

**PUBLIC PARTICIPATION AND WATER USE RIGHTS****P King\*****C Reddell\*\*****SUMMARY**

The conservation and protection of water resources is paramount in the safeguarding of environmental rights and the attainment of sustainable development in South Africa. Although the *National Water Act* 36 of 1998 (the NWA) seeks to provide a framework for ensuring the sustainable use of water resources, its application has been hindered by capacity and enforcement constraints, a legacy of water pollution (primarily as a result of mining and industrial activities), and poor resource management. To aggravate this situation, the difficulties in effectively implementing the NWA are exacerbated by inadequate public participation in water use licensing processes. Public participation in environmental decision-making has increasingly received recognition for its role in ensuring administrative justice and the protection of environmental rights. While environmental legislation (in many cases) sets out procedures for ensuring that public views are taken into account in environmental decision-making processes, the judiciary has also recognised the pivotal role of public engagement in ensuring administrative justice where environmental rights are at stake. Sound public participation practices play an important role in identifying issues requiring consideration in the context of environmental assessment processes, as well as in ensuring that communities are empowered to monitor, identify and report on potential contraventions of environmental legislation. Water is a vital natural resource which is under significant pressure in South Africa. In the circumstances, effective public participation is crucial to ensuring the protection and equitable use of water resources. It follows that provision for comprehensive public engagement in water use licensing processes is integral to ensuring the sustainable management of water resources. While provision

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is made in the NWA for public engagement in the context of water use licensing processes, such participation is limited, and in some cases discretionary. This, in turn, has the effect of curtailing the right to an administrative appeal in respect of a decision by the competent authority to grant water use rights. This paper will explore the role of public participation in environmental decision-making with a view to identifying the shortcomings of the NWA in this regard, as well as the effectiveness of the *Promotion of Administrative Justice Act* 3 of 2000 (the PAJA) in supplementing the NWA's shortcomings. It will also consider the implications which recent changes to South Africa's environmental legal framework will have for public participation in water use licensing, particularly in the context of mining-related activities.

**KEYWORDS:** administrative action; administrative justice; environmental law; environmental rights; constitutional law; constitutional rights; integrated environmental authorisations; One Environmental System; procedural fairness; public participation; sustainable development; water law; water tribunal; water use licensing.