

PC WATER

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Tyhileka madubela - More Comments on the National Water Resource Strategy -  
from Hendrik du Toit

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**Subject:** More Comments on the National Water Resource Strategy - from Hendrik du Toit

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## SUPERIORITY OF THE NATIONAL WATER ACT ON WATER MATTERS.

Section 3 and 4 of the NWA allocate exclusive and superior powers to National Government Acting through the Minister of Water Affairs over the flow, use, management etc of water.

The NWA reserves the power to instruct steps to contain pollutants on land because it is more difficult to purify water than land. But NWA also provide for powers to release stored water to dilute or wash away pollutants on land.

A partnership between DWA and DEA is essential but DWA must retain the powers over water.

DWA should however implement the NWA and Water Services Act to its full extent.

## WATER POLLUTION AND THE STRATEGY

It is a misconception that the National Water Act offers environmental authorization because it deals with water pollution.

The fact is that pollution under the National Water Act is totally different and more stringent from that under NEMA. The NWA deals with the usability of the water, the water quality in the resource and the effect on persons and the environment.

Water use can only be approved under the NWA and approval under both Act's is desired (they complement each other).

## Definition of Water Pollution in the National Water Act 1998 (Act 36 of 1998)

"pollution" means the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it

(a) less fit for any beneficial purpose for which it may reasonably be expected to be used;

or

(b) harmful or potentially harmful

(aa) to the welfare, health or safety of human beings;

(bb) to any aquatic or non aquatic organisms;

(cc) to the resource quality; or

(dd) to property;

"resource quality" means the quality of all the aspects of a water resource including

(a) the quantity, pattern, timing, water level and assurance of instream flow;

(b) the water quality, including the physical, chemical and biological characteristics of the water;

- (c) the character and condition of the instream and riparian habitat; and
- (d) the characteristics, condition and distribution of the aquatic biota

“waste” includes any solid material or material that is suspended, dissolved or transported in water (including sediment) and which is spilled or deposited on land or into a water resource in such volume, composition or manner as to cause, or to be reasonably likely to cause, the water resource to be polluted

“protection”, in relation to a water resource, means

- (a) maintenance of the quality of the water resource to the extent that the water resource may be used in an ecologically sustainable way;
- (b) prevention of the degradation of the water resource; and
- (c) the rehabilitation of the water resource;

“water resource” includes a watercourse, surface water, estuary, or aquifer

“watercourse” 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;

NOTE : (b) seems to exclude diverted or altered (streams) channels. It was considered natural under the 1956 Water Act therefore anything done may be considered natural.

The diverted and altered channels are however included as a water resource under surface water.

Surface water is indirectly defined under “catchment”, in relation to a watercourse or watercourses or part of a watercourse, means the area from which any rainfall will drain into the watercourse or watercourses or part of a watercourse, through surface flow to a common point or common points

“wetland” means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

NOTE The second part of the definition specify vegetation adapted for life in saturated soils therefore a wetland with exotic plants remain a wetland (that may need rehabilitation).

“aquifer” means a geological formation which has structures or textures that hold water or permit appreciable water movement through them;

**Pollution under NEMA**

“pollution”. means any change in the environment caused by—

- (i) substances;
- (ii) radioactive or other waves; or
- (iii) noise, odours, dust or heat.

emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity

of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future; (iii)

“ecosystem.” means a dynamic system of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit: (vii)

“environment.” means the surroundings within which humans exist and that are made up of—

(i) the land, water and atmosphere of the earth;

(ii) micro-organisms, plant and animal life;

(iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and

(iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being: (xix)

Under MINING LAW it is held that spoils (minerals not mined at that stage) does not count as pollution because it is not waste,

The policy of only mining for one mineral or specific combinations is one of the main causes of acid mine pollution and removing that restriction will result in leaving a clean mine and less potent tailing dams behind when mining is done. Changing the law to allow for removing and processing other minerals should be considered.

Hendrik du Toit