



the federation for a sustainable environment

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WRITTEN SUBMISSION FOR THE PROPOSAL FOR THE ESTABLISHMENT OF THE
SINGLE CATCHMENT MANAGEMENT AGENCY IN TERMS OF SECTION 78(3) OF
THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) IN TERMS OF
GOVERNMENT NOTICE 1415

In this document, the Federation for a Sustainable Environment (“FSE”) submits comments on the single catchment management agency in terms of section 78(3) of the National Water Act, 1998 (act no. 36 of 1998) in terms of government notice 1415.

THE FSE:

The FSE is a federation of community based civil society organisations committed to the realisation of the constitutional right to an environment that is not harmful to the health or well-being, and to having the environment sustainably managed and protected for future generations. Their mission is specifically focussed on addressing the adverse impacts of

mining and industrial activities on the lives and livelihoods of vulnerable and disadvantaged communities who live and work near South Africa's mines and industries.¹

The FSE welcomes the attempts by the Department of Water Sanitation ("DWS") to change the structures and undertaken a system that can be operated optimally for the benefit of water usage and the protection of the water ecology. The motivation for the recommendations and the analyses of the organisational structures (in terms of the business case document accompanying the proposal) are logically sound. However, the FSE believes that that current proposition proffered by the DWS is conceptually problematic in that its underlying philosophy is flawed behind centralising the Catchment Management Agency.

In light of the above the FSE's comments ought to be read in conjunction with the South African Water Commission's Report ("SAWC")² on the state of the Department of Water and Sanitation ("DWS"). In terms of the SAWC report, which is germane to this proposal, it reveals deeply concerning institutional and governance challenges in the DWS, and lays bare a situation of institutional paralysis within the DWS and associated deterioration in financial management, service delivery, policy coherence and performance.³ It will be submitted that

¹ Kindly note that the Legal Resources Centre (Lucien Limacher and Joanna Wallace) assisted with this submission, however it does not directly express the LRC's views.

² Available at http://emg.org.za/images/downloads/water_cl_ch/SAWC_State-of-DWS-Report.pdf. In terms of this report the FSE played a pivotal role in the creation and finalisation of the document.

³ In terms of the SAWC report the following issues were reviewed, analyses and commented. These issues are detailed below which again, as stated above, plays into the hand of the issues this proposal has:

- Considerable human resource and organisational challenges including the suspension of senior managers, high staff turnover and vacancy rates and intensified capacity constraints;
- Serious financial mismanagement related to over-expenditure, accruals and failure to pay contractors and corresponding escalation of debt, overdraft of the Water Trading Entity and debt owed to the Reserve Bank, irregular, fruitless and wasteful expenditure, poor revenue collection and corruption allegations;
- Considerable policy and legislative uncertainty related to inter alia the proposed Water Master Plan, proposed Water and Sanitation Bill and the proposed National Water Resources and Services and Sanitation Strategy;
- Failure to publish Blue Drop (water quality) and Green Drop (waste water treatment) reports since 2013. 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 functioning and complying with water 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;
- Deterioration in wastewater treatment works and infrastructure due to lack of maintenance and investment, with initial findings of the 2014 Green Drop report indicating that 212 waste water treatment plants fall within a "Critical Risk" categorisation. These plants 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;
- Significant deficiencies in compliance monitoring and enforcement. Notably, DWS only has 35 compliance and enforcement officials for the whole country, and has never published a specific water compliance and enforcement report. The 2016/17 National Environmental Compliance and Enforcement report highlights that DWS has completely failed to undertake meaningful enforcement



in terms of this submission that the amalgamation of the 9 water catchment agencies into a single agency will only exacerbate the above problems plagued by the DWS.

FSE'S REASONS FOR THE OPPOSITION TO THE PROPOSAL:

Institutional and legal structure: Centralisation and capacity building:

Centralisation problem:

The Constitution of South Africa provides the basis for the country's progressive environmental legislation by guaranteeing South Africans the right to an environment that is not harmful to health and wellbeing and the right to sufficient water. As such, South Africa adopted national water legislation that serves as a tool in the transformation of society based on social and environmental justice. In combination, the Water Services Act and the National Water Act were designed to achieve equality and redress inequalities of racial and gender discrimination of the past; link water management to economic development and poverty eradication; and ensure the preservation of the ecological resource base for future generations.

One of the main principles of the National Water Act is its focus on decentralisation. Decentralisation places an emphasis on public participation in water management and related decision-making processes. This was in line with the decentralisation vision set by the South African government in the post-1994 political dispensation, which favoured more involvement of organisations at grassroots level as opposed to the command-and-control vision of pre-1994 governments. This primarily evidenced by the definitions in the National Water Act that allows for management agencies to be formed in various areas of different

action against offenders. In 2017/2017, of 321 facilities inspected, 76 of which were found to require enforcement action, DWS has had zero (0) convictions for criminal offences. Despite widespread non-compliance, DWS has only suspended one water use licence since 1 January 2008.

waterworks. As a result these areas were defined in terms of the National Water Strategy Report.

In terms of the single CMA proposal, it is the FSE's contention that the exact opposite will occur in that it will dis-empower local communities from engaging in the management of their water resources. Although the DWS tried to remedy the above concern by allowing the creation of Catchment Management Committees, the powers and authority in which the Catchment Management Committees would be able to operate under is very limited. The establishment of the Catchment Management Committees will be a body that is non-statutory, voluntary and without any authority, effectively creating a toothless leopard.

The net effect of creating this toothless tiger is twofold. Firstly, the DWS will be removing a wide range of local knowledge based stakeholder engagement from the system and secondly, the DWS will have a centralised control of the nation's water resources, with potentially large revenue stream from tariffs on raw water and the non-consumptive use of water (i.e. recreational water users). As a result this central system will allow a small minority to take various funding proposal and dictate who should get what without consultation. This is going to become an exploitative system controlled by a minority.

It is prudent to alert the DWS that decentralisation is a principle which under the also rests on the subsidiary philosophy,⁴ which is encapsulated in the South African Constitution. Subsidiarity means that those functions that can be more effectively and efficiently carried out by lower levels of government should be delegated to the lowest appropriate level. In this regard, the National Water Act and the Constitution are two structures of rule that were to be constitutive in the establishment of CMAs in order to give credence to the philosophy of subsidiarity.

In terms of this philosophy, CMAs were required, in terms of the NWA, to cooperate and seek agreement on water-related matters among various stakeholders and interested parties. They also were to have governing boards to ensure that stakeholders are being represented

⁴ This principle has been accepted by various court decision which includes constitutional court decisions.



and to prevent control of decision-making by powerful parties with vested interests. In addition, CMAs were to have a mandate to progressively develop catchment management strategies (CMS) to realize the protection, use, development, conservation, management, and control of water resources in the respective WMAs in which they operate.

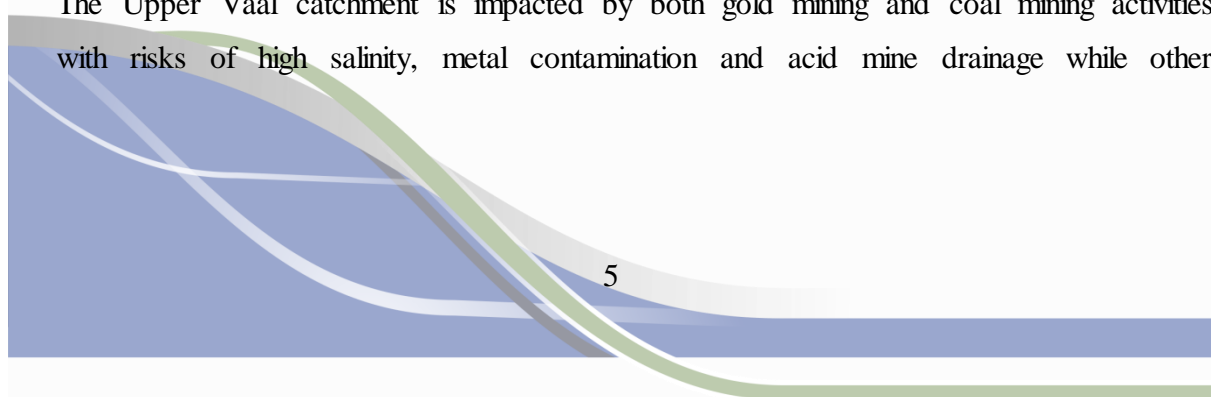
The FSE submits that this decentralised system of governance should not change but rather that there a greater focus on capacity building and education with the catchment agencies.

Capacity building:

CMAs, in terms of the NWA, were to fulfil important functions. In terms of Section 19 (3) of the NWA, unlike Catchment Management Forums (CMFs) that do not possess decision-making powers, CMAs may direct polluters to commence taking specific measures to inter alia contain or prevent the movement of pollutants and remedy the effects of pollution and to complete them before a given date. Should a polluter fail to comply or comply inadequately with a directive given the CMA may take the measures it considers necessary to remedy the situation and recover all costs from persons directly or indirectly responsible for the pollution or the potential pollution or if more than one person is liable for the pollution the CMA may apportion the liability.

Removing this decentralised system will effectively remove the possibility of protecting the environment. This is exemplified below:

- Decentralisation in terms of the management of water resources is necessary since the challenges, conditions and problems of the 9 CMAs are not uniform. The physical, social and economic environments associated with the different catchments vary. To exemplify: The Upper Vaal catchment is impacted by both gold mining and coal mining activities with risks of high salinity, metal contamination and acid mine drainage while other



catchments⁵ have different nutrient loads, chemical pollution, physical and biological characteristics.

- Centralisation of management will furthermore disallows for the concerns and suggestions of stakeholders in their specific regions to be heard and addressed. Stakeholders in different regions have their own issues, perceptions, expectations and interests.
- The decision to consolidate the nine catchment management authorities (CMAs) into a single national CMA is, in our considered opinion, in direct opposition to the abovementioned objectives of the Constitution, the NWA and in particular Chapter 7 of the NWA⁶, the National Development Plan 2030⁷, the National Water Resource Strategy 2 (NWRS-2)⁸ that provide for the decentralisation, equity and public participation in water governance.

Once again the FSE submits that this decentralised system of governance should not change but rather that there a greater focus on capacity building and education with the catchment agencies.

SUBMITTED BY:

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⁵ Pongola-Umzimkulu catchment, Breede-Gouritz and the Inkomati-Usutu, Limpopo, Olifants, Orange, Mzimvubu-Tsitsikamma and Berg-Olifants catchments.

⁶ In terms of Chapter 7 of the NWA requires the Minister to establish CMA – “to involve local communities in the decision making process.”

⁷ In terms of the National Development Plan 2030: “Active citizenry and social activism is necessary for democracy and development to flourish, to raise the concerns of the voiceless and marginalised and hold government, business and all leaders in society accountable for their actions”.

⁸ In terms of section 9.4.9 of the NWRS-2, “Civil society will be encouraged to play a watchdog role in supporting compliance by water users with water regulation at all levels.”

