

13 April 2026

The Director-General
Department of Water and Sanitation
Attention: Ms A. Muir
Private Bag X 313
PRETORIA
0001

By email: gww@dws.gov.za

Dear Ms Muir

AFRIFORUM'S COMMENTARY ON THE PROPOSED REGULATIONS FOR THE MANAGEMENT AND CONTROL OF GOVERNMENT WATERWORKS AND SURROUNDING STATE-OWNED LAND PUBLISHED 16 JANUARY 2026

1. Introduction and procedural context

- 1.1. The Minister of Water and Sanitation published, in terms of section 116 of the National Water Act, 1998 ("the NWA"), proposed regulations for the management and control of government waterworks and surrounding state-owned land, on 16 January 2026.
- 1.2. Interested parties have been invited to submit comments on the proposed regulations by 15 April 2026.
- 1.3. This document is submitted in response to that invitation. It constitutes the submissions of AfriForum NPC ("AfriForum"), a non-profit company with registration number 2005/042861/08, registered as such in terms of the Company Laws of the Republic of South Africa with its principal place of business at AfriForum Building, cnr Union and DF Malan Streets, Kloofsig, Centurion, Gauteng.
- 1.4. AfriForum's objection to the proposed regulations is not rooted in any resistance to the reasonable management of government waterworks or the protection of water resources. On the contrary, AfriForum fully supports responsible, lawful and sustainable water resource management in the public interest.
- 1.5. The concern, however, is that the proposed regulations extend far beyond what is necessary to achieve these objectives. Instead of operating within the framework of the National Water Act, 36 of 1998 ("the NWA"), the regulations seek to introduce a parallel regulatory regime that significantly limits existing rights, disrupts long-established practices, and imposes far-reaching controls that are not authorised by the NWA.
- 1.6. At a fundamental level, the regulations undermine the public's long-standing and lawful use of state dams for recreational purposes by introducing a system of prior approval,

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permits and compulsory agreements, effectively rendering such use unlawful in the absence of state consent. They further impose intrusive obligations on private landowners adjacent to dams, resulting in a material limitation on the use and value of private property without a clear statutory basis.

- 1.7. In addition, the proposed framework creates an onerous and impractical administrative regime, requiring extensive applications and approvals that are unlikely to be workable in practice, particularly considering existing capacity constraints within the Department. The regulations also bypass the institutional structures established under the NWA—most notably Catchment Management Agencies—by introducing parallel governance mechanisms that lack a proper legal foundation.
- 1.8. Finally, AfriForum is concerned about the broader economic and social consequences of the proposed regulations. Recreational, tourism and related activities around state dams play a significant role in local economies and community life. The regulations risk undermining these activities, with potentially serious unintended consequences.
- 1.9. These concerns must also be understood within the broader context of ongoing systemic challenges in the water sector. AfriForum submits that regulatory intervention of this nature is misplaced where fundamental issues relating to governance, infrastructure maintenance, water quality and institutional effectiveness remain inadequately addressed.
- 1.10. The submissions that follow consider the proposed regulations together with the Resource Management Plans (“RMPs”) to which they give effect. While the objections raised are of general application, the Vaal Resource Management Plan (“Vaal RMP”) is referenced, where necessary, as an example to illustrate the operation and consequences of the impugned framework.

2. The recreational use of water resources

- 2.1. Tourism, sport and leisure—forming the broader recreation industry—has developed into the largest industry globally and is receiving increasing attention in South Africa. A significant component of this industry depends on access to water resources, particularly dams, rivers and surrounding land. As the sector expands and diversifies, demand for water-based recreation is expected to increase.
- 2.2. This growth necessitates a corresponding strengthening of the protection, management and sustainable use of water resources throughout South Africa.
- 2.3. It is against this backdrop that the National Water Act 36 of 1998 (“NWA”), together with its subsidiary legislation, was enacted to regulate the use, protection, conservation and management of water resources.

- 2.4. The preamble to the NWA confirms that water is a natural resource which belongs to all people. Furthermore, it acknowledges that the National Government is the custodian of all water resources across the country.
- 2.5. In order to give effect to this custodial mandate, the NWA establishes a comprehensive regulatory system governing water use, primarily through a framework of registration and authorisation. This enables the Department to monitor water use activities and ensure the sustainable allocation and protection of water resources.
- 2.6. However, not all water uses require authorisation. Section 22 read with Schedule 1 of the NWA outlines permissible use of water where a licence is not required. The type of activities outlined in Schedule 1 are activities that have a minimal impact on the water resource. Using the water surface or surrounding land for recreational use is such an activity.
- 2.7. The recognition of recreational use has long been reflected in practice. Members of the public have utilised state dams for recreation for decades, including through recreational clubs, sailing clubs, camping facilities, guesthouses, resorts and privately owned land. This recreational use also contributes significantly to local tourism economies surrounding state dams.
- 2.8. In many instances, landowners adjacent to dams have constructed infrastructure such as slipways and jetties to facilitate access to the water. Much of this infrastructure is situated on private land and predates the commencement of the NWA.
- 2.9. In the case of the Vaal Dam, several townships and residential developments exist around the dam. They were conceived, approved and developed as holiday destinations with access to the water. Local municipalities base their future development plans on the right of the public to use state dams.
- 2.10. In the case of the Vaal Dam, for example, several townships and residential developments exist around the dam. These were originally conceived and developed as holiday destinations with direct access to the water.
- 2.11. The Local municipalities continue to rely on the recreational and tourism potential of state dams in their development planning. Municipal Integrated Development Plans ("IDPs") frequently envisage further residential and tourism development adjacent to these water bodies, reflecting their importance to local economic development.
- 2.12. In addition to the above, the Minister of Water Affairs published regulations in terms of the provisions of section 70(b), (c) and (j) of the Water Act, 54 of 1956 - on 1 May 1964.¹

¹ Regulation Notice GNR.654 of 1964.

These regulations are currently still in force. The regulations recognize the right of the public to use dams for recreation.

3. Authority of the Minister to issue regulations in general

- 3.1. Sections 26 and 116 of the NWA cloaks the Minister with the authority to make and issue regulations in certain respects. The authority to issue regulations under section 26 of the NWA applies to the issuance of regulations for various categories of water resources, whereas the authority in section 116 of the NWA relates only to the issuance of regulations pertaining specifically to government waterworks. This commentary does not explicitly deal with those respects in detail.
- 3.2. The current draft regulations are published in terms of section 116 of the NWA. The title of the notice inviting comment on the regulations are a verbatim version of the wording of section 116(1) of the NWA. It can thus be accepted that the Minister intends to issue the current regulations expressly under section 116 of the NWA.
- 3.3. Section 116 of the NWA empowers the Minister to make regulations regarding a “government waterwork”. A “waterwork owned or controlled by the Minister and includes the land on which it is situated”. A “waterwork” includes a borehole, structure, earthwork or equipment installed or used for or in connection with water use.
- 3.4. The Minister may make regulations in terms of this section by providing for the management of and control over government waterworks and surrounding state-owned land, the use of the water of a government waterwork and the surrounding state-owned land, charges for entrance thereto, the use of facilities at- and the development of a government waterwork.
- 3.5. In making regulations in terms of section 116, the Minister must take into account all relevant considerations, including but not limited to the need for control of the use of government waterworks.
- 3.6. The term “watercourse” in the NWA means:
 - (a) a river or spring;
 - (b) a natural channel in which water flows regularly or intermittently;
 - (c) a wetland, lake or dam into which, or from which, water flows; and
 - (d) any collection of water which the Minister may, by notice in the Gazette, declare to be a watercourse, and a reference to a watercourse includes, where relevant, its bed and banks.
- 3.7. Furthermore, the term “waterwork” as defined in the NWA relates to physical infrastructure - engineered and constructed features of water management infrastructure and the state land on which they are situated. It specifically includes

borehole, structure, earthwork or equipment installed or used for or in connection with water use.

- 3.8. The above definition excludes a “government waterwork”. The necessary conclusion to be drawn from this is that the Legislature’s aim with the NWA was to enable ordinary citizens with the right and ability to, inter alia, make use of water resources that will not be interfered with by the national government.
- 3.9. To that end, the term “government waterwork” includes waterwork owned or controlled by the Minister and includes the land on which it is situated.
- 3.10. The distinction between the terms above is critical because the NWA deals differently with access to government waterworks, and access to water resources.
- 3.11. The NWA gives the right to the public to use “water resources” for recreational purposes, and not necessarily to any form of “waterworks”. The NWA affords the Minister a discretion – in section 113 of the NWA - to make “government water works and the surrounding state-owned land” available for recreational use. It is not intended to determine the rights of the public to access and use dams – which are “water resources” and “watercourses”. It will be dealt with herein elsewhere.
- 3.12. The draft regulations seek to do more than what is envisaged in section 116 of the NWA. It incorporates matters which form part of the regulations provided for in section 26 of the NWA – such as the monitoring and recordal of recreational use of water.
- 3.13. The regulations have been drafted on the assumption that dams are “government waterworks” and that the Minister is empowered to make regulations pertaining to dams in terms of section 116 of the NWA. She is not. Section 116 of the NWA is limited to government waterworks – as defined.
- 3.14. The regulations are flawed for this reason alone.

4. The Minister’s authority to issue regulations pertaining to private-owned land

- 4.1. The heading to the draft regulations states that the regulations relate to the “management and control of government waterworks and surrounding state-owned land”. As stated earlier, this is a verbatim version of the wording of section 116 of the NWA.
- 4.2. As indicated earlier, the authority given to the Minister in the draft regulations go outside what the NWA allows. This is exacerbated when one considers the provisions of the draft regulations with the resource management plans (“RMP”).

- 4.3. What will be demonstrated below is that the draft regulations, read with the RMP's, seek to manage and control private land adjacent to state dams. The draft regulations state that the public must comply with Resource Management Plans of dams.
- 4.4. A resource management plan is defined in the draft regulations as an *“approved management document for a specific state dam that describes and regulates functional, workable sustainable access and utilisation plans (zoning) for water and land resources of the state dam through a process based on the attainment of harmony within the natural and cultural environment, while addressing the needs and expectations of both the community users and visitors based on sound business principles combined with a representative institutional structure to take charge of the management of the resource in an equitable manner, thus ensuring the process will be consultative with interested parties playing an essential role in the success of the final plan and implementation thereof.”*
- 4.5. For present purposes, the recent Vaal Dam RMP will be used as an example of the arbitrary nature of the RMP's and the draft regulations. The Vaal Dam RMP indicated that –
- 4.5.1. The NWA does not give the public the right to use state dams for recreation;
 - 4.5.2. The historic use of state dams for recreation does not constitute existing lawful use as envisaged in the NWA;
 - 4.5.3. The use of state dams for recreation is “an illegal activity”;
 - 4.5.4. The water surface “belongs to DWS”. All persons using the water surface without a “lease agreement” are engaging in an “illegal activity”;
 - 4.5.5. There are private developments, marinas, recreational clubs and other public access areas. “No agreements are in place for these stakeholders.” Most of the access and use of the dam is “informal”;
 - 4.5.6. Dams may only be accessed from “access points” approved by DWS and the other bodies created in the plan;
 - 4.5.7. All access to and use of state dams for recreation is “an illegal activity”, unless a series of prescribed “agreements” are entered into, with numerous parties, containing provisions which will be determined by the State;
 - 4.5.8. All recreational use must be through “an appropriate legal framework”;
 - 4.5.9. No member of the public has lawful access to a state dam from land bordering a dam – even if their land borders the dam or is covered by water in the dam

from time to time. If they traverse their own land below the floodline, they are engaging in “an illegal activity”. This land may also not be “accessed” without a “lease agreement” – which may be refused and if granted, may not be longer than 9 years and 11 months;

4.5.10. “Recreational use agreements” must be developed in line with “the conditions stipulated in the agreement between DWS and the implementing agent”. It should as a minimum include the following:

- 4.5.10.1. All clubs or associations must be affiliated to a National Sporting Body recognised by SASCOC. All agreements must include a cancellation clause if the club or association does not obtain affiliation with SASCOC within one year of signature of the agreement;
- 4.5.10.2. A mandate for programs to assist in equitable access and redressing in balances at the dam, such as sponsored gate fees for members of previously disadvantaged communities;
- 4.5.10.3. A cancellation clause should community access targets not be met;
- 4.5.10.4. “land management agreements” must be concluded with surrounding or adjacent landowners to achieve “environmentally sustainable and more efficient land management”;
- 4.5.10.5. “access agreements” must be concluded and “all surface water access must be formalised. The conditions for such access must be written into the agreement. All illegal practises must be addressed. Appropriate action must be taken to ensure that all parties comply with the requirements of the RMP”;
- 4.5.10.6. “All community members, adjacent landowners and clubs must be made aware that access to the surface water should only be through authorised access points. Accessing the surface water through unauthorised access points is an illegal activity unless they enter into a formal agreement with DWS”;
- 4.5.10.7. “A formal agreement with DWS will be required by all community members, adjacent landowners and new recreational clubs that have direct access to the water surface of the dam through constructed slipways, unnatural slipways or jetties for angling and/or launching of boats. Additional agreements with the implementing agent may also be necessary”;

4.5.10.8. Venues offering accommodation and fishing will require a “formal access point agreement with DWS”.

4.6. Afriforum objects to the aforesaid statements in the RMP’s for two principal reasons. Firstly, the public has the right to access and use dams for recreation. The existing use thereof is not “informal” or an “illegal activity”. Secondly, the water surface does not “belong to DWS”.

5. Arbitrary deprivation of property

5.1. The Vaal RMP, for example, records that the department does not have a purchase boundary in place as the Dam occurs in a servitude of storage. However, the exact extent of the servitude is not known and thus no shoreline zonal map could be produced. The RMP records that no title deeds of private land around the Vaal Dam were considered.

5.2. The Vaal RMP states that *“one of the critical actions included in the Strategic Plan and Business Plan is to determine the extent of the servitude and State owned land (as well as identification of adjacent landowners, commercial enterprises, recreational clubs and unauthorised activities such as abstraction points, slipways etc.). Once the servitude has been determined, a shoreline zonal plan should be produced”*.

5.3. In that regard, the RMP indicates that:

5.3.1. All the land below the 1:100 year floodline “belongs to DWS”– even if it is registered in the name of a private person or entity. If a member of the public should traverse this land, they are engaging in “an illegal activity”. This land may not be “accessed” without a “lease agreement” – which may be refused and if granted, may not be longer than 9 years and 11 months;

5.3.2. No landowner who owns property adjacent to a state dam has any right to access the dam. No dam may be accessed from such land;

5.3.3. All jetty’s, slipways and marina’s constructed in the past are “illegal”. They must either be “formalised” and “licensed”, or demolished. This is so regardless of whether it was built on private land, or not;

5.3.4. All commercial enterprises on private land adjacent to state dams are “illegal” and may only be conducted in Public Private Partnerships. There are “no agreements in place with commercial enterprises” around the dam.

- 5.4. The RMP's provide for zonal plans , including shoreline management zones. The RMP states that “an integral part of the RMP is shoreline zoning”. It will reflect what activities are permissible on the water surface.
- 5.5. The Vaal RMP requires the Dam Management Committee (“DMC”) to compile zonal plans of the private land around dams. It proposes three zones –
- 5.5.1. Zone A, *Management through Agreements - Conservation and Recreation/Tourism*. The majority of the shoreline is to be zoned as Zone A. The RMP contains a list of “Permissible Activities” in this zone. Birding, hiking, picnicking, shoreline fishing and access to the water – all activities on land – must be done in accordance to access agreements. All activities to be formalised and agreements drafted before the expansion of existing facilities.
- 5.5.2. Zone B, Management through Agreements - Development and Recreation. The ‘hub’ areas such as the three towns around the Vaal Dam, current recreational clubs, marinas, estates etc. are to be zoned as “Development and Recreation”. This will allow for “high intensity recreation and development for tourism purposes” allowing for “the potential development” of public picnic areas, accommodation, house boats, recreational club areas and fishing and sailing development schools. The “Permissible Activities” in this zone are the development and expansion of facilities/infrastructure for recreation, development/training and tourism; fishing, camping/accommodation, birding, picnicking and access to surface water for recreational purposes.
- 5.5.3. Zone C, No Access to the Public. This refers to the area around the Dam wall owned and managed by DWS should be zoned as management only and provides for land management of state land but does not allow public use or access.
- 5.6. The RMP seeks to give the DMC wide powers, such as the following:
- 5.6.1. Conducting a survey of the servitude, adjacent landowners, commercial enterprises, unauthorised activities, etc.;
- 5.6.2. Updating the Zonal Maps;
- 5.6.3. Putting agreements with all adjacent landowners in place, including a shoreline Management Plan;
- 5.6.4. Ensuring that all developments have been approved by DWS and DMC; and
- 5.6.5. An “Enforcement Officer” will check all designated picnic spots.

- 5.7. The RMP's list a series of objectives which include the following:
- 5.7.1. Land matters to be resolved including identification of all adjacent landowners and implementation of access agreements;
 - 5.7.2. Unauthorised commercial activities to be resolved in line with National Treasury Requirements;
 - 5.7.3. Survey of illegal structures (including jetties, slipways, ablution facilities, houses, marina etcetera) and unauthorised structures to undergo rectification process or be removed;
 - 5.7.4. Agreements with adjacent landowners, commercial enterprises and recreational clubs to be put in place. These agreements should include management of disposal of general waste and effluents so as to ensure water quality is not impacted by recreational use.
- 5.8. It is apparent that the RMP's are drafted on the assumption that the Minister, DWS and/or the DMC may regulate activities pursued on private land bordering a dam. It provides that camping, birding, hiking, picnicking, shoreline fishing and access to the water – all activities on of from private land - must be done in accordance to access agreements.
- 5.9. Afriforum objects to the statements in the RMP's for the following reasons:
- 5.9.1. It is not illegal to access a dam from private property bordering a dam;
 - 5.9.2. Businesses on private land adjacent to a State dam are also not “illegal”. The Minister does not have the power to determine that a landowner may not carry on commercial activities on private land bordering a dam, or that such activities have to be carried on in a Public Private Partnership. The owners of private land bordering dams are entitled in law to carry on commercial enterprises on such land – provided they comply with the applicable statutory provisions and municipal bylaws regulating such zoning. The NWA contains no provisions affording any powers in this regard to the Minister, or DWS;
 - 5.9.3. The land below the 1:100 year floodline does not belong to DWS. In the case of the Vaal Dam, the majority of this land is private property subject to a servitude of water storage. Chapter 13 of the NWA deals with servitudes and the rights of the holder of the servitude – the State. The Minister and the State have no rights to such land - beyond what is stated in the NWA. It remains the property of the landowner – who has to accept the storage of water from time to time. registered servitude of water storage on such land. The landowner pays rates and taxes on such land to the local municipality. The land is reflected on a diagram filed with

the Surveyor-General. The landowner is entitled to traverse this land and use and enjoy it. There is no basis in law to contend that the “buffer zone”, or the land inside the “high floodline”, is “state land”;

- 5.9.4. It does not follow in law that structures erected on land below the 1:100 year floodline are “illegal”. The Minister, DWS or a DMC has no power to demand that such structures be “formalised”, or demolished;
- 5.9.5. The statement that all structures built on private land submerged from time to time, regardless of when it was done, are “illegal” and require a “water use license” is bad in law and further incorrectly assumes that all these structures impede the flow of water. Using the Vaal Dam as an example - a number of marina’s are situated around the dam. They were constructed decades ago – in cases before the NWA came into force. They were built entirely on private land. They in fact enlarged the storage capacity of the dam;
- 5.9.6. The Minister, DWS and the DMC does not have the power in terms of the NWA to subject private landowners to “surveys” or inspections - by an “enforcement officer” or a DMC - to determine what activities the owner is pursuing on such private land; what commercial enterprises the owner is carrying on such private land and what structures the owner has erected in his/her/its land;
- 5.9.7. The Minister, DWS and the DMC does not have the power to determine the zoning of private land bordering on dams, or prescribe what activities may be pursued on such land. The “zonal plans” provided for in the RMP’s are ultra vires and unlawful;
- 5.9.8. The Minister is not given the power by the NWA to interfere with the rights and activities of private landowners on their land;
- 5.9.9. The RMP’s in effect seek to expropriate the land and businesses of private landowners bordering dams. The Minister cannot do so through an RMP. It is unconstitutional;
- 5.9.10. There is no need to enter into “agreements” with landowners around the Vaal Dam to provide for refuse removal. The RMP’s do not provide any facts of problems in this regard which could pollute the dam. These services are provided already;
- 5.9.11. The Minister cannot provide, by regulation, that members of the public “must comply” with RMP’s – having regard to the aforesaid.

6. The “institutional plan”

- 6.1. The RMP’s contain an institutional plan, a financial plan, and a strategic plan.
- 6.2. The “institutional plan” is described as the backbone of the RMP as it identifies the management system which is required to ensure the objectives of the RMP are met. This plan discusses requirements for agreements, development targets (in relation to community development of water sports) and information on the affiliations required. It also provides for “toolsets which will be used to manage the dam so that the vision can be met”.
- 6.3. The toolsets include-
 - 6.3.1. Three committees chaired by DWS because it “is the custodian of all surface water in South Africa” - a RNP Steering Committee; an OMC; and a Dam Management Committee (“DMC”).
 - 6.3.2. “Management tools” which includes agreements, affiliations and targets. This toolset is to be used by the DMC to determine who is entitled to use the surface water and on what terms. It will be done through a series of compulsory “agreements”.
- 6.4. The DMC is to be guided by “terms of reference”, not stated in the RMP, but such terms will “provide guidance on reporting requirements; management of agreements, access objectives and development targets, and a Strategic Plan for Commercialisation”.
- 6.5. The DMC is stated to be “responsible for the “operationalising of the RMP” and that “business plans” are implemented. This includes “authorised access point representatives”, and all commercial operations and recreational clubs “which have concluded an agreement to authorise access with government”.
- 6.6. The Vaal RMP states – “due to the exceptionally large number of landowners around the dam” they should appoint “one representative to sit on their behalf” – for each of 4 “sections”. It will include representatives of surrounding local municipalities and a number of national and provincial government departments.
- 6.7. Afriforum records that the NWA does not provide for or allow the creation of the institutional framework provided for in the RMP’s –
 - 6.7.1. The NWA recognises the need for the integrated management of all aspects of water resources and, where appropriate, the delegation of management functions to a regional or catchment level so as to enable everyone to participate.

- 6.7.2. The NWA provides for the creation of Catchment Management Agencies (“CMA’s”). CMA’s provide the second tier of the water management structure provided under the NWA. The NWA provides that the Minister must promote the management of water resources at the catchment level by assignment powers and duties to CMAs when it is “desirable to do so”.
- 6.7.3. The NWA envisages the delegation of management functions to regional level or catchment level, with catchment management agencies being the chosen management vehicle.²
- 6.8. CMA’s are governed by a carefully considered Board which represents a broad stakeholder grouping together with experts. A CMA must seek co-operation and agreement on water-related matters from the various stakeholders and interested persons. Further aspects relating to CMA’s include, inter alia, the following:
- 6.8.1. Managing water resources within a defined water management area. Such management is carried out in accordance with a catchment management strategy prepared by each CMA, underpinned by the principles of equity, efficiency, sustainability and representivity;
- 6.8.2. CMA’s are established after extensive public consultation. Public participation is a key requirement of the CMA establishment process. In addition to the stakeholder inputs, the establishment process must be supported by information about the focus and viability of a proposed CMA.
- 6.8.3. CMA’s will only receive additional powers and duties once it can demonstrate that it is effectively carrying out its initial functions and has the capacity to carry out the additional functions sought. There are a wide range of additional powers and duties which can be delegated or assigned to a CMA by the Minister. Additional assignment (and delegation) to CMAs is considered if it is likely to enhance water resource management in a particular water management area. These powers and functions need to be either delegated to the CMA by the Minister in writing or assigned by the Minister through a notice in the Gazette.
- 6.9. There is a stark difference between the statutory management regime envisaged by the NWA and the institutional framework sought to be created by the RMP’s.
- 6.10. Firstly, there is no provision in the NWA empowering the Minister, or DWS, to authorise the compilation of RMP’s and implement such plans. The NWA does not provide for the compilation or approval of RMP’s. It does not envisage the establishment of the “Institutional Structure”, specifically the DMC’s, envisaged in the RMP’s. The Minister has no power to create such committees, or give it any of the powers envisaged.

² See Preamble of the National Water Act, 1998; definition of “responsible authority” read with Part 2 of the Act.

6.11. Secondly, there is a marked difference in the strict requirements for the establishment and management of catchment management agencies, and the lack thereof in the case of the “dam management committees” envisaged in the RMP’s –

6.11.1. An example of the extent of the deviation from the prescripts of the NWA is the funding of DMC’s. The NWA contains detailed provisions regarding the funding and financial controls of CMA’s. Nothing in this regard is said about the three committees envisaged in the RMP’s.

6.11.2. CMA’s must act prudently in financial matters. No obligations are imposed on the three committees.

6.11.3. A CMA can impose charges, but must do so in terms of the Minister’s pricing strategy for water use charges, to cover the cost of executing its functions. Nothing is said in the RMP’s regarding DMC’s. The RMP’s state that DWS has published guidelines for recreational use of water, which provide for “Establishing water management institutions for the water resource and allows the institutions to charge for their activities “. It is not stated anywhere what these charges will be.

6.11.4. The RMP’s state that “a Financial Plan provides guidance on funding requirements and funding options”. The “financial plan” does not form part of the RMP’s and are not published anywhere. No control of any kind is provided for. The Minister also does not have the power to allow such institutions to “charge for their activities”. The NWA contains detailed provisions regarding the determination of “water use charges”. The Minister is obliged to determine these charges in accordance with the prescribed process and requirements.

6.12. Thirdly, the powers and functions of DMC’s are vague. It appears to be given wide powers – without any stated requirement as to how such powers are to be exercised and/or limited.

6.13. Fourthly, a CMA must develop a catchment management strategy – in the prescribed manner. This strategy will determine how it is to perform its functions. DMC’s, on the other hand, are not required to develop any such strategy’s. It is given the power to manage and control dams as and how it sees fit, with no approved plans or strategy’s, and no accountability in terms of the NWA. The RMP’s circumvent the requirements of the NWA and give wide powers to control dams and the recreational use thereof to a DMC. A DMC is not a water management institution provided for in the NWA.

6.14. The NWA does not give the Minister the power to establish “water management institutions” other than that provided for in the NWA, that will serve as a parallel system of managing water use. The NWA does not provide for the establishment of “dam

management committees” to fulfil functions expressly reserved for catchment management agencies.

6.15. The “institutional plan” contained in the RMP’s is ultra vires. Furthermore, the regulations, by providing that the RMP’s must be complied with, are also ultra vires.

6.16. With regards to the “strategic plan”, the RMP’s records, inter alia, the following:

6.16.1. Land matters are to be resolved, by conducting a survey, identifying all adjacent landowners and implementing “access agreements” with such landowners.

6.16.2. All commercial enterprises are to be “resolved in line with National Treasury Regulations”. DWS is to put in place agreements to regulate commercial use. In short, any commercial enterprise as described in the RMP will no longer have the right to function on its land adjacent to the dam, unless it enters into an agreement with DWS.

6.16.3. All jetties, slipways, ablution facilities, houses, marinas etc. are to be surveyed and either have to undergo a “rectification process” or be removed. The “rectification process” appears to be the conclusion of an agreement to “formalise” it.

6.16.4. Agreements with all adjacent landowners, commercial enterprises and recreational clubs have to be put in place.

6.16.5. Access to the water surface will depend on whether a landowner or club has signed a so-called “access agreement” with DWS. It is apparent that “development requirements” and other socio-economic targets and goals will be included in such agreements. The RMP provides that any failure to meet these requirements or goals will result in a termination of access to the water.

6.17. The RMP’s state that “agreements, affiliations and targets” constitute an important “toolset”. The RMP states that “One of the main management tools available is the use of agreements to ensure proper use of the Dam in line with the RMP vision and objectives.”

6.18. DWS and the DMC will manage the agreements. However, the terms of the agreements to be concluded are not disclosed. They are to be developed. The RMP states that “all agreements should be in line with the RMP requirements which as a minimum must achieve the following” –

6.18.1. Conditions on an implementing agent’s mandate to enter into agreements with other parties on the use of the surface water for recreational use;

- 6.18.2. Terms and conditions regarding equitable access must be included in ALL agreements;
- 6.18.3. Guidance on the use of the dam for PPP in line with Treasury requirements;
- 6.18.4. Targets and objectives for the management of the dam;
- 6.18.5. Roles and responsibilities regarding - conditions for the negotiations of agreements between DWS and recreational clubs. As a minimum, it is suggested that all agreements between the DWS and any recreational clubs, should be reviewed and accepted in writing by the IAs. They should also be presented to the DMC prior to signature to ensure the vision and objectives of the RMP are met.
- 6.19. The RMP's state that irrespective of the nature of the agreement the following must be incorporated:
- 6.19.1. Clear start and end dates and terms of renewal/extension;
- 6.19.2. Rights and obligations of both parties;
- 6.19.3. Access points to be used must be stipulated;
- 6.19.4. Access for recreational clubs and adjacent landowners will be managed through agreements with DWS;
- 6.19.5. Terms and conditions of improvements made "to property" should be stipulated. All improvements require consent from DWS and the DMC. Furthermore, the financial consequences should this requirement not be met should also be stipulated in the agreement;
- 6.19.6. No permanent structures shall be built within the 1:100 year floodline without additional approval as required by Section 21 (c) and (i) of the NWA;
- 6.19.7. The extent of the rights to use the resource should be stipulated;
- 6.19.8. Clear instructions on the financial requirements of both parties, and where and when money must be paid should also be stipulated. What money is to be paid is not stated anywhere in the RMP;
- 6.19.9. All agreements should include a cancellation clause if requirements cannot be met;

- 6.19.10. All clubs or associations must be affiliated to a national sporting body recognised by the South African Sports Confederation and Olympic Committee (SASCOC). All agreements must include a cancellation clause if clubs or associations fail to obtain affiliation within one year from date of signature of the agreement;
- 6.19.11. A list of current and potential recreational activities allowed at the Dam;
- 6.19.12. A mandate for programmes to assist in equitable access and redressing past imbalances at the Dam, such as sponsored gate-fees for members of previously disadvantaged communities. This should be in line with the RMP. The DMC will then be required to report against all targets at the OMC. All agreements must include a cancellation clause should community access targets not be met;
- 6.19.13. "All agreements" must contain clauses that provide for "access for all", as well as a series of other socio-economic objectives. The DMC will set access "targets". Landowners are obliged to report annually to the DMC. Compliance with these objectives is to be monitored by the local municipalities (in the case of the Vaal Dam) and by the DMC. Access to the water will be cancelled if a landowner or club does not comply with the objectives.
- 6.20. Using the Vaal RMP as an example, a landowner who wishes to access the water for recreational purposes will have to enter into a series of compulsory "agreements" with DWS, including –
- 6.20.1. A "lease agreement" – leasing the land below the 1:100 floodline, and the water surface, at a rental to be determined. The terms are not stated;
- 6.20.2. A "recreational use agreement" – to be developed, which must as a minimum include the following:
- 6.20.2.1. An "access agreement", the terms of which are not stated, save that "All surface water access must be formalised. The conditions for such access must be written into the agreement";
- 6.20.2.2. A "land management agreement".
- 6.21. The terms are not stated, but the following is clear:
- 6.21.1. The DMC "should actively consider land management strategies that improve the efficiency of current practices. This could include co-management agreements with surrounding or adjacent landowners which may result in environmentally sustainable and more efficient land management";

- 6.21.2. A “shoreline management plan” must be developed so to ensure management of the land within the servitude is in line with best practices, agreements with all adjacent landowners should take into account the shoreline management plan;
- 6.21.3. A “formal agreement with DWS” will be required by all community members, adjacent landowners and new recreational clubs that have direct access to the water surface of the Dam through 1.) constructed slipways; 2.) natural slipways; or 3.) jetties for angling and/or launching of boats;
- 6.21.4. Additional agreements with implementing agents may also be necessary;
- 6.21.5. Any “new” recreational clubs must enter into an agreement with DWS and be approved by the IAs and DMC. The nature of this agreement is unclear. The position of existing clubs is also unclear.
- 6.21.6. Afriforum objects to the use of agreements as provided for in the RMP’s for the following reasons.
- 6.21.6.1. Firstly, the Minister does not have the power to disregard the right of the public to use dams for recreation.
 - 6.21.6.2. Secondly, the NWA does not provide for RMP’s to “regulate” the use of dams.
 - 6.21.6.3. Thirdly, the nature of the agreement is stripped from the usual principles governing contracts and/or agreements. Prejudiced persons do not have a discretion to enter into these agreements with the government. They are essentially forced to do so if they wish to retain possession of their property, and to continue to use the water resources recreationally.
 - 6.21.6.4. Fourthly, the use of the agreements envisaged in the RMP’s are likely to create a substantial administrative burden. Hundreds of landowners will have no option but to conclude and renew a series of prescribed agreements. It is unlikely that this can be administered due to capacity constraints with the department(s).
 - 6.21.6.5. The Minister does have the power to create a parallel system for regulating development targets (this is dealt with below).
 - 6.21.6.6. Finally, the RMP’s, by providing that all the agreements must contain clauses that provide for “access for all”, and other socio-economic objectives, are clearly intended to convert private land to public land.

The land is effectively expropriated without compensation. The Minister has no power to do so.

7. Parallel regulatory systems for regulating various matters

- 7.1. The RMP's seek to create parallel systems for regulating the use of state dams, and several matters expressly dealt with in other statutes, and interfere with functions expressly attributed to other statutory bodies. The Minister does not have the power to create such parallel systems of regulation.
- 7.2. The RMP's record that "each Government Department has its own suite of Legislation to govern the use and management of the Dam. The RMP consolidates these roles and functions into a coherent management platform."
- 7.3. The NWA does not give the Minister the power to "consolidate the roles and functions of other government departments, entrusted with specific functions and powers", in the proposed committees.
- 7.4. The Minister also does not have the power to declare that other State departments "are required to use the RMP to inform" their policy, legislation and planning.
- 7.5. The RMP's seek to create parallel systems for regulation of the following –
 - 7.5.1. The management and control of water by way of the further establishment of RMP's, DMC's etc. The NWA provides for the creation of CMA's. CMAs provide the second tier of the water management structure provided under the NWA. The NWA envisages the delegation of management functions to regional level or catchment level, where catchment management agencies are the chosen management vehicle. The NWA does not provide for RMP's, nor does the NWA envisage the establishment of "dam management committees" to fulfil functions expressly reserved for catchment management agencies.
 - 7.5.2. The setting of development and transformation targets for specifically recreational purposes. The RMP's seek to give DWS and DMC's the power to impose "transformation targets" on all landowners who own property bordering dams. The Minister of Sport and Recreation is responsible for such matters – in terms of the National Sport and Recreation Act, 110 of 1998. The Minister of Sport and Recreation may after consultation with, or after consideration of proposals made by the Sports Commission from time to time, determine the general policy to be pursued with regard to sport and recreation. It is not the function of the Minister, DWS or DMC's to develop, set, monitor and enforce targets pertaining to the use of water for sport and recreation. The Minister does not have the power to do so, nor to entrust the development of such targets to a DMC and require that members of the public must report to a DMC whether they

have met the targets. The Minister also does not have the power to cancel a person's access to a dam if that person does not meet the DMC's targets.

7.5.3. The zoning of land. The RMP's seek to interfere with and regulate the zoning of land falling within the areas of local municipalities surrounding dams. The "Zonal plans" provided for in the RMP's seek to usurp and take over the function of municipal bylaws, and the SPLUMA Act.

7.6. In short, the attempt to create the aforesaid parallel systems of regulation is ultra vires and unlawful.

8. The DWS "Lease Policy"

8.1. DWS has adopted a lease policy ("the policy") on 5 February 2026, which provides that, inter alia, no member of the public currently has lawful access to a state dam. The practical effect of the policy is that access to- and activities on the state dams are subject to a valid lease agreement with the department, at its behest. Historic use of such places does not escape the claws of the policy.

8.2. The necessary implication of the above is that all access to the surface of the dam from private property will be deemed to be an illegal activity. That lease may not be longer than 9 years and 11 months. DWS is "the owner" of all land next to state dams – submerged by water from time to time – and of the water surface. It can only be used if it is "leased" from DWS.

8.3. It is apparent that this policy is based on, and seeks to expand on, the RMP's.

8.4. This is yet another example of the arbitrary deprivation of property rights.

9. Unlawful delegation of powers

9.1. The NWA provides that the Minister is the "responsible authority" for the management and control of state dams and the functions envisaged in the NWA.

9.2. Section 63 of the NWA provides that Minister may, in writing and subject to conditions, delegate a power and duty vested in the Minister in terms of the Act to, inter alia, an official of DWS.

9.3. The Minister does not have the power to delegate any of her powers or functions to the 3 committees envisaged in the RMP's, or a DMC specifically, or assign any of the envisaged control and management functions to a DMC, through RMP's. No provision is made for such in the NWA.

9.4. The Minister may not delegate the power to make regulations. The RMP's state expressly that they are intended to regulate the access and use of dams – in terms of “agreements” to be developed, with targets set and monitored by a DMC – as it sees fit. The RMP's and DMC's will regulate the access to and use of dams. This is contrary to what the NWA permits.

10. The Minister's power to impose fees and charges

10.1. The Minister may, with the concurrence of the Ministry of Finance, from time to time by notice in the Gazette, establish a pricing strategy for charges for any water use within the framework of existing relevant government policy. The pricing strategy may contain a strategy for setting water use charges for funding water resource management, including the related costs of gathering information; monitoring water resources and their use; controlling water resources; water resource protection, including the discharge of waste and the protection of the Reserve; water conservation; the costs of operation and maintenance of waterworks.³

10.2. Charges made within a specific water management area may be made by and are payable to the relevant water management institution. Charges made on a national or regional basis may be made by the Minister and are payable to the state.

10.3. No charge made under the NWA may be of such a nature as to constitute the imposition of a tax, levy or duty.

10.4. Water use charges may only be made in respect of a water use to which a person is voluntarily committed; and must bear a direct relationship to the water use in question.

10.5. The NWA does not allow for the imposition of rental payable to DWS for the recreational use of water.

10.6. The RMP's provide that DMC's may impose charges. DMC's do not have the power to impose charges on the public. The Minister also does not have the power to provide that it may do so either.

10.7. The RMP's (and the Lease Policy) are ultra vires and unlawful, and the regulations seeking to clothe it with validity, are similarly unlawful.

11. Conclusion

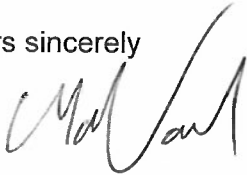
11.1. The regulations seek to enforce RMP's signed in 2015. The RMP's in its terms that they be reviewed every 5 years. They have not been reviewed. There is no relevant current factual basis for the directives contained in the RMP's, serving as a rational basis for

³ Section 59 of the NWA.

imposing the outdated and factually incorrect plans now. It is based on “beliefs” and incorrect assumptions.

- 11.2. The attempt to criminalize recreational water use, and deny the public access to dams are not in line with the NWA, fails to acknowledge various constitutional rights, and is therefore unlawful.
- 11.3. The regulations seek to deny and destroy the property rights of landowners, and business owners, who own land bordering dams. The Minister does not have the power to, in effect, expropriate private land and commercial enterprises on private land next to dams.
- 11.4. The Minister has no power to force members of the public to conclude the series of “agreements” envisaged in the RMP’s, if they wish to access dams for recreation. The use of state coercion to force stakeholders to conclude “agreements” that regulate the access and use of public dams infringes the fundamental right to dignity under the Constitution.
- 11.5. For the reasons given above, AfriForum respectfully requests the Minister to withdraw the regulations.
- 11.6. AfriForum remains available for further engagement on these issues.

Yours sincerely



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