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THE GREEN CONNECTION

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14 January 2025

Dear Dr. Sean Phillips

The Director-General Department of Water and Sanitation

By e-mail: unconventionalgas@dws.gov.za

For attention to:

Mr. Collin Xolani Zwane

The Deputy Director-General: Regulation, Compliance and Enforcement

Department of Water and Sanitation

THE GREEN CONNECTION ENDORSES CENTRE FOR ENVIRONMENTAL RIGHTS SUBMISSION ON REGULATIONS FOR THE USE OF WATER FOR EXPLORATION AND PRODUCTION OF ONSHORE NATURALLY OCCURRING HYDROCARBONS THAT REQUIRE STIMULATION, INCLUDING HYDRAULIC FRACTURING AND UNDERGROUND COAL GASIFICATION, TO EXTRACT, AND ANY ACTIVITY INCIDENTAL THERETO THAT MAY IMPACT DETRIMENTALLY ON THE WATER RESOURCE

Dear Dr. Sean Phillips

The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and nongovernmental/ civil society sectors, which are an integral part of sustainable development.

1. In principle, the Green Connection endorses Centre for Environmental Rights input on the proposed regulations published for comment on 22 November 2024 in Government Gazette No. 51642 under Notice 5582 by the Department of Water and Sanitation (DWS). The regulations have been read together with the Regulations Pertaining to Exploration and Production of Onshore Petroleum Resources Requiring Fracturing, the

Minimum Information Requirements for baseline monitoring for onshore exploration operations and the Minimum Information Requirements for the exploration and production of onshore petroleum using fracturing technology. Ref (Regulations for the use of water for exploration and production 2024.)

We highlight some of the issues that we believe are crucial.

Climate Change:

2. It is common cause that the world is in the midst of a climate catastrophe. The United Nations Intergovernmental Panel on Climate Change (IPCC) 6th Assessment Report (“AR6”) confirms that climate change, as caused by human activity, has led to adverse effects such as significant warming, drought and an increase in the occurrence of natural disasters on a scale that is unprecedented. CER para 10.
3. Gas extraction, and the processing thereof, is an environmental hazard as it contributes towards global warming through the release of large amounts of methane – a dangerously potent greenhouse gas (GHG). Methane has a 28x higher global warming potential and is 84x more potent than carbon dioxide over a 20-year period. Methane therefore contributes a significant portion of the greenhouse gases causing climate change - up to 25% according to the IPCC’s Fifth Assessment Report of 2013 (IPCC AR5). CER para 11.
4. Considering the full lifecycle GHG emissions of gas the state is obliged to consider the fugitive emission, or leakage, of methane that occurs at various points in the supply chain – extraction, transport, storage, liquefaction and at point-of-use. Conventional gas production has been found to result in 2.8% to 3.5% leakage. This goes up to 3.6% to 7.9% for shale gas production, or fracking. It is estimated that a 2.7% leakage rate will cancel out any climate benefits that gas has over coal. CER para 12.

5. Water in the Karoo

“Underground water is the primary water source for all Karoo towns and activities.”¹³ Further to this, an investigation run by the then Department of Mineral Resources asserts that “the technique of hydraulic fracturing required relatively large volumes of water which may be difficult to source in the karoo.” This would lead to communities in the Karoo finding themselves in competition with gas exploration projects for access to water. Therefore, to commence with fracking in this area would result in violations of Constitutional rights of the communities reliant on that underground water - including undermining their way of life and compromising their livelihoods. CER para 14.

6. The World Health Organization describes sustainable development as “policies, projects and investments that provide benefits today without sacrificing environmental, social and personal health in the future. These policies are often described as green because they focus on limiting the impact of development on the environment”. Considering the impacts on water that fracking presents and the stress it would cause on the population reliant on the water especially in water scarce areas such as the Karoo, fracking does not present as an activity that would contribute towards sustainable development and instead will introduce benefits for gas exploration companies at the expense of locals by having direct strain on water that is used for drinking, agriculture and biodiversity in the area. As part of our sustainable development

goals as a country, goal 6 indicates that it is our intention to “improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally”²² Evidently, fracking will benefit exploration companies at the expense of local populations. Para 17.

7. In the context of water scarcity in the country, it is paramount that there be adequate capacity to ensure compliance monitoring and compliance enforcement before any water use is authorised for the use in fracking operations.. CER para 27.
8. The National Water Act³⁰, the principle legislation to these Regulations, provides for public participation in the water use licensing process. Problematically, such participation is limited, and, at times, discretionary. Furthermore, one of the concerns around the newly enacted Upstream Petroleum Resources Development Act is the lack of substantive public participation provisions within the Act. It is thus crucial that public participation be expressly provided for in these Regulations, particularly when it comes to the compilation of;
 1. Baseline Monitoring Plans;
 2. Applications for water use licenses for unconventional extraction exploration (hydraulic fracturing and coalbed methane extraction) and prospecting (underground coal gasification);
 3. Applications for water use licenses for production of controlled activities;
 4. Well design plans, inter alia.
9. The majority of the aforementioned documents should refer to the projected socio-economic and cultural impacts of unconventional gas extraction. A consultation process with all the relevant affected peoples and communities would thus be necessary and such processes would ideally be meaningful, accessible and inclusive. CER para 31 and 32

10. Public Participation

Reference is made to the fundamental human rights contained in sections 33(1) and 33(2) of the Constitution of the Republic of South Africa which provide for lawful, reasonable and procedurally fair administrative action and the provision of written reasons to those that have been adversely affected by administrative action. Section 33(3) of the Constitution further provides that national legislation must be enacted to give effect to these rights. To that end the Promotion of Administrative Justice Act, 2000 (“PAJA”) was promulgated. Interested and affected parties being given the chance to be consulted and to meaningfully participate in decisions that impact them is a core tenet of administrative justice.

Proper public participation procedures play a crucial role in identifying issues that need consideration in the context of environmental (including water) impact assessment processes. They should also ensure that communities can observe, identify and report on potential and actual contraventions of environmental legislation. CER para 28

11. In addition, the desirability of using gas as a ‘transitional’ fuel is also questionable having regard to volatile international gas prices, as well as the potential risk of Carbon Border Taxes being introduced in the future.

We thank you for the opportunity to make these comments and look forward to engaging further.

Yours sincerely

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