

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 73278/2015

In the matter between:

EARTHLIFE AFRICA JOHANNESBURG

First Applicant

BIRDLIFE SOUTH AFRICA

Second Applicant

**MINING AND JUSTICE COMMUNITY NETWORK
OF SOUTH AFRICA**

Third Applicant

ENDANGERED WILDLIFE TRUST

Fourth Applicant

FEDERATION FOR A SUSTAINABLE ENVIRONMENT
Applicant

Fifth

GROUNDWORK

Sixth Applicant

**ASSOCIATION FOR WATER AND RURAL
DEVELOPMENT**

Seventh Applicant

BENCH MARKS FOUNDATION

Eighth Applicant

and

MINISTER OF MINERAL RESOURCES

First Respondent

**DIRECTOR-GENERAL: DEPARTMENT OF MINERAL
RESOURCES**

Second Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS

Third Respondent

**MEC: DEPARTMENT OF AGRICULTURE, RURAL
DEVELOPMENT, LAND, AND ENVIRONMENTAL
AFFAIRS MPUMALANGA**

Fourth Respondent

ATHA-AFRICA VENTURES (PTY) LTD

Fifth Respondent

FIFTH RESPONDENT'S NOTICE IN TERMS OF UNIFORM RULE 35(12)

TAKE NOTICE THAT the Fifth Respondent requires the Applicants to, within **10 (TEN)** days after filing of this notice, produce for its inspection and to permit the Fifth Respondent to make copies thereof, the following documents, which are referred to in the Founding Affidavit and in the Supplementary Founding Affidavit of the Applicants:

1. The notice published in the *Mpumalanga Provincial Gazette* referred to in **paragraph 18** of the Applicants' Founding Affidavit;
2. The application or applications in terms of section 49 of the Mineral and Petroleum Resources Development Act 28 of 2002 ("*MPRDA*"), referred

to in **paragraphs 22, 53, 60, 96 and 117.3.5** of the Applicants' Founding Affidavit;

3. The letter from the Applicants' attorneys dated 26 June 2015 to the DMR's Directorate: Legal Services, referred to in **paragraph 27** of the Applicants' Founding Affidavit;
4. The written consent from the land owners referred to in **paragraph 41** of the Applicants' Founding Affidavit;
5. The notices of intention to declare the "MPE" referred to in **paragraph 42** of the Applicants' Founding Affidavit;
6. The National Protected Areas Expansions Strategy 2008 referred to in **paragraph 47.1** of the Applicants' Founding Affidavit;
7. The re-submitted application in terms of section 49 of the MPRDA referred to in **paragraph 54** of the Applicants' Founding Affidavit;
8. The Mpumalanga Biodiversity Conservation Plan referred to in **paragraph 54.2** of the Applicants' Founding Affidavit;
9. The moratorium imposed by the Minister of Mineral Resources and the extension thereof referred to in **paragraph 56** of the Applicants' Founding Affidavit;

10. The identification of Wakkerstroom and Chrissiesmeer as a category of environmentally sensitive areas referred to in **paragraph 59** of the Applicants' Founding Affidavit
11. The objections referred to in **paragraph 65** of the Applicants' Founding Affidavit;
12. The Mpumalanga Biodiversity Corridor Plan referred to in **paragraph 65.3** of the Applicants' Founding Affidavit;
13. The "series of correspondence" referred to in **paragraph 67** of the Applicants' Founding Affidavit;
14. The directive from the DMR referred to in **paragraph 77** of the Applicants' Founding Affidavit;
15. The National Freshwater Ecosystems Priority Areas maps referred to in **paragraph 80.2.4** of the Applicants' Founding Affidavit;
16. The classification of the Wakkerstroom area as a National Freshwater Ecosystem Priority Area referred to in **paragraph 80.2.4** of the Applicants' Founding Affidavit;
17. The "NFEPA Atlas" referred to in **paragraph 80.2.4** of the Applicants' Founding Affidavit;

18. The declaration of the Biodiversity Area referred to in **paragraph 80.2.7** of the Applicants' Founding Affidavit;
19. The declarations of the "Protected Areas" and the "protected environment" referred to in **paragraph 80.2.8** of the Applicants' Founding Affidavit;
20. The objections submitted by the "MTPA" referred to in **paragraph 88** of the Applicants' Founding Affidavit;
21. The classification of the Assegai River as a Critical Biodiversity River referred to in **paragraph 88.7** of the Applicants' Founding Affidavit;
22. The Mining and Biodiversity Guideline of 2013 referred to in **paragraph 88.7** of the Applicants' Founding Affidavit;
23. The classification or declaration of the "WWGA" referred to in **paragraph 96** of the Applicants' Founding Affidavit;
24. The Mpumalanga Biodiversity Conservation Plan's terrestrial biodiversity assessment and the Mpumalanga Biodiversity Plan of 2006 referred to in **paragraph 117.3.1** of the Applicants' Founding Affidavit;
25. The listing of the Wakkerstroom/Luneberg Grasslands Threatened Ecosystem as an endangered ecosystem referred to in **paragraph 117.3.2** of the Applicants' Founding Affidavit;

26. The determination of the National Freshwater Ecosystem Priority Area and the Strategic Water Source Area as part of the National Freshwater Ecosystem Project referred to in **paragraph 117.3.3** of the Applicants' Founding Affidavit;
27. The National Protected Areas Expansion Strategy (2008) referred to in **paragraph 117.3.4** of the Applicants' Founding Affidavit;
28. The advice from the Minister of Mineral Resources to the National Council of Provinces in May 2012 referred to in **paragraph 117.3.6** of the Applicants' Founding Affidavit;
29. The objection to the granting of the right by the Department of Water and Sanitation referred to in **paragraph 117.3.7** of the Applicants' Founding Affidavit;
30. The objection to the granting of the right by the "MTPA" referred to in **paragraph 117.3.8** of the Applicants' Founding Affidavit;
31. The objections from civil society organisations, including members of the multi-stakeholder Grassland Programme such as WWF SA and Birdlife South Africa referred to in **paragraph 117.3.10** of the Applicants' Founding Affidavit;
32. The national policy in relation to mining in Mpumalanga referred to in **paragraph 117.6** of the Applicants' Founding Affidavit;

33. The government policies and adopted plans in respect of the Mabola Protected Environment referred to in **paragraph 117.8** of the Applicants' Founding Affidavit;
34. The requests by the "CER" for access to information in terms of the "PAIA" referred to in **paragraph 118** of the Applicants' Founding Affidavit;
35. The letter from the "DMR" to the "CER" on 29 May 2015 referred to in **paragraph 120** of the Applicants' Founding Affidavit;
36. The internal appeal against the refusal by the "DMR" to grant the Fifth Applicant access to certain records referred to in **paragraph 122** of the Applicants' Founding Affidavit;
37. The "PAIA request" submitted by the "CER" to the "DEA" on 16 April 2015 referred to in **paragraph 123** of the Applicants' Founding Affidavit;
38. The "PAIA request" submitted to "DWS" referred to in **paragraph 126** of the Applicants' Founding Affidavit;
39. The designation of the National Freshwater Ecosystem Priority Area referred to in **paragraph 152.1** of the Applicants' Founding Affidavit;
40. The declaration of the properties which form the subject of the Fifth Respondent's mining right as a protected environment under "NEMPAA" referred to in **paragraph 189.4.1** of the Applicants' Founding Affidavit ;

41. The declaration or classification of the properties which form the subject of the Fifth Respondent's mining right as a national freshwater ecosystem priority area under the Atlas of Freshwater Ecosystem Priority Areas and the endorsement by the Department of Environmental Affairs and the Department of Water and Sanitation referred to in **paragraph 189.4.2** of the Applicants' Founding Affidavit;
42. The declaration or classification of the properties which form the subject of the Fifth Respondent's mining right as a critical terrestrial and aquatic biodiversity area under the Mpumalanga Biodiversity Conservation Plan and the endorsement by the MEC for Agriculture, Rural Development, Environmental Affairs and Tourism for Mpumalanga Province referred to in **paragraph 189.4.3** of the Applicants' Founding Affidavit;
43. The declaration or classification of the properties which form the subject of the Fifth Respondent's mining right as an endangered ecosystem under the List of Ecosystems that are Threatened and in Need of Protection published by the Minister of Environmental Affairs referred to in **paragraph 189.4.4** of the Applicants' Founding Affidavit;
44. The report or document described as "Viviroli et al 2007) referred to in **paragraph 190.2** of the Applicants' Founding Affidavit ;
45. The document described as "An introduction to South Africa's Water Source Areas, WWF-SA, 2013" referred to in footnote 3 to the text contained in **paragraph 190.1** of the Applicants' Founding Affidavit;

46. The document described as “South Africa’s Strategic Water Sources Areas, CSIR (March 2013” referred to in footnote 4 to the text contained in **paragraph 190.2** of the Applicants’ Founding Affidavit;
47. The complete Rule 53 record filed by the Second Respondent referred to in **paragraph 3** of the Applicants’ Supplementary Founding Affidavit, duly certified by the Applicants in accordance with Rule 53;
48. Letter from the Centre for Environmental Rights dated 23 October 2015, referred to in **paragraph 7** of the Applicants’ Supplementary Founding Affidavit;
49. The notice in terms of Rule 53 served on the CER’s correspondent attorneys on 22 January 2016 referred to in **paragraph 8** of the Applicants’ Supplementary Founding Affidavit;
50. Annexure “PML15’ referred to in **paragraph 48.2** of the Applicants’ Supplementary Founding Affidavit;
51. The declaration or classification of the Wakkerstroom Wetlands Area referred to in paragraph 3 of Annexure PML1 (annexed as PML 27) to the Applicants’ Supplementary Founding Affidavit on page 332;
52. The “MBCP Aquatic assessment” referred to in paragraph 35 of Annexure PML1 (annexed as PML 27) to the Applicants’ Supplementary Founding Affidavit on page 342;

53. The classification of the Wakkerstroom area as a “Strategic Water Source Area” referred to in paragraph 43 of Annexure PML1 (annexed as PML 27) to the Applicants’ Supplementary Founding Affidavit on page 344;

54. The Spational Development Plan for the Gert Sibande District Municipality referred to in paragraph 47 of Annexure PML1 (annexed as PML 27) to the Applicants’ Supplementary Founding Affidavit on page 346;

55. The Integrated Development Plan of the Dr Pixley Ka Isaka Seme Local Municipality referred to in paragraph 48 of Annexure PML1 (annexed as PML 27) to the Applicants’ Supplementary Founding Affidavit on page 347.

BE PLEASED TO TAKE FURTHER NOTICE THAT should the Applicants fail to act as contemplated in Rule 35 (12), the Fifth Respondent will be entitled to approach the Honourable Court in terms of Rule 30 (A) for an order compelling the Applicants to act in accordance with the provisions of Rule 35 (12).

SIGNED at PRETORIA this 19th day of September 2016


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