

**IN THE WATER TRIBUNAL**

**IN THE APPEAL OF:**

**ENDANGERED WILDLIFE TRUST**

**FIRST APPELLANT**

**FEDERATION FOR A SUSTAINABLE ENVIRONMENT**

**SECOND APPELLANT**

**MPUMALANGA LANDBOU/AGRICULTURE**

**THIRD APPELLANT**

**AND**

**DIRECTOR-GENERAL (ACTING),  
DEPARTMENT OF WATER AND SANITATION**

**FIRST RESPONDENT**

**ATHA-AFRICA VENTURES (PTY) LTD**

**SECOND RESPONDENT**

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**NOTICE OF APPEAL IN TERMS OF SECTION 148(1) OF THE NATIONAL WATER ACT, 1998**

**(ACT NO. 36 OF 1998)**

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1. Take notice that the Appellants intend appealing at a date, time and place determined by the Tribunal Officer against the decision of the First Respondent to issue a water-use licence to the Second Respondent for its proposed Yzermyn underground coal mine situated in the Magisterial District of Wakkerstroom in Mpumalanga Province.
2. The First and Second Appellants appoint the Centre for Environmental Rights as their representative in this matter.
3. The Third Appellant appoints Noltes Attorneys as its representative in the matter.
4. Although separately represented, the First to Third Appellants bring this appeal as a joint appeal.

5. The First and Second Appellants will accept service of all documents in the above matter at the offices of their representative at 2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town.
6. The Third Appellant will accept service of all documents in the above matter at its offices at 124 Alwyn van Zyl Street, Ermelo, 2350.
7. The appeal is based in the following grounds:
  - 7.1. on account of the inadequate and inaccurate information in Atha's water-use licence application about the environmental sensitivity, vulnerability and importance of the proposed mining area and its surrounds, the Director-General failed to consider, alternatively adequately consider, the efficient and beneficial use of water in the public interest as required in terms of section 27(1)(c) of the National Water Act (**first ground of appeal**);
  - 7.2. on account of the inadequate and inaccurate information in Atha's water-use licence application about the risks and consequences posed by the proposed colliery pertaining to dewatering of aquifers and the decant of contaminated groundwater and acid mine drainage ('AMD'), cumulative impacts of the proposed colliery, as well as the impacts of the proposed colliery on downstream water users, the Director-General failed to consider, alternatively adequately consider, the likely effect of the proposed water uses to be authorised on the water resource and on other water users as required in terms of section 27(1)(f) of the National Water Act (**second ground of appeal**);
  - 7.3. the Director-General failed to consider, alternatively adequately consider, the 'precautionary' environmental management principle in section 2(4)(a)(vii) of the National Environmental Management Act ('NEMA'), as required in terms of section 2(1) of NEMA (**third ground of appeal**);

- 7.4. the Director-General's grant of exemption to Atha in terms of Government Notice 704 was unjustifiable (**fourth ground of appeal**);
- 7.5. on account of the failure of Atha's Integrated Water and Waste Management Plan and Environmental Impact Assessment Report to report objectively and fully on the possible effects of the proposed colliery on people living in the area, the Director-General failed to consider, alternatively adequately consider, the socio-economic impact of the water uses, if authorised, as required in terms of section 27(1)(d) of the National Water Act (**fifth ground of appeal**); and
- 7.6. the failure to give effect to the right to procedurally fair administrative action in terms of section 33 of the Constitution of the Republic of South Africa, 1996 and sections 3 and 4 of the Promotion of Administrative Justice Act, 2000 (**sixth ground of appeal**).
8. The written evidence in support of the appeal is set out hereinbelow.

SIGNED AND DATED AT PRETORIA ON THIS 15<sup>th</sup> DAY OF DECEMBER 2016.



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FIRST AND SECOND APPELLANTS' REPRESENTATIVE

CENTRE FOR ENVIRONMENTAL RIGHTS

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Tel: 021 447 1647

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Care of:

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**THIRD APPELLANT**

**MPUMALANGA LANDBOU/AGRICULTURE**

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**TO:**

**WATER TRIBUNAL, DEPARTMENT OF WATER AND SANITATION**

Mr Robert Mabe, Registrar

**By hand**

Address: Department of Water and Sanitation

Waterbron Building

191 Francis Baard Street

Pretoria

WUL no.: 05/W51A/ACFGIJ/4726

File no.: 16/2/7/W51/Yzermyn

**AND TO:**

**DIRECTOR-GENERAL (ACTING), DEPARTMENT OF WATER AND SANITATION**

Ms Nolwazi Gasas

**By hand**

Address: Department of Water and Sanitation

Sedibeng Building

185 Francis Baard Street

Pretoria

**AND TO:**

**ATHA AFRICA VENTURES (PTY) LTD**

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