

21 April 2026

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

By email: ~~XXXXXXXXXXXXXXXXXXXX~~

Dear Ms Muir

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

AfriForum refers to its submission dated 13 April 2026 on the proposed regulations, as well as the Department's subsequent communications and public presentations seeking to clarify its intention with the draft regulatory framework.<sup>1</sup>

While these attempts at clarification are noted, they have not resolved the substantive concerns raised. Instead, they have introduced further uncertainty and, in certain instances, appear to contradict the wording and legal effect of the proposed regulations, Resource Management Plans ("RMPs") and the Department's Lease Policy.

In order to meaningfully engage with the proposed framework, AfriForum requests clarity on the following issues.

### **Status of access to dams**

1. Is it the Department's position that current public access to dams for recreational purposes is lawful or unlawful?
2. If unlawful, what specific legal provision renders such access an offence?
3. Does access to a dam require prior approval in all instances? If not, in which circumstances is approval required?
4. Can a member of the public lawfully access a dam via private land bordering the dam?

### **Access from private land and servitudes**

5. What specific conditions in servitudes regulate access to and use of the water surface?
6. Are such servitudes with access conditions registered over all properties bordering the dam?

---

<sup>1</sup> The additional public consultation meetings were held via Teams on Wednesday 15 April 2026 at 18h00, Thursday 16 April 2026 at 12h00 and Monday 20 April 2026 at 18h00. AfriForum's Marais de Vaal attended the meeting on 16 April.

7. Where no servitude exists, does the landowner have lawful access to the dam?
8. Where a servitude exists but is silent on access, does the landowner have lawful access?
9. On what legal basis does the Department assert that land below the floodline or servitude line constitutes state land?

### **Authority to grant access**

10. Who may lawfully grant access to a dam under the proposed regulations?
11. Does an adjacent landowner have the right to grant access to the dam?
12. Is it the Department's position that no adjacent landowner, club or resort has lawful access to a dam?
13. What is the legal status of existing access points such as marinas, resorts and boating clubs?

### **Criminalisation of conduct**

14. Would a person accessing a dam from private land and using the water for recreational purposes be committing an offence?
15. Does non-compliance with an RMP or access condition constitute a criminal offence?
16. Is it the Department's intention to criminalise existing recreational use where no prior approval exists?

### **Legal status of Resource Management Plans**

17. Under which provision of the National Water Act are RMPs authorised?
18. Are RMPs intended to be legally binding instruments?
19. Can RMPs regulate access to dams and prescribe conditions for use?
20. Can RMPs lawfully limit or override existing lawful use of water resources?

### **Use of agreements**

21. What is the legal basis for requiring individuals, landowners or clubs to enter into agreements to access dams?
22. Are such agreements voluntary or compulsory?
23. What are the standard terms of these agreements?
24. What payments, if any, are required under such agreements, and on what legal basis?
25. What are the consequences of refusing to enter into such agreements?

### **Lease requirements and commercial activities**

26. Under what legal authority may the Department require a lease agreement for use of the water surface?
27. Is a lease required for all commercial activities, and how is "commercial activity" defined?
28. Can a landowner be required to lease land below a servitude line from the state?
29. On what legal basis can commercial activities on private land be declared unlawful in the absence of such agreements?
30. Is it required that all commercial activities on private land bordering dams be conducted through Public Private Partnerships?

31. Is it the Department's official policy that all commercial activities on private land bordering dams are unlawful? If so, what offence is being committed and under which statute?
32. What exactly is to be leased in a "commercial lease agreement" relating to water surface use?
33. Why is a commercial lease required to ensure compliance with existing maritime safety or recreational event regulations?
34. Which statutory provision authorises the Department to impose such lease requirements for commercial activity?

### **Existing infrastructure**

35. On what legal basis are existing slipways, jetties and marinas considered unlawful?
36. How are such structures treated if they were constructed prior to the commencement of the National Water Act?
37. Do such structures constitute "existing lawful use" under the Act?
38. What process is required to regularise such structures, and what are the consequences of non-compliance?

### **Interference with private property**

39. On what legal basis can the Department regulate activities on private land bordering a dam?
40. Can the Department determine what activities may be conducted on such land?
41. Can the Department impose zoning or land use restrictions on private land?
42. Does the Department claim the power to require approval for improvements or developments on private land?
43. On what legal basis can the Department determine that activities such as tourism, accommodation or recreation on private land are unlawful?

### **Enforcement powers**

44. Does the Department intend to appoint enforcement officers to inspect private land bordering dams?
45. What legal authority permits entry onto private land for inspections or surveys?
46. Can landowners be compelled to participate in surveys or compliance processes?
47. What is the legal status and mandate of Dam Management Committees?

### **Scope of recreational water use**

48. Does "recreational water use" include boating, sailing, canoeing and similar activities?
49. If so, why are these not clearly reflected in the definition?
50. Are such activities permitted as of right, or only subject to approval?

### **Interpretation of "state land"**

51. Does the Department maintain that all land below the servitude line or floodline constitutes state land?
52. Does the Department assert that land extending beyond the servitude line (including any "buffer zone") constitutes state land?

53. What is the legal basis for any such interpretation?
54. Does the Department accept that privately owned land subject to a servitude remains privately owned?

### **Procedural fairness and public participation**

55. Will the Department provide recordings and/or transcripts of the public clarification meetings held on 15 April 2026, 16 April 2026 and 20 April 2026?
56. On what basis were further public engagements held after the closing date for written comments?
57. Does the Department intend to formally extend the comment period through publication in the Government Gazette?
58. Will a revised version of the proposed regulations be published for fresh public comment?

### **Consistency between clarification and regulations**

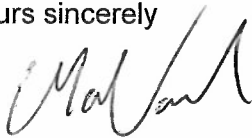
59. Which version of the Department's position must stakeholders rely on: the published regulations, or the explanations provided in subsequent communications and presentations?
60. How does the Department reconcile statements made during the clarification process with provisions in the regulations and RMPs that suggest the criminalisation of recreational use and access?

AfriForum submits that clarity on these issues is essential for meaningful public participation and for stakeholders to properly assess the legal and practical implications of the proposed regulations.

In the absence of such clarity, the regulatory framework remains ambiguous, internally inconsistent and difficult to engage with in a substantive manner.

AfriForum remains available to engage constructively with the Department on these matters.

Yours sincerely



**Marais de Vaal**  
**Advisor: Environmental Affairs**  
**AfriForum**

Cell: ~~082 300 1100~~

Email: ~~marais.devaal@afriforum.org.za~~