



**BREED-GOURITZ**  
C A T C H M E N T M A N A G E M E N T A G E N C Y

101 York Street 3rd Floor Rm 302 George 6530, P.O. Box 1205 George 6530

**Enquiries:** Ms N Ndlumbini **Tel:** 023 346 8070 **Fax:** 044 873 2199 **E-mail:** [ndlumbini@bgcma.co.za](mailto:ndlumbini@bgcma.co.za)

Ref: 4/9/2/J35B/KELLERSHOOGTE 172/4, OUDTSHOORN  
Date: 25/05/2021

PJ Keller & Sons Pty (Ltd)  
PO Box 1458  
Oudsthoorn  
6620

**By Hand and Email**

Email: [viljeekeller@mweb.co.za](mailto:viljeekeller@mweb.co.za)

**For Attention:** Mr Viljee Keller

cc: [louise@capeeaprac.co.za](mailto:louise@capeeaprac.co.za) (Louise-Mari van Zyl, Cape Eaprac consultant)

Dear Sir

**NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 53(1) OF THE NATIONAL WATER ACT (NWA) (ACT NO 36 OF 1998): FOR ALLEGED UNAUTHORISED WATER USE ACTIVITIES TAKING PLACE AT FARM 170/19 AND 172/4, OUDSTHOORN.**

1. I, Jan Van Staden in my capacity as the Chief Executive Officer (Acting) of the Breede-Gouritz Catchment Management Agency (BGCMA) and duly authorised in terms of powers delegated to me by the Minister of Water and Sanitation hereby give you Mr Villie Keller, in your capacity as the member of the PJ Keller & Sons Pty (Ltd) which lawfully owns the Farm 170/19 and 172/4, Oudsthoorn a written notice of intention to issue a Directive in terms of Section 53(1) for contravening with Section 22(1) of the NWA, which states that:

22. (1) *A person may only use water*

(a) *without a licence if that water use is permissible under Schedule 1;*

(i) *if that water use is permissible as a continuation of an existing lawful use; or*

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- (ii) if that water use is permissible in terms of a general authorisation issued under section 39;*
- (b) if the water use is authorised by a licence under this Act; or*
- (c) if the responsible authority has dispensed with a licence requirement under subsection (3)*

2. I have reasonable grounds for believing that you have commenced with activities defined as water use in terms of section 21(a), (c), and (i) of the NWA without a water use authorisation.
3. The BGCMA has reached this opinion as a result of the following:
  - 3.1 Reference is made to a site investigation conducted by BGCMA officials on 23 February 2021 at Farm 170/19 and 172/4, Oudtshoorn.
  - 3.2 During the site investigation it was confirmed that you have commenced with activities defined as water use in terms of section 21(a), (c), and (i) of the NWA without a water use authorisation.
  - 3.3 The two new boreholes were drilled and equipped with 160m pipeline crossing a non-perennial tributary of Kammanasie River at about 4 meters on servitude road (portion 11/170) to transport water from portion 19/170 to portion 4/172 which does not have a borehole for irrigation purposes.
  - 3.4 The BGCMA has no record of a water use authorisation confirmed for ground water use activities taking place on the abovementioned property.
4. The following water uses are taking place at the property without authorisation:
  - 4.1 The taking of water from the new two drilled boreholes for the purpose of commercial irrigation have triggered an application for the licence in terms of S21(a) of NWA and the fact that the abstracted volume is approximately 70080m<sup>3</sup>/a which is far beyond general authorisation for groundwater in the quaternary catchment.
  - 4.2 Diverting the flow of water in a watercourse, and
  - 4.3 Altering the bed, banks, course, or characteristics of a watercourse.
5. In light of the above, in accordance with Section 3 of the Promotion of Administrative Justice Act, Act no 3 of 2000 you are hereby afforded an opportunity to make written

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representation to the BGCMA within **14 (fourteen) working days** upon receipt of this notice if you believe there are any compelling reasons for this Office not to exercise its powers in terms of Section 53(1)(a) of the NWA and issue a directive requiring you to:

- 5.1. Provide proof of authorisation for water use activities taking place at Farm 170/19 and 170/14 within **5 (five) working days** upon receipt of this Pre-directive notice.
- 5.2. Provided you have submitted a proof of authorisation, rehabilitate the impacted area to mitigate the impact of the activities and provide proof of metering device installation on boreholes and metering records in terms of the 2017 Measuring Regulations.
- 5.3. Failure to provide such proof as per **5.1** will compel you to immediately cease the unlawful water use activities taking place at Farm 170/19 and 170/14, Oudtshoorn by discontinuing the taking of water from the two new boreholes for irrigation purposes, seal the boreholes and remove the pipeline crossing the river, and rehabilitate the area to mitigate the impact of the activities that took place within the regulated area within **30 (thirty) working days** upon receipt of this directive and provide a proof of cessation.
- 5.4. Appoint a suitably qualified SACNASP registered aquatic/freshwater specialist to develop and submit a rehabilitation and management plan for approval to BGCMA **within 30 (thirty) working days** and must include an impact assessment of the activities undertaken.
- 5.5. Rehabilitate the impacted area once the rehabilitation and management plan has been approved by the BGCMA.
- 5.6. Submit an action plan within **5 (Five) working days** upon receipt of this directive, which must include a detailed time schedule on how you plan to comply with provisions of this directive.
- 5.7. I would also like to bring to your attention that failure to make representations within **fourteen (14) working days** of receipt of this notice will leave the BGCMA with no option but to issue you with a directive in terms of section 53(1) of the NWA in which failure to comply with constitutes an offence in terms of section 151 (1) (d) of the NWA.

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6. In terms of Section 151(2) any person who contravenes any provision of Section 151 (1) of the NWA is guilty of an offence and liable on first conviction to a fine or to imprisonment for a period not exceeding 5 (five) years or to both such fine and such imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.
7. We wish to make it clear that the instructions contained in this letter are made in the interest of responsible water resource management, and with a view to a co-operative resolution of the issue.

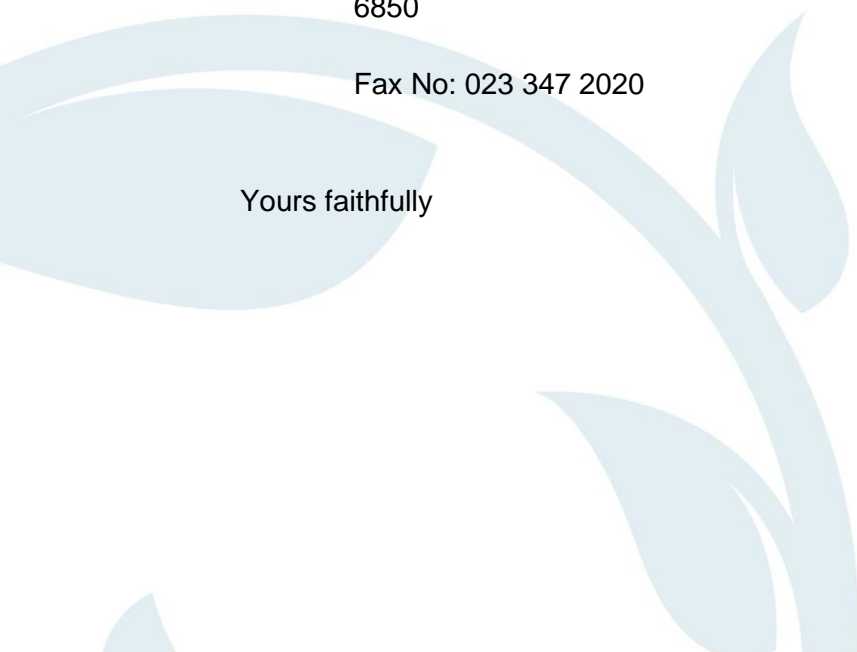
**THIS LETTER SHALL NOT BE CONSTRUED AS CONFERRING EXEMPTION FROM COMPLIANCE WITH THE FOLLOWING:**

8. The provisions and regulations of the National Environmental Management Act, 1998 (Act No. 107 of 1998) regarding control over activities which may have a detrimental effect on the environment.
9. Should you have any further queries, please contact the relevant official whose name appears under enquiries.
10. Representations must be forwarded for the attention of Mr Jan van Staden and delivered to:

Ms Nolutando Ndlumbini  
Breede-Gouritz Catchment Management Agency  
Private Bag X 3055  
**WORCESTER**  
6850

Fax No: 023 347 2020

Yours faithfully



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P.P. 

**MR. JAN VAN STADEN**

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**CHIEF EXECUTIVE OFFICER (ACTING)**

**DATE: 31 May 2021**



**NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 53(1) OF THE NATIONAL WATER ACT (NWA) (ACT NO 36 OF 1998): FOR ALLEGED UNAUTHORISED WATER USE ACTIVITIES TAKING PLACE AT FARM 170/19 AND 172/4, OUDSTHOORN.**

**Acknowledgement of Receipt:**

Received by Mr/Ms \_\_\_\_\_

On behalf of the company \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 2021, at \_\_\_\_\_

Signature: \_\_\_\_\_

