempt to obstruct the passage of the claim can the Commission approach the court to prevent the application.	This regulation should be deleted
23(1)(SIC): A notice or advertisement referred to in sub-regulation (3) must - (a) give adequate details of the application which is subject to public participation; and (b) state the following - i. that the application has been submitted to the responsible authority in terms of these Regulations as the case may be; ii. the nature and locality of the water uses to which the	The applicant cannot comply with both sub-regulation 23(1)(b)(i) (SIC) and sub-regulation 26(1). On the one hand, the applicant is required to state in any notice to the public that the application has been submitted to the responsible authority, but on the other hand the applicant must also submit a public participation process	

Regulation Clause	Comment	Recommendation
application refers; iii. the water uses; iv. where further information on the application or water uses may be obtained; v. the manner in which and the person to whom representations in respect of the application can be made; vi. a specified date, not less than 60 days after the last publication of a notice, before which written comments or objection may be lodged; and vii. an address to which written objections may be lodged.	report when submitting a water use licence application.	
24(1): Application in a property(ies) where there is a gazetted land claim must obtain written comments from the land claimants and the Land Claim Commissioner. Such written comments must indicate whether they object or not to the granting of the licence.	This regulation is onerous. The claim must be declared valid by the court. Land claimants are often hard to trace. The requirement is too onerous. Notice to the Land Claims Commission in the case where a claim has been gazetted should suffice. This requirement differs from sub-regulation 23(3)(b)(vi) which limits public participation to "valid" land claims. The word "gazetted" in this provision is a lower standard and is unfairly onerous on landowners. It is unreasonable to expect this as part of an application for a WUL, as it is unrelated to the WUL process, and it relates to legislation which the DWS does not have the mandate to administer. It also privileges land claimants ahead of other I&APs.	This regulation should be deleted.

Regulation Clause	Comment	Recommendation
25: An applicant must open and maintain a register which contains the names and contact details and addresses of all persons who objected to the granting of the licence concerned.	The requirements of this sub-regulation should clearly state how the POPI Act should be taken into consideration with such capturing of personal information and how it is to be protected.	The register and the information of the person objecting to the licence must comply with the POPI Act.
The applicant must compile and submit a public participation report to the responsible authority when submitting a water use licence application. The Public Participation report should contain the following- (a) written comments or objections of interested and affected parties; (b) records of meetings; and (c) register of interested and affected parties.	An applicant cannot comply with this sub-regulation as well as with sub-regulation 23(1)(b)(i).	
26(1c): register of interested and affected parties		Compliance to the POPI Act for register is to be noted
Chapter 12		
30 (1) Applications submitted prior to the promulgation of these regulations will be dealt in accordance with Regulations 267 or any other manner directed by the responsible authority.	The implication of this is that the responsible authority could very well ask for applications currently in progress to now adhere to these new regulations, consequently the applicants will be forced to start the WULA process again. This will mean the amended regulations could be implemented retrospectively.	It is undesirable that new regulations are implemented retrospectively, it is therefore recommended that the transitional arrangements are clearly written indicating that all applications submitted prior to the promulgation of these regulations will be dealt with according to the regulations at the time.
Annexure A:		

Regulation Clause	Comment	Recommendation
Time frames and steps for processing a water use licence applications	Annexure A indicates that the timeframe for the arrangements necessary for the pre-application consultation, site inspection, and public participation is 0 days, but clause 7(4) indicates that the site visit must take place within 40 days of the preapplication engagement, and this is not indicated in Annexure A. These inconsistencies must be addressed.	
Annexure B		
Time frames and steps for processing water use license amendments	The timeframes listed in Annexure B do not indicate a unit of time, and it is assumed that this refers to days, and not weeks. If it indeed refers to days, then the timeframes specified in Annexure B contradict the provisions of sub-regulation 14(2). It makes no sense that an application for renewal should be made 250 days before the WUL expires, when the decision regarding the licence validity period will only take 60 days. In addition, if only the licence period is to be amended, it should take the same time as a minor amendment (30 days). Furthermore, it does not make any sense that an amendment should take the same time for processing as a new water use licence application (90 days)—surely an amendment should be processed quicker than an application for a new water use	

Regulation Clause	Comment	Recommendation
	licence? Also, the timeframe of 5 days in sub-regulation 15(2) is contradicted by the timeframe of 3 days in Annexure B for the acceptance or rejection of the application.	
Annexure C		
Summary of public participation process required for different water use applications	The “activities” listed in Annexure C do not make any sense, and Annexure C does not cover activities associated with all types of water uses. For example, all industries produce waste, and water uses such as the abstraction of water for industrial use is not listed here. This Annex must be entirely rewritten.	
Annexure D		
Forms and reports to be completed in respect of particular water use licence application	These forms are poorly designed. For example, groundwater is not recognised as part of the water resource on many of the forms, and the forms are extremely cumbersome. The same information needs to be completed repeatedly, and this is not necessary when a database has been properly designed.	
DW806/783: Section 21(k) of the National Water Act: Using water for recreational purposes	All water uses under <u>section 21(k)</u> of the NWA have been authorised under Schedule 1 of the NWA, and there is therefore no need to include an application form for the authorisation of these	

Regulation Clause	Comment	Recommendation
	uses under a WUL in these proposed Regulations. Any attempt to refuse permission for the undertaking of those water uses would be unlawful.	
DW765: Requires "Waste Water Treatment / Water Treatment Plants Technical Report in Annexure F – if the purpose is irrigation of any land with waste or water containing waste generated through any industrial activity is for wastewater treatment works"	The Waste Water Treatment / Water Treatment Plants Technical Report in Annexure F is designed for municipalities, and not for mines, industries or agricultural operations that may irrigate water containing waste.	
DW765: Requires "Power generation business plan – if the purpose of irrigation of any land with waste or water containing waste generated through any industrial activity or by a waterwork is for power generation"	There is no guideline provided by the DWS on what is implied by a "Power Generation Business Plan", and the business of power generation has nothing to do with potential impacts resulting from the irrigation of wastewater.	
DW765: Requires "Geohydrological report – if the controlled activity is intentional recharging of an aquifer with any waste or water containing waste"	A Geohydrological Report should be a requirement for any water use that may potentially have a detrimental impact on groundwater, including the irrigation of wastewater, and hydraulic fracturing.	
DW766: Requires "Waste Water Treatment / Water Treatment Plants Technical Report in Annexure F – if the purpose is for discharging waste or water after treatment in a water works"	The Waste Water Treatment / Water Treatment Plants Technical Report in Annexure F is designed for municipalities, and not for mines, industries or agricultural operations that may	

Regulation Clause	Comment	Recommendation
	discharge waste or water after treatment in a water works.	
DW766: Requires "Power generation business plan – if the purpose is for discharging waste or water after treatment in a water works power generation"	There is no guideline provided by the DWS on what is implied by a "Power Generation Business Plan", and the business of power generation has nothing to do with potential impacts resulting from the discharge of wastewater.	
DW767Requires "Waste Water Treatment / Water Treatment Plants Technical Report in Annexure F – if the purpose is for disposing waste or water after treatment in a water works"	The Waste Water Treatment / Water Treatment Plants Technical Report in Annexure F is designed for municipalities, and not for mines, industries or agricultural operations that may dispose waste or water after treatment in a water works.	
DW767: Requires "Power generation business plan – if the purpose is for disposing waste or water after treatment in a water works power generation"	There is no guideline provided by the DWS on what is implied by a "Power Generation Business Plan", and the business of power generation has nothing to do with potential impacts resulting from the disposal of wastewater.	
DW780: Indicates that the water use as described under section 21(h) "refers specifically to discharges to the marine environment (sea, surf-zone).	Considering the mandate of the DWS in sections 2 and 3 of the NWA, and the definition of "water resource" in section 1 of the NWA, and the provisions of the National Environmental Management: Integrated Coastal Management Act (ICMA), the DWS has no mandate or control over any discharges into the marine environment.	

Regulation Clause	Comment	Recommendation
	This is another example of overreach by the DWS.	
DW775: Supplementary Water Use Information Form for Section 21(c) and (i) Water Uses	There is confusion in the Proposed Revised Regulations between water uses as described under <u>section 21(c)</u> of the NWA, as opposed to water uses as described under <u>section 21(i)</u> of the NWA. One activity cannot imply the applicability of two (2) water uses. There is a specific distinction between the two water uses described under <u>section 21(c)</u> and <u>section 21(i)</u> of the NWA: While impeding or diverting the flow of water in a watercourse (<u>section 21(c)</u>) will invariably also alter its bed, banks, course or characteristics (<u>section 21(i)</u>), the inverse is not the case, and the alteration of the bed, bank, course or characteristics of a watercourse does not necessarily lead to the impeding or diversion of the flow of water in such watercourse. Activities therefore must be evaluated to determine whether they are water uses as described under <u>section 21(c)</u> , or under <u>section 21(i)</u> . The requirement to complete both forms may therefore be unlawful.	
Annexure E:		
Application Checklist	Contains an extremely cumbersome range of Reports but does not specify the purpose or	

Regulation Clause	Comment	Recommendation
	contents of the Reports required. These documents will vary on a site-specific basis, and relate to substantive, and not procedural aspects. Their inclusion in a procedural regulation is therefore unlawful.	
S21(C): Method Statement	No indication given of what should be contained in such a "Method Statement". Its minimum requirements should be specified.	
S21(c):Landscape Maintenance Plan	The DWS does not have the mandate to oversee gardening activities and landscape designs, and this has no place in a water use licence application.	
S21(i): Method Statement	No indication given of what should be contained in such a "Method Statement". Its minimum requirements should be specified.	
S21(i):Landscape Maintenance Plan	The DWS does not have the mandate to oversee gardening activities and landscape designs, this has no place in a water use licence application.	
S21(f): None	The absence of the requirement for a Water Balance for water uses that relate to the discharge of wastewater is a further indication of the DWS not fulfilling its mandate to ensure that	

Regulation Clause	Comment	Recommendation
	water is used “efficiently and beneficially in the public interest”.	
S21(k): Section 21(k) of the National Water Act: Using water for recreational purposes	All water uses under <u>section 21(k)</u> of the NWA have been authorised under Schedule 1 of the NWA, and there is therefore no need to include a checklist for the authorisation of these uses under a WUL in these proposed Regulations. Any attempt to refuse permission for the undertaking of those water uses would be unlawful.	
S21(k): Requires “Approval as per section 116 of the NWA”	<u>Section 116</u> of the NWA provides for the making of regulations regarding government waterworks. If such regulations have been made, they should be clearly referenced in the proposed Regulations. The proposed Regulations should also clearly specify for what the approval should be obtained, and where such approval should be obtained.	
Annexure F		
Table of contents of technical reports for information requirements to be submitted	Contains an extremely cumbersome range of information requirements but does not indicate the purpose of the information required. The information requirements will vary on a site-specific basis and relate to substantive and not	

Regulation Clause	Comment	Recommendation
	procedural aspects. Their inclusion in a procedural regulation is therefore unlawful.	
Water treatment technical report: Par 1.15: Has the water treatment plant / wastewater treatment plant been included in the Water Services Development Plan? Par 1.3 Details of contract between WSA and WSP Par 4.1: percentage of areas served which is unsewered	This only has applicability for municipalities, and not for other entities that operate water or wastewater treatment plants.	
F:2: Agriculture business plan	There is no guideline provided by the DWS on what is implied by an "Agriculture Business Plan", and the business of an agricultural operation is not within the mandate of the DWS to regulate or approve. This is later referred to as an "Agricultural Technical Report or Business Plan", and the same wording of "Technical Report" should be used consistently.	
Agriculture Technical Report: Par 2.4.3: System operations/herd management programme Par 2.4.6: Marketing plan	The herd management programme and marketing plan of an agricultural business does not have anything to do with a decision relating to an application for a water use licence.	
Agriculture Technical Report: Statement that "undertaking of water uses like taking of water	It does not follow that undertaking of one water use will involve the undertaking of another. Nor does it follow that another water use necessarily	

Regulation Clause	Comment	Recommendation
from a water resource and storing water for agriculture is likely to trigger other water uses"	requires authorisation under a WUL. This statement affirms the need for a screening step as part of the authorisation process, and the need for a Water Use Assessment Report, prior to embarking on an expensive application process for a water use licence.	
Stream flow reduction report: Par 3.5: Marketing Plan Par 3.7 Start-up capital	The marketing plan and start-up capital of an afforestation operation do not have anything to do with a decision relating to an application for a water use licence.	
6:Wetland Delineation Report	Although the riparian habitat is per definition part of a watercourse and should be delineated to determine if an activity is having an effect on such watercourse or not, the absence of the requirement for a riparian delineation demonstrates that the DWS is not fulfilling its mandate to manage and protect water resources in the country.	
7: Mine Closure/Rehabilitation Plan	The Table of content for this Plan is not at all aligned with the requirements in the Mining Regulations (GN R.527 in GG 26275 of 23 April 2004) for such a Mine Closure/Rehabilitation Plan.	

Regulation Clause	Comment	Recommendation
9: Civil Design	Not all water uses require civil design and stating that the “purpose” of the report is “minimum information requirements” makes no sense.	
Civil Design: Par (5): For water uses 21 f, g & j: The pollutant risk is to be assessed in accordance with the NEMWA Regulations 2013 and NEMWA Regulations 2015 (as amended) as a minimum Par 7: For facilities/developments requiring a Section 21 g water use licence and/or waste management licence, the reports and drawings shall demonstrate compliance with the performance based regulations of NEMWA for which guidance is provided on both design and construction quality assurance	This requirement clearly demonstrates a lack of knowledge with regard to (a) the concept of pollution, (b) the content of the NEMWA Waste Classification Regulations, and (c) the mandate of the DWS under the NWA. The Waste Classification Regulations under the NEMWA do not assess “pollutant risk” in any way and are certainly not aligned with the DWS’s own Water Quality Management Policy that was published in 2021. Furthermore, the DWS does not have the mandate to enforce or apply regulations made under a different law for an entirely different purpose than what it is to be determined for a water use licence application. Further, the Waste Classification Regulations are seriously flawed from both a legal and a scientific perspective, and are currently under revision (refer to request for comments on proposed revision of the waste classification system published by the DFFE in GG48290 on 24 March 2023).	
10: Unconventional gas activities	The statement that the “purpose” of the report is “minimum information requirements” makes no sense.	

Regulation Clause	Comment	Recommendation
Annex H		
Security and guarantee	Contradicts the specifications of <u>section 30</u> of the NWA, as Annexure H(I) only provides for a letter of credit from the bank, a surety or a bank guarantee, a bond, or an insurance policy, while <u>section 30(2)(v)</u> indicates that "any other appropriate form of security" may be provided. Furthermore, <u>section 30(1)</u> states that security is only required "if it is necessary for the protection of the water resource", and not all water uses listed under Annexure H(II) pose a significant detrimental risk to water resources – the need for security needs to be established on a site-specific basis as part of the substance of an application, and cannot be uniformly required based only on the type of water use that is applicable to the activities of the applicant.	Align surety and guarantee with NEMA Financial Provisioning regulations.
Annexure I: Water Use Audit Report	There is no reference in the text of the Proposed Regulations to this Annexure. It appears to contain a Table of Contents for a Water Use Licence Audit Report. However, this Table of Contents is not at all aligned with internationally accepted standards for compliance auditing, or with the objectives for auditing of environmental authorisations (of which a WUL is one, in accordance with its status as a specific	

Regulation Clause	Comment	Recommendation
	environmental management act under the NEMA) which have been published in GN R.982 in GG38282 of 4 December 2014, which explicitly state that one of the objectives of an environmental compliance audit is to identify shortcomings in the authorisation, and to identify and make recommendations on the need for any changes to the authorisation, and to report on the effectiveness of the authorisation. These requirements are also not aligned with the requirements for environmental auditing published under the Minerals and Petroleum Resources Development Act 28 of 2002 ("MPRDA") in GN R.527 in GG 26275 of 23 April 2004. Most significantly, is that it is not the objective of an audit report to "identify and assess any new impacts and risks as a result of undertaking the water use", as an audit report can never be an impact assessment. It can only identify the need for such an assessment.	
Annexure J: "Table 1: Schedule of the proposed amendment to < insert name of the applicant and project >, licence number: <insert licence number>"	There is no reference in the text of the Proposed Regulations to this Annexure. It appears to contain a Table to be completed as part of an amendment process for a water use licence, but it does not give any indication as to where or how this table should be submitted.	