

WATER RIGHTS: A PRECARIOUS BALANCE

Securing South Africa's Agricultural Future While Advancing Equitable Water Reform

agbiz agricultural business chamber
the way to prosperity

FACT SHEET: Position on the National Water Amendment Bill, 2026

THE PROBLEM

South Africa's agricultural sector—which accounts for 60% of national water use and supports 25–30% of agricultural production—faces an uncertain future under the proposed National Water Amendment Bill, 2026.

The Bill seeks to strengthen state control over water resources and prioritize transformation. While these goals are laudable, several provisions create unintended consequences that threaten:

- **FOOD SECURITY** — Irrigation supports up to 90% of high-value crop production
- **WATER EFFICIENCY** — The Bill removes incentives to invest in water-saving technologies
- **RURAL EMPLOYMENT** — The agricultural sector is vital to rural job creation
- **LONG-TERM INVESTMENTS** — Orchards, vines, and forestry have lifecycles of 5–25 years

KEY FACTS

Agriculture's Critical Role in South Africa

- **60%** of South Africa's water use is by the agricultural sector
- **25-30%** of national agricultural production depends on irrigation
- **90%** of fruit and wine is produced under irrigation
- **90%** of high-value crops (potatoes, vegetables, fruit) rely on irrigation
- **1.5%** of land is under irrigation but produces 30% of the country's crops
- **14%** of South Africa's GDP is attributed to the food and fibre value chain

Sources: Water Research Commission, 2018; WWF, 2015

TEN AREAS OF CONCERN

1 PROHIBITION OF WATER TRADING (CLAUSE 25)

- The Bill prohibits water trading and removes compenstation for surrendering water rights
- This contradicts the Constitutional Court judgment in the Lotter case

Source: Lotter NO and Others v Minister of Water and Sanitation and Others, 2021

Impact: Removes financial incentive for farmers to invest in water-saving technologies (drip irrigation, water reticulation)

Result: Farmers will use full historical volumes rather than invest in efficiency

2 WATER SOURCE AREA RESTRICTIONS (PART 2)

- 70% of South Africa's GDP is supported by water from the Limpopo, Komati, Pongola, and Olifants rivers
- The Bill imposes blanket prohibitions without risk-based, scientific assessment

Impact: Arbitrary approach that fails to consider mitigation measures

Result: Uncertainty for farmers, investors, and financial institutions

Source: Department of Water and Sanitation

3 32-METER SET-BACK REQUIREMENT

- Duplicates existing NEMA Environmental Impact Assessment Regulations
- Forestry industry supporting 165,000 direct jobs and 650,000 livelihoods is threatened
- Question: Will farmers be compensated for loss of production on legally used land?

Impact: Unnecessary regulatory burden and barrier to entry into the sector

4 NO RISK-BASED ANALYSIS FOR PROHIBITIONS

- Blanket prohibitions assume all activities have same impact regardless of mitigation
- Contradicts NEMA's EIA requirements and the draft Preservation and Development of Agricultural Land Bill

Impact: Permits not granted based on unique risk assessment

Result: Sustainable water resource management objectives undermined

5 REVIEW OF WATER LICENCES

- Licences may be reviewed and withdrawn in water source areas
- Long-term investments in orchards, vines, and forestry (5–25 year lifecycles) are threatened
- Question: Will farmers be compensated for sunk capital investments?

Impact: Threatens long-term investments

Result: Dire consequences for businesses and livelihoods they support

6 RE-ALLOCATION OF WATER BETWEEN SECTORS (CLAUSE 25A)

- Minister may reallocate water between sectors, provinces, and catchments
- No clear factors or procedural framework provided

Impact: Absence of public participation or appeal rights

Result: Potential violation of Section 33 of the Constitution (administrative justice)

7 PRIORITISATION OF REDRESS IN LICENSING (CLAUSE 27)

- Elevates transformation as the paramount consideration in licence allocations
- Contradicts the Goode Wellington Appeal Court judgment
- Question: How is race and gender measured for juristic persons?

Impact: No practical guidance on how transformation should be measured or applied

8 EXISTING LAWFUL USE (ELU) RIGHTS (SECTION 34)

- Repeal of Section 33 makes it legally impossible to register pre-commencement ELUs
- Affects small-scale farmers, communities in former homelands, land reform beneficiaries
- Question: Raises constitutional concerns under Section 25
- Proposed Solution: 5-to-10-year sunset clause for ELU conversion

Impact: Extinguishes rights of vulnerable water users

9 WATER USER ASSOCIATIONS (WUAs) (CHAPTER 8)

- Amendments limit WUA powers to functions reserved for the Minister
- Minister may determine membership criteria without clarity on intention
- Question: What happens if transformation strategies are not achieved?

Impact: WUAs may lack credibility if membership does not mirror water users in the area

10 APPORTIONMENT OF LIABILITY (SECTION 156A)

- Imposes automatic liability on directors and municipal managers for water use infringements
- Problem: Contradicts established criminal law principles (requires proof of causal link and mens rea)
- Recommendation: Remove or replace with administrative penalties

Impact: Unenforceable no-fault criminal liability

Result: Undermines legal certainty and fairness



A HUMAN STORY: THE COST OF UNCERTAINTY

> *"Long-term commodities such as orchards, vines and forestry have an investment lifecycle of between 5 and 25 years. These investments are undertaken on the basis of security of supply. Should a licence be reviewed during the lifecycle of a long-term crop, it could have dire consequences for the businesses and the livelihoods they support."*

Farmers who have invested millions of rands in irrigation infrastructure over decades face the prospect of having their water rights withdrawn without compensation—threatening not only their businesses

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THE SOLUTION: A BALANCED APPROACH

A just, pragmatic and fiscally aware framework that secures water justice for all while protecting food production.

		IMPACT
1	**Build Systemic Collaboration in the Sector** • Strengthen dialogue between government, Parliament, farmers, communities and civil society. • Co-create practical, shared solutions.	• Builds trust and alignment • Reduces conflict and litigation • Creates sustainable outcomes
2	**Restructure & Align the Water System Clearly** • Clarify roles of national, provincial and local authorities. • Eliminate duplication and confusion.	• Improves governance and efficiency • Prevents policy contradictions • Faster decision-making
3	**Provide Transitional Safeguards** • Protect lawful, existing water rights during the transition. • Ensure continuity for food production.	• Protects food security • Reduces economic disruption • Builds confidence in reform
4	**Protect Water User Associations (WUAs)** • Recognise and support the role of WUAs. • Enable them to continue operating and delivering local solutions.	• Strengthens local governance • Improves service delivery • Empowers communities
5	**Provide Transitional Relief** • Offer interim support and/or compenstation for affected farmers and communities. • Prevent irreversible harm.	• Ensures fairness and equity • Sustains livelihoods • Eases transition pressures
6	**Prioritise Basic Human Needs & the Environment** • Protect water for basic human needs and ecological sustainability first. • Uphold constitutional commitments.	• Supports vulnerable communities • Protects ecosystems • Ensures constitutional compliance
7	**Enable Long-Term Water Security** • Invest in infrastructure, storage, efficiency and innovation. • Build climate resilience.	• Improves water reliability • Drives economic growth • Builds resilience to droughts
8	**Ensure Continuous Monitoring & Review** • Track implementation, impacts and equity. • Adjust policies as evidence evolves.	• Ensures accountability • Enables continuous improvement • Protects against unintended harm
9	**Promote Water Awareness & Education** • Inform and engage citizens and stakeholders. • Build a culture of water stewardship.	• Improves compliance • Strengthens community action • Encourages responsible use
10	**Uphold the Rule of Law & Policy Certainty** • Ensure transparent, lawful and consistent application of water laws. • Protect property rights within the public interest.	• Builds investor confidence • Reduces legal uncertainty • Supports economic stability

THE BILL'S IMPACT AT A GLANCE

ISSUE	CURRENT POSITION	PROPOSED CHANGE	AGBIZ POSITION
Water Trading	Permitted with DWS approval	Prohibited	**Oppose prohibition**
Water Source Areas	Risk-based assurance	Blanket prohibition	**Support risk-based approach**
ELU Buffer / Transition	Case-by-case under Section 27	Section 29 expanded	**Support 5–10 year sunset clause for ELU conversion**
Director Liability	Requires proof of causation	Assumes liability	**Oppose, unconstitutional**
Reforms to Licencing	One at a time (2–5 yrs)	Fast-track restrictions	**Support balanced approach**
WUA Powers	Delegated authority	Limited to Minister	**Support protection of WUA autonomy**

Agbiz believes that sound water governance must balance transformation and redress with certainty, fairness and sustainability—securing South Africa's food security, rural livelihoods, and economic future.