



## **REPORT ON THE STATE OF THE DEPARTMENT OF WATER AND SANITATION**

*Prepared by the South African Water Caucus DWS Task Team  
based on publicly available information*

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## 1. INTRODUCTION

In 2015 the Minister of Water and Sanitation commissioned a comprehensive organisational review of the Department of Water and Sanitation. The background and motivation for this organisational review included:

- The new mandate and functional change that established the Department of Water and Sanitation and merged the mandates of the Department of Water Affairs and the Sanitation function from the Department of Human Settlements
- The development of DWS Strategic Plan 2015/2016 - 2019/20 and the need to align the plan with the objectives of the National Development Plan (NDP).
- The establishment of nine Catchment Management Agencies which impacts on the functions, particularly DWS at provincial level.

This review included a diagnostic evaluation of the entire Department, business process analysis, organisational functionality assessment, post establishment determination, job analysis processes and organizational structure costing. The organisational review included an evaluation of the department's business and revenue model.<sup>1</sup> It is apparent that the outcomes and recommendations stemming from this process were entirely ignored evident by the ongoing and intensified institutional problems within the department.

This report provides a cursory overview or snap-shot of the institutional and governance challenges that subsist and in many aspects have, arguably, deteriorated in the Department of Water and Sanitation. In summation, the central challenges facing the department relate to human resources (including capacity constraints, high staff turnover and vacancy rates and suspension of senior management); poor financial management (including over-spending, accruals and corruption allegations); considerable policy and institutional uncertainty and incoherence; major challenges to institutions that are critical for water governance (including Water Boards and Catchment Management Agencies); deterioration in WWTW and infrastructure due to lack of maintenance and investment and significant deficiencies in reporting, compliance monitoring and enforcement.

The main sources of information for this report are Parliamentary Questions and Answers, Portfolio Committee meeting reports and information stemming from access to information requests.

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<sup>1</sup> Department of Water and Sanitation (2015). Portfolio Committee Briefing: Organisational Structure Department of Water and Sanitation

## 2. HUMAN RESOURCES

### 2.1. *Vacancy rates*

The DWS has high rates of staff turnover in general and considerable vacancy rates in particular. National Treasury reports that there are 900 vacant posts within DWS.<sup>2</sup> On 12 May the Minister confirmed that a total of twenty one (21) positions are currently vacant within the office of the Director-General, out of a total of forty four (44) employment positions (*see Table 1*). As of 12 May 2017 two (2) of these positions had been filled with persons on an acting capacity.

Table 1: Vacant posts in the office of the Director General

No	(1)(b)(i) Title of the vacant post	(1)(b)(ii) Reason why post still vacant
1	Director: Office of the DG	Post was advertised and put on hold until the DG was appointed
2	Head: Strategy & Operations	Advertised closed 25/11/2016
3	CD: Support Services	Advertised closed 17/06/2016
4	Assistant Director : Ministerial Enquiries	Advertised in June 2017
5	Language Practitioner	Advertised in June 2017
6	Deputy Director CPT	Not regarded as priority post as a result of budget cuts
7	Water and Sanitation Advisory Service	Not regarded as priority post as a result of budget cuts
8	ASD: Administration	Advertised closed 25/11/2016
9	Office Manager	Not regarded as priority post as a result of budget cuts
10	Personal Assistant	Not regarded as priority post as a result of budget cuts
11	Head : Water Sector Partnerships IGC and Corporate Communication	Not regarded as priority post as a result of budget cuts
12	Office Manager	Not regarded as priority post as a result of budget cuts
13	Personal Assistant	Not regarded as priority post as a result of budget cuts
14	Personal Assistant	Not regarded as priority post as a result of budget cuts
15	ASD: Office of the DG (secretary)	Not regarded as priority post as a result of budget cuts
16	Driver /Messenger	Not regarded as priority post as a result of budget cuts
17	Messenger	Not regarded as priority post as a result of budget cuts
18	Director : Policy & Stakeholder Management	Not regarded as priority post as a result of budget cuts
19	Deputy Director : Stakeholder Liaison and Parliamentary Co-Ordination	Advertised closed 25/11/2016
20	Parliamentary Officer	Not regarded as priority post as a result of budget cuts
21	Cluster and Policy Coordination	Not regarded as priority post as a result of budget cuts

<sup>2 2</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Section 32 Public Finance Management Act reports: NT briefing; Overberg Water Board: DWS & Overberg Water; with Minister. 28 June 2017. [Available online: <https://pmg.org.za/committee-meeting/24704/>]

## 2.2. Suspensions

More recently, the suspension of senior management has become commonplace in the department. On 9 May 2017 the DG confirmed that three senior officials had been suspended: the DDG: Water Resource Infrastructure<sup>3</sup>, CFO: Water Trading Entity<sup>4</sup> and Chief Director: Sanitation and Bucket Eradication Project<sup>5</sup>. The DG declined to give reasons for their suspension save that the suspensions had to do with “consequence management”<sup>6</sup>. On 14 August 2017 the Minister confirmed that DDG: Regulation<sup>7</sup> was also suspended due to allegations of misconduct. This was a precautionary suspension in terms of Chapter 7 of the SMS Handbook pending an investigation into allegations of misconduct. Arising from the suspension, the DG appointed a senior manager in an acting capacity as DDG: Regulation.<sup>8</sup>

On 23 August the Minister confirmed that three Deputy Director-Generals (DDGs) were suspended. However, two of these DDGs were present at the Portfolio Committee meeting where these suspensions were confirmed based on the fact that “no charges were served on them within the specific time of suspension”.<sup>9</sup> There have been no public statements or explanations as to why these DDGs have been suspended, what are they being investigated for or charged with and who is acting in their place. The Committee recommended scheduling,

*a closed session where the Minister and Acting DG can share in confidence the events leading to the suspension of the senior officials. The session will be aimed at addressing the issues that the suspended DG could not address.*

It is uncertain whether this has been scheduled and the extent to which the public will be informed on the outcomes

On 13 September the Minister announced that the Deputy Director Generals (DDGs) had returned to work because they had not been charged during the required time period. This did not mean that charges had been dropped. Allegations of corruption would be investigated.

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<sup>3</sup> Zandile Mathe

<sup>4</sup> Mpho Mofokeng

<sup>5</sup> André van der Walt

<sup>6</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department of Water and Sanitation on its Annual Performance Plan. 09 May 2017. [Available online: <https://pmg.org.za/committee-meeting/24309/>]

<sup>7</sup> Mr Anil Singh

<sup>8</sup> National Assembly, Question No. 2303. Date of publication in internal question paper: 14 August 2017 (Internal Question Paper No. 26)

<sup>9</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Briefing by the Minister and Department of Water and Sanitation on Quarter 1 performance. 23 August 2017. [Available online: <https://pmg.org.za/committee-meeting/24309/>]

Table 2: List of Director-Generals: Department of Water and Sanitation since 2008

Sifiso Mkhize (Acting DG)	Acting	Current
Dan Mashitisho	Suspended	3 Jan - 16 July 2017
Sifiso Mkhize (Acting DG)	Acting	9 July 2016 - 3 Jan 2017
Margaret-Anne Diedricks	Resigned	22 Oct 2014 - 9 July 2016
Trevor Balzer (Acting DG)	Acting	
Maxell Sirenya	Suspended [for two years on full pay]	January 2012 [Suspended 2013-2015]
30 months with no DG		
Nobubele Ngele (Acting DG)	Suspended	2 November 2010
Pam Yako	Dismissed	February 2008 - 23 July 2009

The office of the Auditor-General of South Africa has also expressed concern about the “instability” in the accounting department owing to a high turnover rate of accounting officers. According to the Auditor-General, the Department of Water and Sanitation has had 9 different accounting officers in the last 8 years.

The regular suspensions of senior management particularly DGs and DDGs alongside high vacancy and staff turn-over rates have severe implications for the functioning of the Department of Water and Sanitation and associated service delivery.

### **3. FINANCIAL MANAGEMENT**

Major concerns have been raised in Water and Sanitation Committee meetings, media reports and in response to Parliamentary Questions and Answers related to financial management in DWS. In particular, issues of accruals, over-spending, overdraft (owed to the Reserve Bank) and failure to collect money owed to DWS are of serious concern. As a result of serious concerns related to the Water and Sanitation Budget, with regards to inter-alia over-spending, accruals and over-draft, in 2017 the Water and Sanitation Committee threatened to postpone the budget vote. As the budget vote could not be postponed, the Committee threatened to recommend that the budget vote be rejected. It demanded a detailed breakdown of the debt from the DWS. In response, the Minister stated that the DWS would return to the Committee with a project-by-project report.

#### ***3.1. Accruals and payables***

On 23 May 2017 the DWS reported that R 1 463 212 763 (rounded off to R 1.5 billion) was owed to contractors (accruals) at the end of March 2017. The breakdown of the total accruals and payables are as follows:

- Accruals and payables for infrastructure projects amount to R943 million;
- Accruals and payables for normal goods and services amount to R121 million; and
- Accruals and payables for sanitation projects amount to R399 million

According to the Minister this debt was mainly related to the Regional Bulk Infrastructure Grant Projects (RBIGs). On the 13 September, the DG submitted that R 921 million of this had been paid as at 07 September 2017. According to the DWS the remainder could only be settled in the 2017/18 financial year. As a result, the current budget had to be adjusted (reduced) to take care of accruals<sup>10</sup>. On 13 September the DG outlined the reprioritised budget for DWS as follows:

- Water Services Infrastructure Grant: Grant allocations have been reprioritised to cater for the accruals. Only projects in Nongoma and Madibeng municipalities will be implemented.
- Accelerated Community Infrastructure Programme: R214 million has been reprioritised to cater for the accruals of the Bucket Eradication programme. The plan to initiate 52 new projects has been deferred. Only 3 KZN projects that were committed during the 2016/17 financial year will be implemented.
- Regional Bulk Infrastructure Grant: R344 million has been reprioritised from 71 slow moving projects under construction to cater for accruals. However, the projects earmarked for completion are currently not affected.

In response to concerns around accruals a Member of Parliament in the Water and Sanitation Portfolio Committee pointed out that,

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<sup>10</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Minister of Water and Sanitation briefing; Committee Report on Water and Sanitation Budget. 25 May 2017

*Various construction projects engaged in by the DWS were all behind and the costs are escalating. People have been employed by the DWS for the purposes of those construction projects and are being paid monthly, but no work is currently being done.*

According to a Media Statement by DWS, the department pays R1 billion to service providers per month<sup>11</sup>. These debts will continue to escalate if they are not settled timeously.

### **3.2. Overdraft of Water Trading Entity**

On 24 May 2017 during a Portfolio Committee briefing on the Water and Sanitation Budget, the Deputy Minister reported that, as a Water Trading Entity, the department's account is R2.6 billion overdrawn. This amount is owed to the Reserve Bank. During the Committee Meeting the Minister and the department could not sufficiently answer questions raised about this. Notably, the DWS gave three conflicting answers related to where the money was going to come from to service the debt.<sup>12</sup> The Committee Members were also concerned about the rapid increase in debt owed to the Reserve Bank i.e. from R454 million in 2016 to R2.6 billion by March 2017. In September 2017, the debt had been reduced to R1.9 billion. According to National Treasury, the main source of the debt was money owed by the Water Trading Entity to the Trans Caledon Tunnel Authority.

On 13 September the Minister submitted that this R2.6 billion overdraft has been frozen by Treasury. An agreement has been reached to cut infrastructure projects and reduce the overdraft by R700 billion by March 2018. This means that the infrastructure works at some of the dams will "slow down".

### **3.3. Overspending by Department of Water and Sanitation**

The Department overspent on its budget by R110 million at the end of Quarter 4 (Q4) of 2016/17 financial year. This was disclosed on the 24 June 2017 during a Portfolio Committee meeting where the department presented its Q4 performance results. The Minister attributed this overspending to infrastructure programmes and "significant unforeseen expenditure related to drought relief" and the "inherited" bucket eradication programme ("inherited" from the Department of Human Settlements). However, the Minister has confirmed that DWS "does not have a budget allocation for drought relief in the 2017/18 financial year" and that "there is no amount allocated for Western Cape towards drought relief in the 2017/18 financial year".<sup>13</sup> Moreover, it is evident that DWS had under-spent in a number of programmes. At the Committee meeting members raised that National Treasury does not condone over-expenditure. In response, the Minister submitted that the Department would present details of over-expenditure to Parliament for Parliament to either condone or not condone the over-expenditure.

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<sup>11</sup> Department of Water and Sanitation. Media statement Department presents quarter 4 results to parliament. 28 June 2017. Available online:

<http://www.dwa.gov.za/Communications/PressReleases/2017/MS%20-%20Department%20presents%20quarter%204%20results%20to%20parliament.pdf>

<sup>12</sup> ibid

<sup>13</sup> National Assembly, Question No. 1601. Date of publication in internal question paper: 9 June 2017 (Internal Question Paper No. 21)



### 3.4. Auditor-General report and performance

The Auditor General of South Africa's (AGSA) *'Budgetary review and recommendations report to the Water and Sanitation portfolio'* qualified both DWS and WTE "on irregular and fruitless and wasteful expenditure as they did not have adequate controls to identify unauthorised, irregular, fruitless and wasteful expenditure within project's". The report notes that that DWS converted indirect grants into direct grants and applied an incorrect accounting treatment. The report raises particular concern related to Programme 3 of DWS Strategic Plan (Water Infrastructure Development) as DWS spent 99.6% of the budget allocated to it yet only achieved 28% of the objectives of Programme 3. On 17 May 2017 the Auditor-General submitted that only 33% of the water boards had received unqualified audit outcomes (with no findings) for the 2015/16 financial year.<sup>14</sup> The Auditor-General highlighted that this regression is a result of "poor budget management processes, supply chain management, irregular expenditure and poor management".

At a Portfolio Committee on Water and Sanitation meeting on 4 October 2017, the office of the Auditor-General reported to the Portfolio Committee that its audit of the DWS's annual report for the 2015/16 financial year was qualified. The audit was qualified on the basis of findings of significant irregular, fruitless and wasteful expenditure and lack of adequate controls to identify unauthorised, irregular, fruitless and wasteful expenditure within projects. The Minister of Water and Sanitation advised the Portfolio Committee that the DWS intends to object to the audit, but, at a Portfolio Committee meeting held on 2 November 2017, the Auditor-General's office advised the Portfolio Committee that the DWS has not provided any evidence to support its challenge of the 2015/16 audit.

On 7 November 2017, the National Planning Commission (NPC) reported to the Portfolio Committee on Water and Sanitation<sup>15</sup>. It advised the Portfolio Committee that "none of the DWS's National Development Plan goals had been achieved". Importantly, the NPC highlighted that "DWS did not have a comprehensive management strategy, it will not have completed the Lesotho Highlands water project by 2020 and it had not timeously developed new water schemes to supply urban and industrial centres and augment irrigation schemes". The NPC also highlighted DWS failure to develop a national water conservation programme to improve water use and efficiency.

At the same Portfolio Committee meeting, held on 7 November 2017, Dr Rolfe Eberhard made a presentation to the Portfolio Committee which highlighted that South Africa's water infrastructure is "in some trouble" due to *inter alia* the fact that "infrastructure was not always well built or built in the right place and resources that were used for water were not always effectively used". The presentation stressed the risks in DWS planning and decision making and the level and effectiveness of expenditure. Dr Eberhard raised that, accordingly "allocation of additional resources ought to be contingent on fundamental reforms to improve the governance and effectiveness of expenditure".

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<sup>14</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department of Water and Sanitation 2017/18 Annual Performance Plan, AGSA input; Committee Report on Water and Sanitation Budget. 17 May 2017

<sup>15</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - MTBPS implications on water sector: Department; Water Economist; Black Business Council responses. 07 November 2017

### **3.5. Revenue collection and Water Boards**

On 3 March 2017 the Minister, in response to media reports on DWS bankruptcy, argued that DWS had experienced significant budget cuts from National Treasury. National Treasury, on the other hand, submit that budget cuts were entirely justified and reasonable, as DWS should be financing capital expenditure from income (service charges) received from municipalities, Water Boards and other water consumers. According to the Minister, the DWS is struggling to collect money owed to it. Particularly, DWS is failing to collect money from municipalities and Water Boards. Approximately R9.8 million is owed to the DWS.

On the 7 June 2017 the Deputy Minister submitted that Overberg Water Board has never produced reports, despite having an allocation of over R40 million. Mhlathuze has no board. Later in June 2017, the Minister disbanded the management of the Overberg and Umgeni Water Boards. All members of the Overberg Water Board were suspended and subsequently legal action was instituted against the DWS. In a Committee meeting the Deputy Minister explained that DWS was waiting for the outcome of the High Court matter, in which it was held that the Minister acted unlawfully.

### **3.6. Corruption allegations**

There have been several concerning allegations of corruption in DWS, particularly in relation to the Lesotho Highlands Water Project. Notably, the Polihali Dam, part of the Lesotho Highlands Water Scheme, was originally scheduled for completion in 2018. This has been repeatedly postponed due to alleged interference by the Minister of Water and Sanitation related to “irregular appointment” of LTE Consulting without following a proper tender process<sup>16</sup>. Prior to being awarded this tended LTE Consulting has been the subject of a probe by the Special Investigating Unit, in connection with water and sanitation contracts in Limpopo and Gauteng, which were allegedly awarded to the company without following regular tender or procurement processes. The issue has also been subject to a probe by the Public Protector, in 2016, who confirmed referring allegations of irregularities to the Auditor-General for an audit. According to media reports, LTE Consulting has been awarded R5 billion worth of contracts in water and sanitation over the past year. The consultation fee, related to the Lesotho Highlands Water Scheme, could amount to as much as R2.6 billion. It has been alleged that the LTE had donated as much as R3.5 million to the ANC in the past two months. There are also allegations that LTE Consulting has been contacting and paying stakeholders involved in the LHWP.

Further, media reports highlight a number of irregular hiring and firing practices undertaken by Minister of Water and Sanitation and the department, allegedly in order to ensure “favourable” people are involved with the project. This included the removal of

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<sup>16</sup> amaBhungane (5 August 2016). Nomvula Mokonyane’s alleged interference in Lesotho water project cited as causing delays. *Daily Maverick*. [Available online: [https://www.dailymaverick.co.za/article/2016-08-05-amabhungane-nomvula-mokonyanes-alleged-interference-in-lesotho-water-project-cited-as-causing-delays/#.WczQh\\_5rzml](https://www.dailymaverick.co.za/article/2016-08-05-amabhungane-nomvula-mokonyanes-alleged-interference-in-lesotho-water-project-cited-as-causing-delays/#.WczQh_5rzml)]

officials who had denied LTE tender opportunities. For instance, in October 2015 the Minister removed South Africa's chief delegate<sup>17</sup> on the LHWP, who had previously had 10 years of experience in water megaprojects, from the LHWP offering no reasons and replaced her with the former Gauteng MEC for infrastructure development<sup>18</sup>, who served under Minister during her tenure as Gauteng premier and worked alongside her in ANC provincial structures. Lesotho's chief delegate<sup>19</sup> to the LHWC was also removed in April 2015. The reason for the removal was alleged insubordination<sup>20</sup>. Media reports suggest that the chief delegates of South Africa and Lesotho were removed after meeting with LTE Consulting and refusing to give the company tenders without going through the formal process. According to reports, the Minister of Water and Sanitation along with Lesotho politicians removed and replaced officials seen as obstacles, resulting in the 'hijacking of the bilateral Lesotho Highlands Water Commission (LHWC)'<sup>21</sup>.

Since LTE Consulting's involvement in the project, the bids for a number of tenders, from other companies, were rejected by the department soon thereafter. Due to repeated postponement the Minister announced that the project is only scheduled for completion in 2025 (rather than 2018). According to the Wits School of Governance, six-month delay in a project of this magnitude would cost about R500-million. The delay and extension of completion date to 2025 will result in total costs of up to R26 billion. Further, the delay will have significant impacts on water security and access.

During Phase 1 of the LHWP, in the 1980s and 1990s, massive corruption was uncovered. In 1999, a Lesotho court found the chief executive of the Lesotho Highlands Development Agency (LHDA) guilty of accepting bribes from multinationals to secure tenders in the Lesotho Highlands Water Project (LHWP). More than 12 multinational firms and consortiums were found to have bribed the CEO of the project<sup>22</sup>. The case drew considerable international attention. According to the Executive Manager of the Trans Caledon Tunnel Authority<sup>23</sup> construction tenders worth between R1million and R1 billion are being advertised for the second phase of the R25 billion Lesotho Highlands.

The Special Investigative Unit (SIU) reported to the Portfolio Committee on Water and Sanitation at its meeting held on 1 November 2017. It advised the Portfolio Committee that it was investigating several water-related projects across South Africa. As a result of the investigations, 58 referrals had been made to the National Prosecuting Authority (NPA) for prosecution and the DWS for civil action and internal disciplinary proceedings. Of those 58 referrals, 9 related to contraventions of the Prevention and Combating of Corrupt Activities Act, 2004 by former and current DWS officials.

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<sup>17</sup> Dr Zodwa Dlamini

<sup>18</sup> Bheki Nkosi

<sup>19</sup> Charles Putsoane

<sup>20</sup> The Lesotho Highlands Development Authority is currently operating without a board of directors following a series of resignations and dismissals.

<sup>21</sup> City Press. (07 October 2016). *Nomvula Mokonyane's Watergate*. [Available online: <http://citypress.news24.com/News/nomvulas-watergate-20160710>]

<sup>22</sup> Institute for Security Studies in South Africa. (2012). Case Study: Lesotho Highlands Water Project Corruption Trials

<sup>23</sup> Trans Caledon Authority manages the project for SA and the Lesotho Highlands Development Authority manages it for Lesotho.

#### **4. POLICY AND LEGISLATIVE ENVIRONMENT**

There is considerable uncertainty and incoherence in the policy and legislative environment related to water and sanitation. Notably, there is a complete lack of clarity on overall policy direction and alignment vis-à-vis the manner in which proposed new legislation, policy and legislative reform and amendments are intended to align. Instead of ensuring proper implementation of the National Water Act, the Minister has caused significant policy and legislative uncertainty through the proposed Water Master Plan, proposed Water and Sanitation Bill, the proposed National Water Resources and Services and Sanitation Strategy; and Free Basic Water review. The encouraging Integrated Water Quality Policy and Strategy, on the other hand, seems to be largely ignored. Notably, there is lack of clarity on:

- Objectives, rational and timeframes for the proposed Water and Sanitation Bill
- The status of the proposed National Water Resources and Services and Sanitation Strategy, intended to replace the NWRSS2.
- A proposed *Master Plan* and its alignment with other policy processes.
- The status, outcomes and public participation related to the FBW review. This review supposedly happened in 2013, however, stakeholders were not properly consulted or engaged in the process and there is no available and accessible documentation on the outcomes and results of the review.
- The Integrated Water Quality Strategy vis-à-vis failure to publish Blue Drop or Green Drop reports in four years.

##### ***4.1. Proposed Water and Sanitation Bill***

The DWS has, for several years, proposed the development of a “Water and Sanitation Bill” that “would merge the National Water Act and Water Services Act into one piece of legislation”. According to the department, “having one piece of legislation will enable everyone within the water sector to have a clearer understanding of the legislative framework regarding water management across the entire water value chain”. On 10 May, DWS briefed the Portfolio Committee on Water and Sanitation on intended legislative reform and progress made on developing the proposed Water and Sanitation Bill. In terms of the department’s timeframes, a deadline for the publication of the Draft National Water and Sanitation Bill was set for August 2017. On 14 August 2017 the Minister submitted that the department would not be able to deliver on this deadline,

*The Bill was presented to the ESEID cluster on 19 July 2017, requesting approval for submission to Cabinet for Cabinet to approve the publication of the Bill in the government gazette for public comment. The cluster recommended further consultation with all other government departments being members of both the ESEID and SPCHD clusters. The further consultation took place on 10 August 2017 and the Bill will be resubmitted to the cluster at the date to be specified. Only after Cabinet has approved, the Bill will be gazetted for public comments<sup>24</sup>.*

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<sup>24</sup> National Assembly, Question No. 2303. Date of publication in internal question paper: 14 August 2017 (Internal Question Paper No. 26)

On 13 September the DG submitted that the Bill would potentially be delayed until March 2018. He advised that a draft of the Bill is available and could be presented to the Committee<sup>25</sup>.

There are several concerns related to the proposed Water and Sanitation Bill. In a Committee meeting on 10 May 2017, during a briefing by the Department on the Draft Water and Sanitation Policy, committee members raised, inter-alia, lack of alignment between the proposed Bill and the Draft Policy, issues of overlapping mandates, public participation and general incoherence and lack of legal certainty in the legal and policy environment related to water. The following issues, raised by Committee Members, remain uncertain:

- Would the Draft Policy have to be reviewed once the new Act was active?
- Uncertainty on the mandate to determine tariffs and free basic water allocation at the local government level, as these determinations are the responsibility of the Department of Cooperative Governance and Traditional Affairs (COGTA) and municipalities.
- Related to the above, the alignment between the Bill and the Municipal Systems Act which gave local government a range of powers related to water.
- Lack of coordination, consultation and cooperation between DWS, DEA and DMR related to water
- The actual benefits of merging the provisions of the National Water Act and Water Services Act in relation to service delivery, affordability and access to basic water services.
- Rationalising tariffs for large users in the commercial, agricultural and industrial sectors.
- Issues related to ownership versus custodianship of water resources.
- Skills shortages<sup>26</sup>

The Chief Director: Legal Services, Mr Puseletso Loselo, reported to the Portfolio Committee on Water and Sanitation about the Bill on 8 November 2017. He advised the Portfolio Committee that the State Law Advisor has refused to certify the Bill on account of it not being aligned with the Constitution. He explained that the State Law Advisor is of the opinion that the Bill purports to afford functions to the Minister of Water and Sanitation that are exclusive municipal competences. Mr Loselo stated that he could not divulge the content of the Bill to the Portfolio Committee at this stage, but gave a broad overview of the main changes the Bill will make to existing legislation. Those changes are broadly the following:

- The introduction of “sunset clauses”, or clauses which provide that all existing lawful water uses (uses that accrued to landowners under the old dispensation) must be converted to other forms of authorisations within a given time

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<sup>25</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department of Water and Sanitation on Quarter 1 performance, with Minister and Deputy Minister. 13 September 2017

<sup>26</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department briefing on the Water and Sanitation Draft Policy. 10 May 2017

- The introduction of a “use-it-or-lose-it” clause, or a clause which provides that a water authorisation is not utilised within a given time, it will prescribe
- The introduction providing for the transformation of water user associations
- The introduction of clauses explicitly prohibiting the trading of water authorisations without the consent of the Minister of Water and Sanitation
- The introduction of clauses dealing with the rationalisation of water governance entities
- Changes to the provisions of the Act dealing with compliance monitoring and enforcement
- Necessary amendments to existing provisions to bring water legislation in line with the Public Finance Management Act, 1999

Mr Loselo also advised the Portfolio Committee that, “if all goes well”, the Water and Sanitation Bill should be table with the Portfolio committee before the end of the first quarter of 2018/19 financial year. The Bill would have no “costing” implications as it does not provide for the creation of any additional entities. The establishment of an Economic Regulation for the water sector will be provided for in a separate Bill.

**Table 3: Proposed Roadmap for Draft Water and Sanitation Bill as presented by DG to Portfolio Committee**

ACTIVITY	DATE
Submit Cabinet Memorandum to DG and Minister	May 2017
Draft Socio Economic Impact Assessment	Completed
Presentation of Water and Sanitation Bill to SPCHD Cluster Technical Working Group	June 2017
DG presents Water and Sanitation Bill for discussion and recommendation at Clusters (SPCHD)	June 2017
Submission of the Bill for Preliminary Certification by State Law Adviser	July 2017
Minister presents Bill for Gazetting for public comments at Cabinet meeting	July 2017
<b>Public consultation: 90 days starts</b>	August 2017
Certified Socio-Economic Impact Assessment Final report	August 2017
Final record of public comments, analysis and recommendations and final drafting	
Certification by State Law Adviser	August 2017
Cabinet Memorandum for approval by DG and Minister	August 2017
Presentation of Bill to SPCHD Cluster Technical Working Group	September 2017

Committee Members further suggested that the process should include the development of a Green Paper and White Paper to ensure that the Bill is not fragmented. It was submitted that



the Bill should consider, inter-alia, the following; restructuring of financial arrangements, prioritisation of equitable share allocations, alignment with the Public Finance Management Act (PFMA) and Municipal Systems Act, institutional factors, access to water, ecological reserves, emerging farmers, climate change, pollution, CME and delegations to Catchment Management Agencies

#### ***4.2. Proposed Water and Sanitation Master Plan***

DWS recently undertook consultations on a proposed 'water and sanitation *Master Plan*'. There is a complete lack of clarity on the objectives of the Master Plan, its rationale and how it is intended to relate or align to existing water and sanitation legislation, policy, plans and strategies as well as current policy and legislative processes such as the Draft Policy and Water and Sanitation Bill. It thus appears to be a completely separate policy process unrelated to other processes. The proposed Master Plan was discussed at a Water and Sanitation committee meeting on 20 June 2017. The Committee Chairperson raised that the Bill should precede and provide the legal framework for and guide implementation of the proposed Master Plan. The Committee recommended that both the legislation and Master Plan should be finalised by March 2018<sup>27</sup>. It is envisaged that the Water and Sanitation Master Plan will be updated yearly to ensure that there are no policy gaps going forward.

#### ***4.3. Proposed revision of the pricing strategy for water use charges***

The Minister has proposed some changes to the strategy for pricing the use of raw (untreated water) directly from water resources and the discharge of polluted water to water resources. The pricing strategy directly affects municipalities and other water services providers other, as well as other users of raw water, such as mining operations, industrial facilities and agricultural practices.

The new strategy provides for five different types of charges for raw water, namely water resources management charges (which will find the protection, allocation, conservation and control of water resources in South Africa), water resources infrastructure charges (which will find the maintenance of water infrastructure in South Africa), waste discharge mitigation charges (to ensure that the polluter pays), Water Research Commission charges (to fund the Water Research Commission) and economic regulation charges (to fund an entity that will be created under new legislation).

The strategy also provides that the pricing of raw water will be determined in the light of fundamental principles, such as 'the polluter/user pays' principle, ecological sustainability and efficiency. The strategy also states that the measurement of water use will be 'phased in' over time for the purposes of effectively monitoring and pricing water use. The Economic Regulator, once established will advise the Minister on the pricing of water use charges. The draft strategy was published for comment in November 2015, but has not yet been finalised.

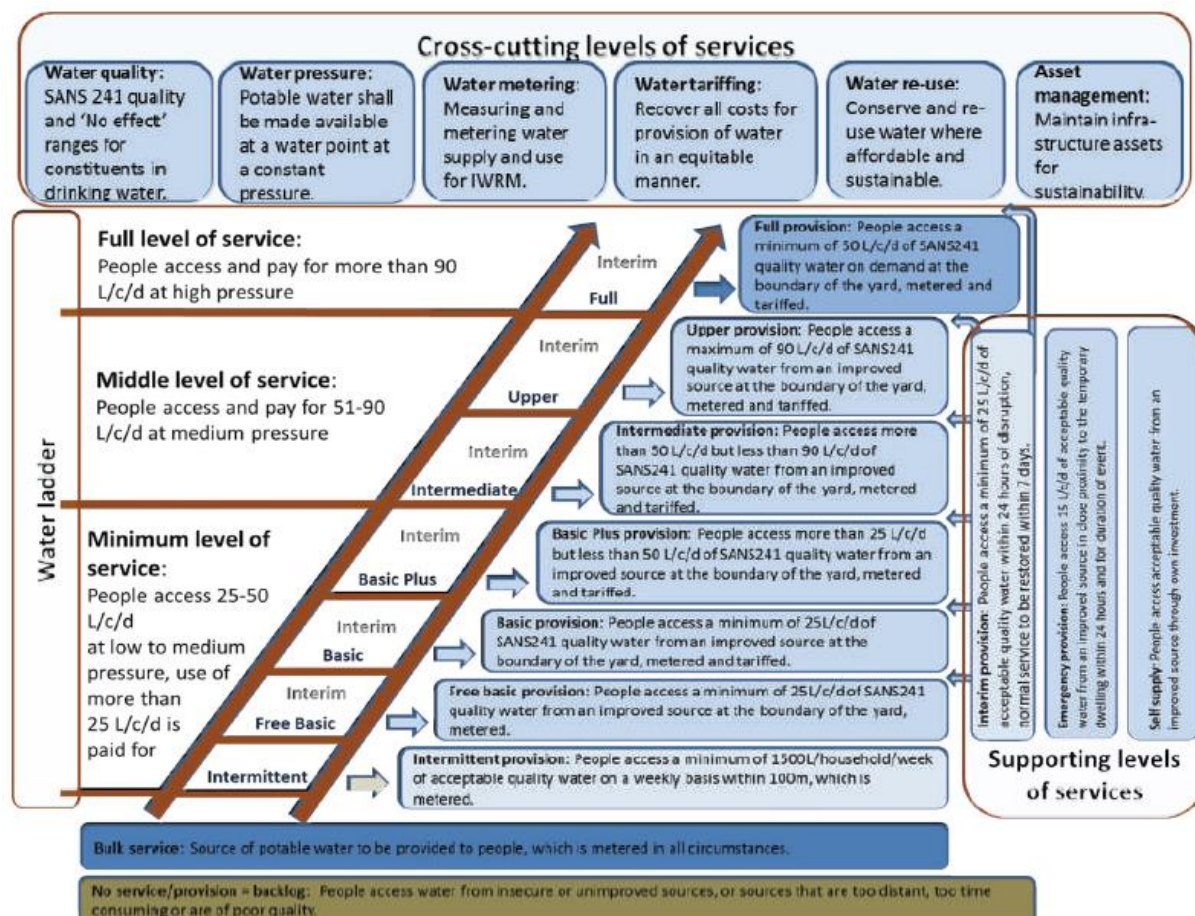
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<sup>27</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department briefing on Water Master Plan, with Deputy Minister. 20 June 2017

#### 4.4. Proposed national norms and standards for domestic water and sanitation services

The proposed norms and standards were published for comment on 15 September 2017. The proposed norms and standards provide for the provision of water supply services in accordance with the “water ladder” which is captured in the infographic below.

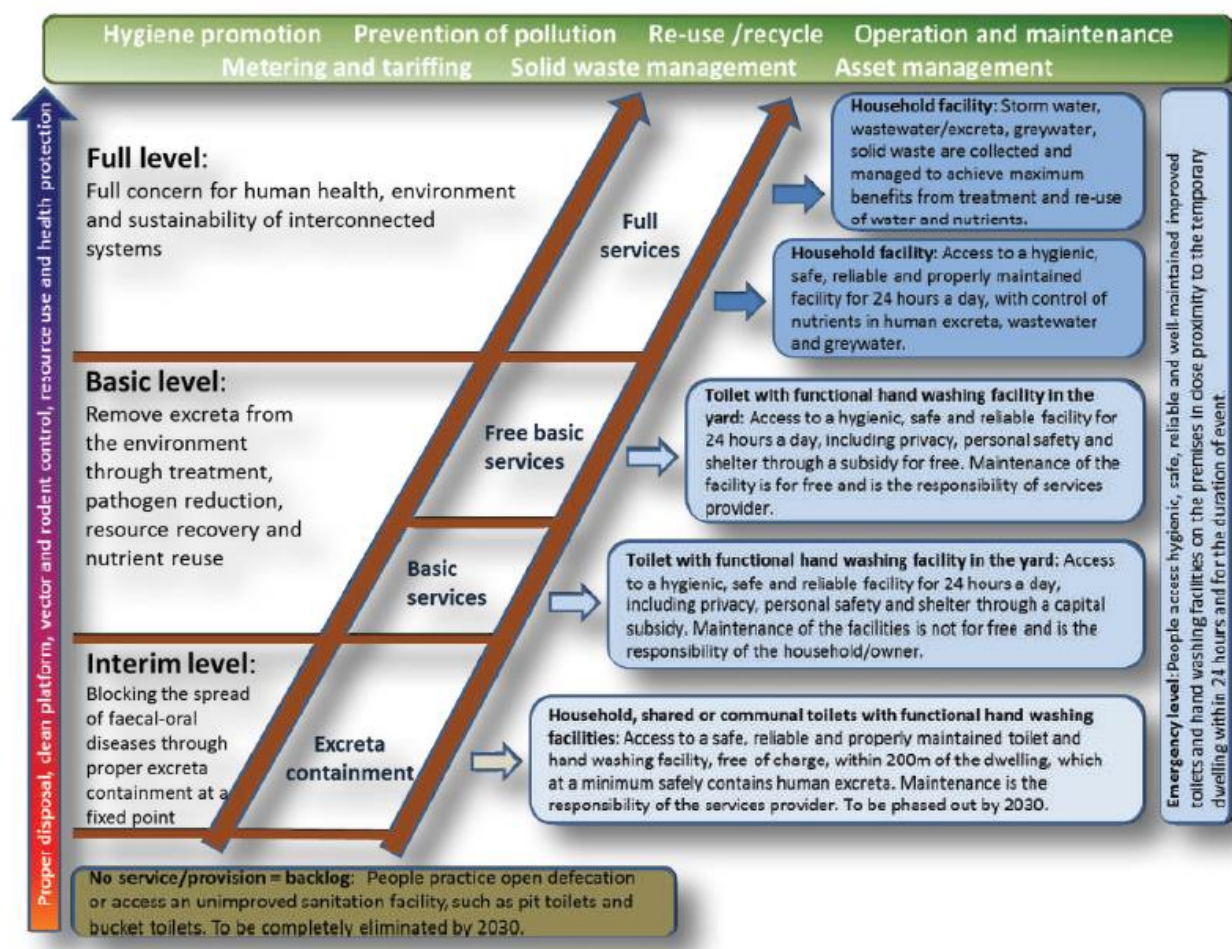
Figure 1: “Water ladder” for water supply services proposed by the norms and standards for domestic water and sanitation services



Sanitation services are to be provided in accordance with the “sanitation ladder” which is captured in the infographic below.



Figure 2: “Sanitation ladder” for sanitation services proposed by the norms and standards for domestic water and sanitation services



#### 4.5. Proposed revision of the norms and standards for setting water services tariffs

These norms and standards apply to tariffs for domestic water services, i.e. water provision and sanitation services. Water services are provided by municipalities or other entities, such as Water Boards, and the tariffs for those services are set by municipalities. The norms and standards is a guideline that must be applied by municipalities when determining water tariffs.

The draft norms and standards provide that tariffs must differentiate between different categories of water use i.e. household use, industrial use and other uses. In relation to household use, the norms and standards provide that a water services authority may not use transfers or grants intended to subsidise the provision of household water above the level of free basic water supply. It furthermore provides for different tariff structures for different categories of household users and for tariff blocks within those categories,

Table 4: Draft norms and standards for different water use categories

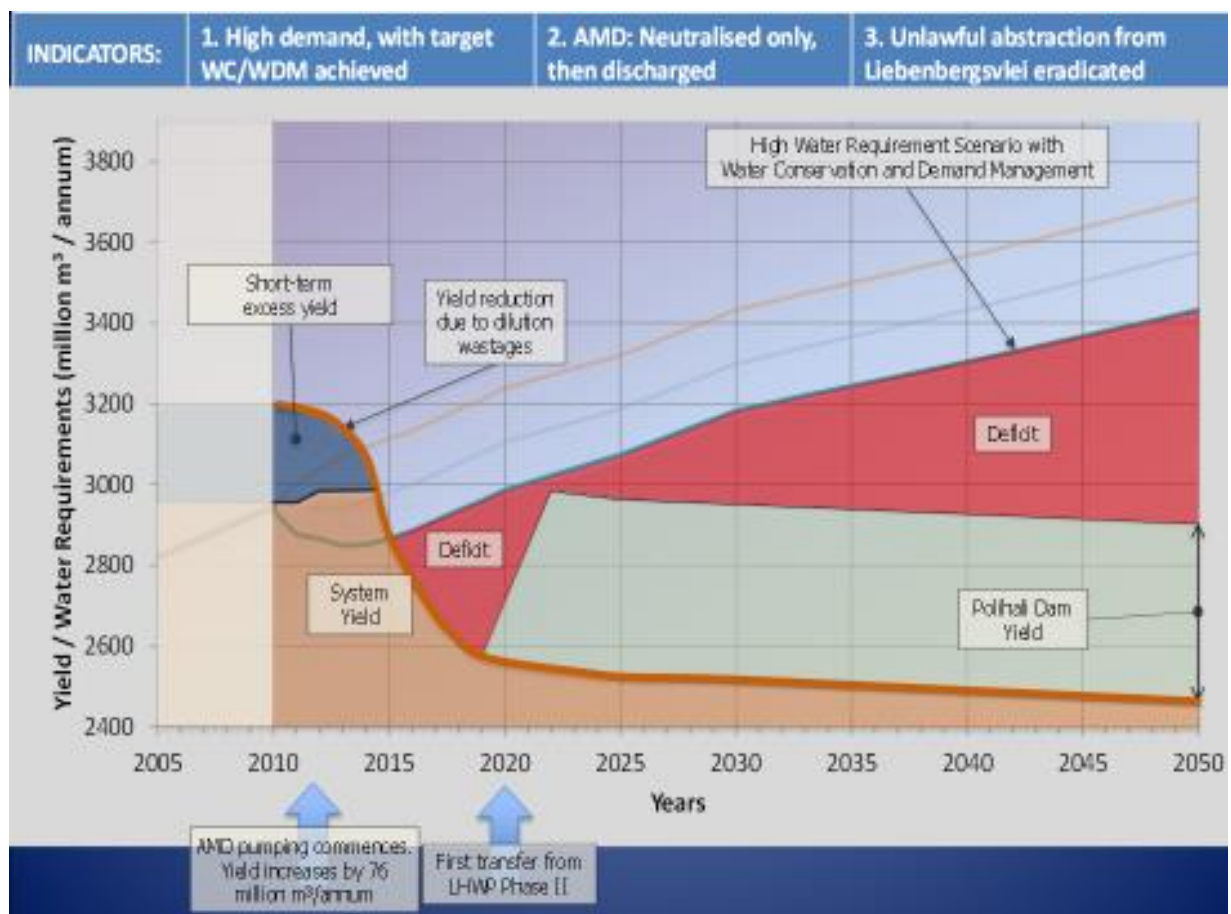
Category	General norm/standard for category	Tariff Block	Specific norm/standard for tariff block
Households who are supplied through a water services work that supplies each household through an individually metered connection	Tariff is set as a volume based charge that provides for a rising block tariff structure	<b>Lowest tariff block</b>	A volume of at least 6 kilolitres and which is set at the lowest amount required to ensure the viability and sustainability of water supply services
		<b>Standard use</b>	Set at an amount that would recover the calculated reasonable average cost of supplying water
		<b>Highest consumption block</b>	Set at an amount higher than the average cost of supplying water and at a level that would discourage the wasteful use of water
Households who are included on the indigent register and who are supplied through a water services work that supplies each household through an individually metered connection	[None]	<b>First tariff block</b>	Free water supply
		<b>Pro poor tariff block</b>	Standard use set as a volume basic charge at an amount below the calculated reasonable average cost of supplying water
		<b>Highest consumption block</b>	Set at an amount equal to or higher than the average cost of supplying water and at a level that would discourage the wasteful use of water
Households who are included on the indigent register and who are supplied through a communal water services work	Free basic water supply		

Fixed charges may also be levied for water supply services to any category of users. Furthermore, the draft norms and standards provide for drought or seasonal tariffs to be used as conservation measures.

#### 4.6. Water quality strategies

There are no water quality strategies for most Water Management Areas, other than the Olifants. The water quality strategy for the Vaal is outdated and was last done in 2009, which is resulting in ad hoc decisions and crisis management.

The Vaal River augments the Crocodile West and the return flows do not return to the Vaal but in turn augments the Moloko Water Management Area. The Vaal supplies water to 60% of the economy and 45% of the population. The Reconciliation Strategy for the Integrated Vaal River System was last conducted in 2014. The 2014 Strategy is outdated (*see graph below*) since it is grounded upon the premise that AMD will be desalinated (long term treatment of AMD) by 2014/2015 and that the Lesotho Highlands Phase II will be constructed by 2020. The Strategy needs to be revised urgently as there will be an increasing water shortage as a result of the delays in the implementation of the long term treatment of AMD (will now only be desalinated by 2020/2021) and delays in the construction of the Lesotho Highlands Phase II (will only be constructed by 2025).



## **5. CATCHMENT MANAGEMENT AGENCIES AND THE WATER TRIBUNAL**

### ***5.1. Catchment Management Agencies***

The status of CMA powers changed following the revocation of certain powers by the Minister in December 2015 and a delegation of certain powers by the DWS Director-General (DG) in June 2016. Due to the Minister and/or DG not being required by law to publish delegations in the Government Gazette, it is difficult to have absolute certainty on all delegations. Nevertheless, the following delegations have been made:

1. 2005 and 2008 delegations, in terms of which the Minister did not delegate any powers to CMAs;
2. 2010 delegations, in terms of which the Minister delegated Schedule 3 NWA powers (amongst others) to the ICMA (now known as the Inkomati-Usuthu Catchment Management Agency (IUCMA));<sup>28</sup>
3. September 2015 delegations, in terms of which the Minister delegated Chapter 4 and Schedule 3 NWA powers to the IUCMA;
4. December 2015 delegations, in terms of which the Minister revoked Chapters 2 & 3 NWA powers of all CMAs generally; and
5. June 2016 delegations, in terms of which the DWS DG delegated Chapter 4 powers to CMAs (as an interim measure, pending the full set of delegations to be finalised).

*Annexure 1* includes a table that is intended to clarify the current status of CMA powers and identification of powers which remain within the functionary of CMAs to date. What appears from this table is that the Chapters 2&3 NWA powers which were revoked in December 2015 were not re-delegated to CMAs in June 2016. Instead, the June 2016 delegation gives CMAs Chapter 4 NWA powers. Although an interim arrangement, unfortunately the notice does not give an indication as to when the full set of delegations can be expected. Until then, CMAs and proto CMAs have the powers delegated to them under the 10 June 2016 notice. Powers highlighted in **red** indicate those which were revoked from the CMAs functions as at December 2015, and powers highlighted in **blue** indicate those powers which were delegated back to CMAs as of June 2016, and can therefore be exercised. Lastly, these delegations should be read in conjunction with the DWS' circular on the separation of Water Resource Management Functions to be performed by regional office, head office and CMAs, signed off by the Acting DG in July 2016. Furthermore, the Minister published the new 9 water management areas in the Government Gazette in September 2016 with the intention to establish CMAs in each. To date, CMAs have been established for the following water management areas:

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<sup>28</sup> Reference is made to Pejin and Cogger. *Delegation and Assignment in the National Water Act: Understanding the Legal Distinction between Delegations and Assignment in the National Water Act* (2011) at 29-30. The memorandum therefore does not deal with these delegations in detail.



- Inkomati-Usuthu (Mpumalanga)
- Breede-Gouritz (Western Cape)
- Limpopo-North West
- Pongola-uMzimkhulu (KwaZulu-Natal)
- Vaal River (Mpumalanga, Gauteng, North West and Northern Cape)
- Olifants River (Gauteng, Mpumalanga and Limpopo)

Notices of intention to declare CMAs have been published for the following catchments:

- Orange River (Northern Cape and Free State)
- Berg-Olifants (Western Cape)
- Mzimvubu-Tsitsikamma (Eastern Cape)

The above mentioned delegations and subsequent revocations of catchment management agency (CMA) powers brought about confusion as to whether the Department of Water and Sanitation (DWS) had made a “policy shift with regards to establishing and implementing CMAs in all water management areas”. The confusion related to the revocation was compounded by a letter to the IUCMA who were told in the correspondence that “they would be workshopped” on the matter. This never happened, resulting in considerable confusion and at least one resignation of a senior water resources manager, together with growing mistrust from stakeholders with whom strong institutional arrangements had been established over years. On 23 March 2016 the Centre for Environmental Rights addressed a letter to the Minister to seek clarity on these delegations and revocations. On the 10 May 2017 DWS responded that it “wishes to categorically state that there has been no policy shift with regard to the establishment and implementation of CMAs”. There is still lack of clarity from DWS with regards to the revocation of previous delegations to the CMAs.

However, of far considerable concern, it has recently come to the attention of SAWC that the Minister has taken the decision to commence the process of **consolidating the nine catchment management authorities (CMAs) into a single national CMA**. The rationale for this includes “lack of capacity and cost effectiveness”. It is expected that this will be officially announced this month and public engagement on the strategic roadmap towards establishment will commence shortly. This is in direct opposition to existing national water policy that provide for the decentralisation of and public participation in water governance.

To date, the Minister has conducted no public participation in relation to her decision to consolidate the 9 CMAs into a single national CMA. Her decision therefore is in conflict with the public administration principle in the Constitution of the Republic of South Africa, 1996 that people’s needs must be responded to, and the public must be encouraged to participate in policy-making. The decision is also misaligned with the principles in the National Environmental Management Act, 1998 which provide that the participation of interested and affected parties in environmental governance must be promoted. This is also in contradiction to the NWRS2, that highlights that 9 CMAs must be established and brought into operation as soon as possible. It also states that CMFs are to be developed to assist CMAs to fulfil their functions under the NWA.

## ***5.2. Water Tribunal***

As water disputes can be complex, the resolution of disputes often requires technical, scientific and specialist knowledge for it to be effective. The Water Tribunal, if properly managed, is well suited to fulfil that role. It should thus be retained as the chief appeal authority for water disputes. However, the future of the Water Tribunal is uncertain. In response to a question that was posed to the Minister in Parliament, the Minister announced that the Water Tribunal will be “discontinued” and will be replaced by a new administrative dispute resolution mechanism. The Minister is of the opinion that the Water Tribunal has not been an “efficient, cost effective and speedy” appeal mechanism. The problem however has not been the Water Tribunal itself, but the administration of the Water Tribunal. Notably, the Water Tribunal was not functional between December 2011 and March 2015. The Tribunal was only reconstituted after litigation was brought against the Minister for its reconstitution in 2015. The prolonged period of inactivity resulted in a sizeable backlog.

## **6. BLUE AND GREEN DROP REPORTS AND WASTEWATER TREATMENT WORKS**

### ***6.1. Blue and Green Drop reports***

Blue Drop and Green Drop reports have not been published since 2013. The Blue Drop certification programme was initiated in 2008. Since its inception, Blue Drop assessments were done in 2009, 2010, 2011 and 2012. Since then a Blue Drop report has not been released. DWS is currently working on the 2014/2015 Blue Drop progress report<sup>29</sup>. The department submits that the assessment has been done. The next step was for moderation of the assessments that were done. Currently, it is only a draft report and not yet the full assessment, because of financial and capacity constraints that had prohibited the Department.

The department presented the findings of the 2014/2015 report to the Water and Sanitation committee on 26 January 2017. Over and above the missing reports the findings of the 2014/2015 assessment, presented by Director: Drinking Water Regulation, highlight concerning trends and challenges.

The national trends highlight a drop in the Blue Drop Score from 87.6% in 2012 to 79.6% in 2014. The number of systems that were awarded Blue Drops status decreased from 98 in 2012 to 44 in 2014. Challenges outlined by the Department include:

- Insufficient (alongside unfilled vacancies) skilled process controllers to manage the water treatment plants and process the drinking water
- Inconsistent and insufficient monitoring and non-adherence to monitoring programmes
- Data uploading on Blue Drop System (analytical results not loaded under correct programme or results not loaded at all)
- Water Services Institutions not always sufficiently prepared for adverse incidents
- Lack of investment in infrastructure
- Vandalism of infrastructure<sup>30</sup>.

The Green Drop programme was likewise initiated in 2008. The first Green Drop report was published in 2012. The department is currently reviewing a report that pertains to 2014<sup>31</sup>. On 25 January 2017 members of the Water and Sanitation Committee raised serious concerns and implications of non-release of Green Drop reports. Notably, the Committee raised that the “non recognition of best performers due to non-release of the 2013 Green Drop Report” contributed to the regression in performance in following years.

One reason given for delays was the fact that DWS does not timeously remunerate laboratories and they subsequently withhold data or results. According to the department, 2015 Green Drop Assessments were not undertaken due to lack of capacity. The delayed release of the Green Drop Report has resulted in a “lack of trust from the Water Service

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<sup>29</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department briefing on Blue Drop Green Drop Report: 25 January 2017

<sup>30</sup> Mashitisho, D. (2017). Briefing to the Portfolio Committee on Water and Sanitation on the Blue Drop Progress Report

<sup>31</sup> Mashitisho, D. (2017). Briefing to the Portfolio Committee on Water and Sanitation on the Green Drop Progress Assessment Tool Report

Authority plants' which in turn has been described as an "institutional risk". Considerable challenges outlined by the initial findings include:

- Insufficient skilled process controllers;
- Vacancies;
- Problems with uploading data on Green Drop System;
- Minimal maintenance of sewer pump stations; and
- Vandalism of infrastructure.<sup>32</sup>

In response to the departments submissions, the Committee Chairperson highlighted that DWS had cited both financial constraints and procurement of suppliers as reasons for not finalising and releasing Blue and Green Drop reports. However, the Committee argued that in subsequent years DWS returned R2 billion to National Treasury (NT). Accordingly, lack of funding was not an appropriate justification. DWS lack of commitment "to ensure procurement" was regarded as a major concern particularly because "the Blue Drop Green Drop Report is the only report that the Portfolio Committee and South Africa received which indicated whether the Water Treatment plants and Wastewater Treatment plants were functioning". The lack of inflow-monitoring metering in many of the plants was also highlighted as an urgent issue as without metering, WWTW could easily become overwhelmed.

On 25 January 2017 the Portfolio Committee recommended (and DWS agreed) to fast track the appointment of a professional service provider to undertake the 2015/2016 Green Drop Assessments, and the assembling of the internal team in DWS to conduct 2015 Green Drop Progress Assessment Tool (PAT) assessments<sup>33</sup>.

The Blue Drop-Green Drop reports are arguably the only comprehensive assessments available to the public and water service authorities on whether water and wastewater treatment plants are complying with quality standards. The absence of such assessments has considerable implications for management, operation, risk mitigation, remedial action and refurbishment plans related to treatment plants - and hence water safety and water quality.

## ***6.2. Dysfunctional wastewater treatment works and lack of remedial action***

The initial findings of the Green Drop 2014 assessment were presented by the DG on 28 January 2017. The assessment included audits conducted for 152 Water Services Authorities (WSA or municipalities) in 9 provinces, assessment of 824 Wastewater Treatment Works (WWTW) in the municipal sector; 4 WWTW's for Private Systems (Sun City, Nedbank-Olwazini, Sasol Synfuels and Sasol Infrachem) and 13 WWTW's for Department of Environmental Affairs (Kruger National Park)<sup>34</sup>.

The initial findings are highly concerning. The Average Cumulative Risk Ratings for overall criteria was at 13.4, which was a decrease from 12.2 in 2013. The 2014 National Risk Profile experienced an increase in the **Critical Risk categorisation to 212 plants**. These plants

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<sup>32</sup> ibid

<sup>33</sup> ibid

<sup>34</sup> Mashitisho, D. (2017). Briefing to the Portfolio Committee on Water and Sanitation on the Green Drop Progress Assessment Tool Report



pose serious risks of completely untreated sewage entering rivers, streams and dams. This has dire impacts on water quality and human health including enhancing the spread of diseases such as e-coli, hepatitis A and diarrhoea. **The majority of plants (259) assessed are in the high risk** category and 218 plants in medium risk. A decrease in performance from previous assessments are recorded in relation to average design rating, average capacity exceedance rating, average effluent failure rating and average technical skills rating. Notably, the risk ratings of North West Province are highly worrying, as 60% of its WWT systems were in High and Critical Risk<sup>35</sup>.

Overall, a significant regression in the performance of municipal treatment facilities is evident for 2014. Notably, the results indicated that, despite significant regulatory pressure, processes or evidence are still lacking in terms of in-flow and/or effluent quality monitoring.

In general, sampling of water quality is insufficient. Due to budget constraints, only a few variables are tested. For instance, acid mine water contains a broad spectrum of metals in toxic concentrations as well as uranium but only total dissolved solids (TDS), pH, manganese (Mn), sulfate (SO<sub>4</sub>), EC and iron (Fe) are tested. Sampling is only done once a month and hence sampling makes no allowance for *inter alia* diurnal fluctuations, pollution incidences and rainfall events. Further, a contract between DWS and ERWAT for the sampling of the water quality in the Upper Vaal was terminated in August 2013. The contract was renewed on the 30 April 2016 with the CSIR. During this period i.e. August 2013 to the 30 of April 2016 there was no monitoring of water quality by the DWS of the Upper Vaal except for some ad hoc monitoring<sup>36</sup>. As a further example, since no environmental impact assessment (EIA) was conducted for the short and medium term treatment of Acid Mine Drainage (AMD) within the Witwatersrand, the impacts of the high salinity and metal sludge on groundwater, the ecology and downstream water users have not been assessed. The costs of combating the high salinity in the AMD are currently carried by the domestic sector.

DWS submits that it has the responsibility to support municipalities with the implementation of sanitation, which entailed WWTWs. Over R5 billion was allocated to sanitation within DWS budget, and over 88% of it was spent on the upgrading and refurbishment of WWTWs<sup>37</sup>. Once the department allocates funding in the Accelerated Infrastructure Programme (ACIP) it deals primarily with WWTWs, particularly focusing on WWTWs in critical state. The Minister submits that it plans to implement only three projects, all in KwaZulu-Natal, in terms of the Accelerated Community Infrastructure Programme (ACIP) in the 2017/18 financial year<sup>38</sup> (see table below). None, it seems, are targeted to North West Province which shows that highest risk ratings and regressions in performance.

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<sup>35</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department briefing on Blue Drop Green Drop Report: 25 January 2017

<sup>36</sup> There have also been issues regarding non-payment of phone bills, by DWS, and switching to another service provider which resulted in all flow gauges in the Olifants were down. This meant that there was no data available on flows, for over 3 months, during the worst drought on record

<sup>37</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department of Water and Sanitation 2017/18 Annual Performance Plan, AGSA input; Committee Report on Water and Sanitation Budget. 17 May 2017

<sup>38</sup> National Assembly, Question No. 1665. Date of publication in internal question paper: 9 June 2017 (Internal Question Paper No. 21)

Table 5: List of all planned DWS projects for upgrade and refurbishment of WWTW in 2017/2018

Project Name	Project Nature	Project cost	Location	Commencement
Manguzi WWTW	Refurbishment of WWTW	R 9,710,000	Umhlabuyalingana Local Municipality (LM) under uMkhanyakude District	October 2017
Hluhluwe WWTW	Refurbishment of WWTW	R3,450,000	The Big Five False Bay LM under uMkhanyakude DM	October 2017
Ingwavuma WWTW	Refurbishment of WWTW	R13,679,916	Jozini LM under uMkhanyakude DM	January 2017 (Under Construction)
Total		R26,839,916		

Despite these concerns there has been very little remedial action by DWS in relation to WWTWs. On 25 January 2017 the DG stated that “plants that regressed by taking up increased risk ratios will be placed under surveillance and continuously monitored for implementation of corrective interventions and risk mitigation measures”<sup>39</sup>. However, in the same meeting the Committee highlighted that DWS had shown little commitment to undertake remedial action in the past. Notably, the following was raised:

- What were the incentives and/or consequences in cases where there were lacking data or poor quality data that was uploaded;
- What remedial interventions were targeted specifically for the North West Province, because it was currently in a critical state;
- Was there confidence by DWS that the installation of inflow-monitoring meters would be done, and if so, by when would its installation be expected;
- How would the Portfolio Committee be assured that the Department would, indeed, accomplish the feat of surveillance and ensure that there will be the necessary intervention; and
- If there would be revocation of licensing who would be in the capacity to deliver the service?

The DWS submits that it regularly refurbishes municipal WWTWs up to national standard, but operational maintenance was thereafter the responsibility of the municipality. Such maintenance had been neglected in many instances. Consequently, particular WWTW deteriorated after the refurbishment equating a loss of investment<sup>40</sup>. Further, it is not feasible for DWS to revisit and refurbish the same plant again. The onus, therefore, lied with municipalities to maintain the infrastructure and appoint skilled personnel that could

<sup>39</sup> Portfolio Committee on Water and Sanitation. Committee Meeting - Department briefing on Blue Drop Green Drop Report: 25 January 2017

<sup>40</sup> *ibid*

competently operate WWTWs. In response, the Committee raised the need for proper monitoring, incentives and measures to support municipalities.

## **7. COMPLIANCE MONITORING AND ENFORCEMENT, LICENCE CONDITIONS AND REPORTING**

### ***7.1. Compliance monitoring and enforcement***

The Department of Water and Sanitation has made commitment to ongoing and intensified enforcement action to demonstrate a “zero tolerance approach towards polluters and transgressors”. However, major concerns have been raised with regards to the Blue Scorpions, related to *inter alia*, capacity constraints, insufficient training and unfilled vacancies. Notably, DWS only has 35 compliance and enforcement officials for the whole country, and has never published a specific water compliance and enforcement report. Consequently, in some of the Provinces there are no Blue Scorpions to monitor rivers.

On 1 September 2017 the Minister indicated that in the 2016/17 financial years, no mine achieved a “hundred percent compliance with its water use license conditions”. Out of 111 mines that were monitored in the 2016/2017 financial year, 55 mines were found to be significantly non-compliant with the conditions of the water use license, of which 25 mines were referred for enforcement actions. A further 30 mines were requested to provide action plans to address non-compliance. For the 2017/18, from April to June, 22 mines were monitored for compliance. Of this, 15 mines were found to be significantly non-compliant, of which 8 required enforcement actions.<sup>41</sup> (*See Annexure 2 for a list of mines monitored and findings*).

The 2016/17 National Environmental Compliance and Enforcement report highlights that DWS has completely failed to undertake meaningful enforcement action against offenders. In 2016/2017, of 321 facilities inspected, 76 of which were found to require enforcement action, DWS has had zero (0) convictions for criminal offences. Moreover, pre-directives seldom result in directives being issued and if directives are issued, non-compliance with directives is seldom enforced<sup>42</sup>.

### ***7.2. Inappropriate licences and licence conditions***

DWS has issued a number of water use licenses (WUL) in protected areas. Rather than refuse WUL applications these are issued with stringent conditions. Mining companies cannot or are unwilling to comply with these conditions and hence request an amendment. As a result, prospecting or mining goes ahead in these precious water areas. On 5 May 2017 the Minister submitted that **DWS has only suspended one water use licence since 1 January 2008**. This was for an agricultural water use (irrigation) for Aganang Beef Trust.<sup>43</sup>

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<sup>41</sup> National Assembly, Question No. 2600. Date of publication in internal question paper: 1 September 2017 (Internal Question Paper No. 31)

<sup>42</sup> Department of Environmental Affairs (2017). National Environmental Compliance and Enforcement 2016-2017 [Available online: [https://www.environment.gov.za/sites/default/files/reports/nationalenvironmentalcomplianceandenforcementreport2016\\_17.pdf](https://www.environment.gov.za/sites/default/files/reports/nationalenvironmentalcomplianceandenforcementreport2016_17.pdf)]

<sup>43</sup> National Assembly, Question No. 1054. Date of publication in internal question paper: 5 May 2017 (Internal Question Paper No. 15)

### **7.3. Upliftment of suspensions**

Activities are supposed to be suspended if there is a challenge to a WUL pending the outcome of an appeal to the Water Tribunal. In terms of section 148(2)(b) the Minister may uplift the suspension. This provision is frequently used by the Minister, without giving good reasons and hence the activities go ahead. In response to a PQ&A related to the factors that the Minister or the “person delegated considers when taking a decision in terms of section 148(2)(b) to uplift the suspension, the Minister responded that she lifts a suspension when a petition is made indicating any of the following:

- (a) that the granting of all authorisations or a water use licence followed all relevant due processes;
- (b) that the suspension is highly prejudicial and detrimental to a lawfully obtained authorisations;
- (c) that the suspension will derail the entire project timelines and create uncertainties;
- (d) that the suspension will put hundreds of millions of investments at risks as well as forego much needed jobs and community development projects;
- (e) that the issues raised by the Appellants in the appeal should be decided upon by the Water Tribunal, and the Appellants will not be prejudiced by the lifting of the suspension; and
- (f) if the reasons provided by the person who is affected by the suspension are persuasive.<sup>44</sup>

It is, obviously, concerning that **none of the factors taken into account by the Minister relate to water.**

### **7.4. Publication of compliance monitoring and enforcement data and reports**

On 2 September 2015 at a briefing to the Portfolio Committee on Water and Sanitation the DG indicated that DWS would publish an “annual report on compliance monitoring and enforcement in October 2015”.<sup>45</sup> This undertaking was recorded in the presentation by the department. However, the Department of Water and Sanitation has not, to date, published such a report. The failure of DWS to make compliance monitoring and enforcement data publicly available has made it easy for companies with enormous detrimental impacts on the environment to hide the status of their often dismal environmental compliance. These impacts have devastating consequences for local communities living around mines and industrial facilities. It is critical that compliance monitoring and enforcement data and statistics are published, as publication will “act as a deterrent to other offenders and will work towards fostering a culture of transparency and accountability”.

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<sup>44</sup> National Assembly, Question No. 2305. Date of publication in internal question paper: 14 August 2017 (Internal Question Paper No. 26)

<sup>45</sup> Diedricks, A. (2015). Briefing to Portfolio Committee on Water and Sanitation on: Prosecution of Polluters and Perpetrators of theft and vandalism of Water Infrastructure, Interventions of the Blue Scorpions and Legislative Interventions to Strengthen Penalties against Polluters and Vandals

### Annexure 1: Catchment Management Agencies' delegations

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
IUCMA delegations			(Not applicable)		
Chapter 4: Use of water					
33	<p>(1) A person may apply to a responsible authority to have a water use which is not one contemplated in section 32 (1) (a), declared to be an existing lawful water use.</p> <p>(2) A responsible authority may, on its own initiative, declare a water use which is not one contemplated in section 32 (1) (a), to be an existing lawful water use.</p> <p>(3) A responsible authority may only make a declaration under subsections (1) and (2) if it is satisfied that the water use—</p> <p>(a) took place lawfully more than two years before the date of commencement of this Act and was discontinued for good reason; or</p> <p>(b) had not yet taken place at any time before the date of commencement of this Act but—</p> <p>(i) would have been lawful had it so taken place; and</p> <p>(ii) steps towards effecting the use had been taken in good faith before the date of commencement of this Act.</p> <p>(4) Section 41 applies to an application in terms of this section as if the application had been made in terms of that section.</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
34	<p>(1) A person, or that person’s successor in title, may continue with an existing lawful water use, subject to—</p> <p>(a) any existing conditions or obligations attaching to that use;</p> <p>(b) its replacement by a licence in terms of this Act; or</p> <p>(c) any other limitation or prohibition by or under this Act.</p> <p>(2) A responsible authority may, subject to any regulation made under section 26(1)(c), require the registration of an existing lawful water use.</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
35(1) – (4)	<p>(1) The responsible authority may, in order to verify the lawfulness or extent of an existing water use, by written notice require any person claiming an entitlement to that water use to apply for a verification</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	<p>of that use.</p> <p>(2) A notice under subsection (1) must—</p> <p>(a) have a suitable application form annexed to it;</p> <p>(b) specify a date before which the application must be submitted;</p> <p>(c) inform the person concerned that any entitlement to continue with the water use may lapse if an application is not made on or before the specified date; and</p> <p>(d) be delivered personally or sent by registered mail to the person concerned.</p> <p>(3) A responsible authority—</p> <p>(a) may require the applicant, at the applicant's expense, to obtain and provide it with other information, in addition to the information contained in the application;</p> <p>(b) may conduct its own investigation into the veracity and the lawfulness of the water use in question;</p> <p>(c) may invite written comments from any person who has an interest in the matter; and</p> <p>(d) must afford the applicant an opportunity to make representations on any aspect of the application.</p> <p>(4) A responsible authority may determine the extent and lawfulness of a water use pursuant to an application under this section, and such determination limits the extent of any existing lawful water use contemplated in section 32 (1).</p>				
40	<p>(1) A person who is required or wishes to obtain a licence to use water must apply to the relevant responsible authority for a licence.</p> <p>(2) Where a person has made an application for an authorisation to use water under another Act, and that application has not been finalised when this Act takes effect, the application must be regarded as being an application for a water use under this Act.</p> <p>(3) A responsible authority may charge a reasonable fee for processing a licence application, which may be waived in deserving cases.</p> <p>(4) A responsible authority may decline to consider a</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	licence application for the use of water to which the applicant is already entitled by way of an existing lawful water use or under a general authorisation.				
41(1) – (4)	<p>1) An application for a licence for water use must—</p> <p>(a) be made in the form;</p> <p>(b) contain the information; and</p> <p>(c) be accompanied by the processing fee, determined by the responsible authority.</p> <p>(2) A responsible authority—</p> <p>(a) may, to the extent that it is reasonable to do so, require the applicant, at the applicant’s expense, to obtain and provide it by a given date with—</p> <p>(i) other information, in addition to the information contained in the application;</p> <p>(ii) an assessment by a competent person of the likely effect of the proposed licence on the resource quality; and</p> <p>(iii) an independent review of the assessment furnished in terms of subparagraph (ii), by a person acceptable to the responsible authority;</p> <p>(b) may conduct its own investigation on the likely effect of the proposed licence on the protection, use, development, conservation, management and control of the water resource;</p> <p>(c) may invite written comments from any organ of state which or person who has an interest in the matter; and</p> <p>(d) must afford the applicant an opportunity to make representations on any aspect of the licence application.</p> <p>(3) A responsible authority may direct that any assessment under subsection (2) (a) (ii) must comply with the requirements contained in regulations made under sections 24 (5) and 44 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).</p> <p>(4) A responsible authority may, at any stage of the application process, require the applicant—</p> <p>(a) to give suitable notice in newspapers and other media—</p> <p>(i) describing the licence applied for;</p> <p>(ii) stating that written objections may be lodged</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	



Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	against the application before a specified date, which must be not less than 60 days after the last publication of the notice; (iii) giving an address where written objections must be lodged; and (iv) containing such other particulars as the responsible authority may require; (b) to take such other steps as it may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and (c) to satisfy the responsible authority that the interests of any other person having an interest in the land will not be adversely affected.				
42	After a responsible authority has reached a decision on a licence application, it must promptly— (a) notify the applicant and any person who has objected to the application; and (b) at the request of any person contemplated in paragraph (a), give written reasons for its decision.	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
44	A responsible authority may, for good reason, condone a late application and charge a reasonable additional fee for processing the late application.	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
51(1)	A responsible authority may, after giving all parties an opportunity to be heard, adjudicate upon conflicting claims between a licensee and a successor in title, or between different successors in title, in respect of claims for the amendment or substitution of licence conditions.	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
52(1) – (2)	(1) A licensee may, before the expiry date of a licence, apply to the responsible authority for the renewal or amendment of the licence.  (2) Unless an application for the renewal or amendment of a licence is made in terms of section 50, it must— (a) be made in such form, contain such information and be accompanied by such processing fee as may be determined by the responsible authority; and (b) be dealt with according to the procedure as set out in section 41.	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
53	(1) A responsible authority may, by notice in writing to a person who contravenes— (a) any provision of this Chapter; (b) a requirement set or directive given by the responsible authority under this Chapter; or	IUCMA	15/09/15	Revoked by 12/12/15 delegation	

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	<p>(c) a condition which applies to any authority to use water, direct that person, or the owner of the property in relation to which the contravention occurs, to take any action specified in the notice to rectify the contravention, within the time (being not less than two working days) specified in the notice or any other longer time allowed by the responsible authority.</p> <p>(2) If the action is not taken within the time specified in the notice, or any longer time allowed, the responsible authority may—</p> <p>(a) carry out any works and take any other action necessary to rectify the contravention and recover its reasonable costs from the person on whom the notice was served; or</p> <p>(b) apply to a competent court for appropriate relief.</p>				
54	<p>(1) Subject to subsections (3) a n d (4), a responsible authority may by notice to any person entitled to use water under this Act suspend or withdraw the entitlement if the person fails—</p> <p>(a) to comply with any condition of the entitlement;</p> <p>(b) to comply with this Act; or</p> <p>(c) to pay a charge which is payable in terms of Chapter 5.</p> <p>(2) An entitlement may be suspended under subsection (1)—</p> <p>(a) for the period specified in the notice of suspension; or</p> <p>(b) until the responsible authority is satisfied that the person concerned has rectified the failure which led to the suspension.</p> <p>(3) A responsible authority may only suspend or withdraw an entitlement under subsection (1) if the responsible authority has directed the person concerned to take specified steps to rectify the failure within a specified period, and the person concerned has failed to do so to the satisfaction of the responsible authority.</p> <p>(4) The person concerned must be given an opportunity to make representations, within a reasonable period, on any proposed suspension or withdrawal of an entitlement to use water.</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	(5) A responsible authority may, for good reason, reinstate an entitlement withdrawn under subsection (1).				
55	<p>(1) A licensee may offer to surrender any licence issued to that licensee under this Chapter, whereupon, unless there is good reason not to do so, the responsible authority must accept the surrender and cancel the licence.</p> <p>(2) A responsible authority may refund to a licensee any charge or part of any charge paid in respect of a licence surrendered under subsection (1).</p>		IUCMA	15/09/15	Revoked by 12/12/15 delegation
57	<p>1) Water use charges—</p> <p>(a) may be made—</p> <p>(i) within a specific water management area; or</p> <p>(ii) on a national or regional basis; and</p> <p>(b) must be made in accordance with the pricing strategy for water use charges set by the Minister.</p> <p>(2) Charges made within a specific water management area may be made by and are payable to the relevant water management institution.</p> <p>(3) Charges made on a national or regional basis—</p> <p>(a) may be made by the Minister and are payable to the state; and</p> <p>(b) may be apportioned between different water management areas according to the extent of the specific benefits which each water management area derives or will derive from the water uses for which the charges are made.</p> <p>(4) Any person liable to pay water charges to a water services institution as defined in the Water Services Act, 1997 (Act No. 108 of 1997), for water supply services or sanitation services may not be charged for those services in terms of this Act.</p> <p>(5) No charge made under this Act may be of such a nature as to constitute the imposition of a tax, levy or duty.</p>		IUCMA	15/09/15	Revoked by 12/12/15 delegation
58	(1) The Minister may direct any water management institution to recover any charges for water use made by the Minister under section 57 (1) (a) from water users within its water management area or area of operation, as the case may be.		IUCMA	15/09/15	Revoked by 12/12/15 delegation

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	<p>(2) A water management institution which has been directed to recover any such charges may retain such portion of all charges recovered in order to recompense it for expenses and losses, as the Minister may allow.</p> <p>(3) A water management institution which has been directed to recover any such charges—</p> <p>(a) is jointly and severally liable to the state with the water users concerned; and</p> <p>(b) may recover any amounts paid by it in terms of paragraph (a) from the water users concerned.</p>				
66	The Minister may, in exceptional circumstances and for a good reason, extend a time period or condone a failure to comply with a time period.	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
141	The Minister may require in writing that any person must, within a reasonable given time or on a regular basis, provide the Department with any data, information, documents, samples or materials reasonably required for—	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
	(a) the purposes of any national monitoring network or national information system; or				
	(b) the management and protection of water resources.				
145(2)	The Minister may, where reasonably practicable, establish an early warning system in relation to the events contemplated in subsection (1).	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
Schedule 3					
3(2)	A catchment management agency may—	IUCMA	15/09/15	Revoked by 12/12/15 delegation	
	(a) manage and monitor permitted water use within its water management area;				
	(b) conserve and protect the water resources and resource quality within its water management area;				
	(c) subject to the provisions of the Act, develop and operate a waterwork in furtherance of its catchment management strategy;				
	(d) do anything necessary to implement catchment management strategies within its water management area; and				
	(e) by notice to a person taking water, and after having given that person a reasonable opportunity to be heard, limit the taking of water in terms of Schedule 1.				
3(3)	(1) A catchment management agency may make rules	IUCMA	15/09/15	Revoked by	

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	<p>to regulate water use.</p> <p>(2) The rules made under subitem (1) may relate, amongst other things, to—</p> <p>(a) the times when;</p> <p>(b) the places where;</p> <p>(c) the manner in which; and</p> <p>(d) the waterwork through which, water may be used.</p> <p>(3) A water user must adhere to any such rules which apply to that user.</p> <p>(4) A rule made under subitem (1) prevails over a conflicting distribution condition contained in any authorisation.</p> <p>(5) Before making rules a catchment management agency must—</p> <p>(a) publish a notice in the Gazette—</p> <p>(i) setting out the proposed rules;</p> <p>(ii) inviting written comments to be submitted on the proposed rules, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice;</p> <p>(b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the catchment management agency considers to be appropriate;</p> <p>(c) consider all comments received on or before the date specified in paragraph (a) (ii); and</p> <p>(d) consider all applicable conditions for provision of services and bylaws made under the Water Services Act, 1997 (Act No. 108 of 1997), by water services institutions having jurisdiction in the area in question.</p> <p>(6) After complying with subitem (5), a catchment management agency must—</p> <p>(a) finalise the rules; and</p> <p>(b) make it known, in an appropriate manner, that the rules have been finalised and where they may be read; or</p> <p>(c) deliver or send a copy of the rules to each water user to whom the rules apply.</p>				12/12/15 delegation

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
3(4)	<p>( 1 ) A catchment management agency may require in writing that a water user—</p> <p>(a) install a recording or monitoring device to monitor storing, abstraction and use of water;</p> <p>(b) establish links with any monitoring or management system to monitor storing, abstraction and use of water; and</p> <p>(c) keep records on the storing, abstraction and use of water and submit the records to the catchment management agency.</p> <p>(2) If the water user fails to comply with a requirement of subitem (1) (a) or (b), a catchment management agency may undertake the installation or establishment of such links and recover any reasonable cost from that water user.</p>		IUCMA	15/09/15	Revoked by 12/12/15 delegation
3(5)	<p>(1) A catchment management agency may, by written notice to the owner or person in control of a waterwork, require that person to collect and submit particular information within a period specified to enable the catchment management agency to determine whether that waterwork is constructed, maintained and operated in accordance with the Act.</p> <p>(2) A catchment management agency may direct the owner or person in control of a waterwork at the owner's own cost and within a specified period, to—</p> <p>(a) undertake specific alterations to the waterwork;</p> <p>(b) install a specific device; or</p> <p>(c) demolish, remove or alter the waterwork or render the waterwork inoperable in a manner specified in the directive.</p> <p>(3) A catchment agency may only issue such a directive if it is reasonably necessary in order to—</p> <p>(i) protect authorised uses of other persons;</p> <p>(ii) facilitate monitoring and inspection of the water use; or</p> <p>(iii) protect public safety, property or the resource quality.</p> <p>(4) If the owner fails to comply with a directive, the catchment management agency may—</p> <p>(a) undertake the alterations;</p> <p>(b) install the device; or</p>		IUCMA	15/09/15	Revoked by 12/12/15 delegation

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	(c) demolish, remove or alter the waterwork or render the waterwork inoperable, and recover any reasonable costs from the person to whom the directive was issued.				
3(6)	<p>(1) If a catchment management agency on reasonable grounds believes that a water shortage exists or is about to occur within an area it may, despite anything to the contrary in any authorisation, by notice in the Gazette or by written notice to each of the water users in the area who are likely to be affected—</p> <p>(i) limit or prohibit the use of water;</p> <p>(ii) require any person to release stored water under that person’s control;</p> <p>(iii) prohibit the use of any waterwork; and</p> <p>(iv) require specified water conservation measures to be taken.</p> <p>(2) A notice contemplated in subitem (1) must—</p> <p>(a) specify the geographical area or water resource to which the notice relates;</p> <p>(b) set out the reason for the notice; and</p> <p>(c) specify the date of commencement of the measures.</p> <p>(3) In exercising the powers under subitem (1), the catchment management agency must—</p> <p>(a) give preference to the maintenance of the Reserve;</p> <p>(b) treat all water users on a basis that is fair and reasonable; and</p> <p>(c) consider—</p> <p>(i) the actual extent of the water shortage;</p> <p>(ii) the likely effects of the shortage on the water users;</p> <p>(iii) the strategic importance of any water use; and</p> <p>(iv) any water rationing or water use limitations by a water services institution having jurisdiction in the area in question under the Water Services Act, 1997 (Act No. 108 of 1997).</p> <p>(4) If the owner or person in control of a waterwork contravenes a notice issued under subitem (1), the catchment management agency may—</p> <p>(a) modify, or require the owner of the waterwork to modify the waterwork so that it cannot be used to take more water than that allowed for in the notice; or</p>	IUCMA	15/09/15	Revoked by 12/12/15 delegation	

Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	<p>(b) remove the waterwork or require the owner to remove the waterwork if the notice contains a prohibition on the use of that waterwork.</p> <p>(5) A catchment management agency may recover from the owner any reasonable costs incurred by it in acting under subitem (4).</p>				
<b>Delegations applicable to all CMAs</b>					
Chapter 2: Water management strategies					
8	Establishment of catchment management strategies (CMSs)	CMA	DG	12/12/15	Revoked by delegation to DG
Chapter 3: Protection of water resources					
Pollution prevention					
19(3)	To direct any person who fails to take measures required under subsection 19(1), to take these measures necessary to remedy the effects of pollution should the person fail to comply or comply inadequately with a directive	CMA	DG	12/12/15	Revoked by delegation to DG
19(5)	To recover jointly and severally all the costs incurred as a result of acting under subsection (4) in remedying the effects of pollution from the persons set out in this subsection	CMA	DG	12/12/15	Revoked by delegation to DG
19(6)	To claim the costs under subsection (5) from any other person who benefited from the measure undertaken to remedy the situation	CMA	DG	12/12/15	Revoked by delegation to DG
19(8)	At the request of any of the persons liable, apportion liability if more than one person is held liable in terms of section 19(5)	CMA	DG	12/12/15	Revoked by delegation to DG
Control of emergency incidents					
20(4)(d)	To direct verbally/in writing to the	CMA	DG	12/12/15	Revoked by



Sections (NWA)	Powers	Principal functionary	Delegated to	Delegation date	Current status
	responsible person the measures to be taken to contain emergency incidents				delegation to DG
20(5)	To confirm a verbal directive within 14 days in writing	CMA	DG	12/12/15	Revoked by delegation to DG
20(6)	To take the measures considered necessary to remedy the effects of pollution should the responsible person fail to comply with a directive or it is not possible to give a directive timeously to the responsible person	CMA	DG	12/12/15	Revoked by delegation to DG
20(7)	To recover jointly and severally all reasonable costs in remedying the effects of pollution, from every responsible person	CMA	DG	12/12/15	Revoked by delegation to DG
20(9)	At the request of the persons liable, apportion liability if more than one person is held liable in terms of section 20(7)	CMA	DG	12/12/15	Revoked by delegation to DG
Chapter 4: Use of water					
35(1)-(3)	Issue a written notice to any person claiming to have an entitlement to an existing water use to apply for a verification of that water use	DG	(proto) CMA	10/06/16	Effective
35(4)	Make recommendations to the DG on the application for verification of the lawfulness or extent of an existing water use	DG	(proto) CMA	10/06/16	Effective
35(6)	Condone late application and charge reasonable additional fee for processing the late application	DG	(proto) CMA	10/06/16	Effective
43(1)-(3)	Issue a notice requiring persons to apply for licences for one or more types of water use contemplated in section 21;  Make recommendations to the DG on an application for a compulsory licence	DG	(proto) CMA	10/06/16	Effective
44	Condone a late application and charge a reasonable [fee] for a late application	DG	(proto) CMA	10/06/16	Effective
45(1)-	Proposed allocation schedules	DG	(proto) CMA	10/06/16	Effective

<b>Sections (NWA)</b>	<b>Powers</b>	<b>Principal functionary</b>	<b>Delegated to</b>	<b>Delegation date</b>	<b>Current status</b>
(4)					
46	Preliminary allocation schedules	DG	(proto) CMA	10/06/16	Effective
47(1)(b)	Make recommendations to the DG on the publication of the final allocation schedule	DG	(proto) CMA	10/06/16	Effective
47(2)	Make recommendations to the DG to issue licences in accordance with the final allocation schedule	DG	(proto) CMA	10/06/16	Effective

**Annexure 2: List of mines monitored for compliance and findings in Q1 2016 and Q2 2016**

Quarter 1 (APRIL - JUNE 2016)					
No	Water Sector	Name	Province	PoE received	Finding/ Motivation
1	Mining	Exxaro Leeupan Coal Mine	MP	Yes	Not acceptable 25-49%
2	Mining	Umcebo Middelkraal Colliery	MP	Yes	Not acceptable 25-49%
3	Mining	Bankfontein	MP	Yes	Not acceptable 0-24%
4	Mining	Exxaro Matla	MP	Yes	Not acceptable 25-49%
5	Mining	Kangala	MP	Yes	Good but at risk 50-74%
6	Mining	Homelands Energy	MP	Yes	Not acceptable 0-24%
7	Mining	Palesa	MP	Yes	Not acceptable 25-49%
8	Mining	Hoshoza Resources: Karoboo Colliery	KZN	Yes	Acceptable 75-100%
9	Mining	Grootegeeluk Coal Mine	LP	Yes	Good but at risk 50-74%
10	Mining	Mogalakwena Platinum Mine	LP	Yes	Not acceptable 0-24%
11	Mining	Venetia Diamond Mine	LP	Yes	Good but at risk 50-74%
12	Mining	Vele Colliery	LP	Yes	Good but at risk 50-74%
13	Mining	Tshikondeni Coal Mine	LP	Yes	Acceptable 75-100%
14	Mining	Ocon Brick Audit	GP	Yes	Not acceptable 25-49%
15	Mining	Evander Gold	GP	Yes	Not acceptable 25-49%
16	Mining	New Vaal Colliery	GP	Yes	Not acceptable 25-49%
17	Mining	Lonmin Platinum Mine	NW	Yes	Not acceptable 25-49%
18	Mining	Northam Platinum Mine: Zondereinde division	NW	Yes	Not acceptable 25-49%
19	Mining	Elitheni Coal	EC	Yes	Not acceptable 0-24%
20	Mining	Kalagadi Manganese	NC	Yes	Good but at risk 50-74%

		Mine			
<b>Quarter 2 (JULY - SEPTEMBER 2016)</b>					
<b>No</b>	<b>Water Sector</b>	<b>Name</b>	<b>Province</b>	<b>PoE received</b>	<b>Finding/ Motivation</b>
1	Mining	Anglo Coal: Kromdraai	MP	Yes	Not acceptable 0-24%
2	Mining	Anglo Coal: Navigation	MP	Yes	Not acceptable 0-24%
3	Mining	Anglo American: Twickenham	MP	Yes	Not acceptable 0-24%
4	Mining	Brackfontein: Tegeta Resources & Exploration	MP	Yes	Not acceptable 25-49%
5	Mining	Xstrata: Goedgevonden Colliery	MP	Yes	Good but at risk 50-74%
6	Mining	Hlagisa Mining Wildfontein Colliery	MP	Yes	Good but at risk 50-74%
7	Mining	Glencore: Tavistock Coal	MP	Yes	Good but at risk 50-74%
8	Mining	ATC Impunzi Complex	MP	Yes	Not acceptable 25-49%
9	Mining	ASA Dilokong Chrome Mine	MP	Yes	Not acceptable 25-49%
10	Mining	Mtotolo Platinum Mine	MP	Yes	Not acceptable 25-49%
11	Mining	Elandsfontein Colliery	MP	Yes	Not acceptable 0-24%



The South African Water Caucus (SAWC) is network of more than 20 community-based organisations, non-government organisations and trade-unions active in promoting the wise, equitable and just use, protection and provision of water. It was formed in the lead up to the 2002 World Summit on Sustainable Development.