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Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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And to: Mr. Johan Nieman
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By email: Abraham.Nieman@dmr.org.za

Your ref: 9/2/4/3/333

Our ref: CH/MT

26 June 2015

Dear Ms Ratlou

INTERNAL APPEAL AGAINST THE GRANT OF MINING RIGHT (MP30/5/1/1/1/10069MR) TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM, MPUMALANGA / REQUEST FOR THE SUSPENSION OF THE GRANT OF THE AFORESAID MINING RIGHT PENDING THE OUTCOME OF THE APPEAL
APPEAL NO. 9/2/4/3/333

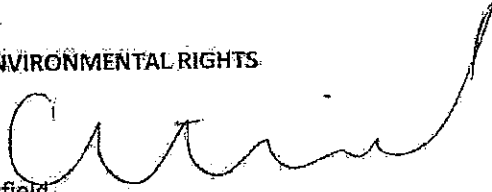
We refer to the internal appeal lodged by the Centre for Environmental Rights (CER) on behalf of a number of civil society and community organisations on 1 April 2015 against the grant of a mining right to Atha-Africa Ventures (Pty) Limited (AAV) for the proposed Yzermyh underground coal mine over properties situate in the Mabola Protected Environment and the Wakkerstroom Wetlands Area.

1. On Friday 22 May 2015 the Department of Mineral Resources (DMR) sent the CER a letter dated 12 May 2015, a copy of which is attached, marked "A", enclosing "comments on the appeal as submitted by Atha-Africa Ventures (Pty) Ltd" and affording our clients an opportunity to comment on these documents.

2. The comments constitute a letter dated 24 April 2015, together with two annexures, sent by AAV to the Chief Director: Legal Services: DMR in which it submits that it "cannot submit a formal response" to the appeal and application for suspension. A copy of the letter is attached, marked "B".
3. It appears from the comments that on 19 November 2014 AAV submitted a request addressed to the DMR's Regional Manager: Mpumalanga Region for the amendment of conditions 6(i) and 6(ii) imposed when the mining right was granted by the Director-General (DG) on 19 September 2014. The request is annexure 1 to AAV's letter.
4. On 14 April 2015, the Minister of Mineral Resources (*the Minister*) sent a letter addressed to the directors of AAV in response to the request for an amendment of the conditions. The Minister's letter is annexure 2 to AAV's letter (*the Minister's letter*).
5. In the final paragraph of the letter of 24 April 2015, AAV requests the DMR to inform the CER that the "Second (FINAL) Granting Letter was issued to AAV on the 14th of April 2015, and as a result the First Granting Letter became Null and Void. Naturally following from the annulment of the First Granting Letter, no appeals can be entertained by the DMR in respect of the First Granting Letter."
6. AAV's contentions are flawed. It is incorrect to refer to either of the two letters as "granting letters". A "granting letter" does not constitute the actual administrative decision in terms of which a mining right is granted. Such a letter is merely the means by which the decision which was taken is communicated to the applicant. The initial decision taken by the DG to grant the mining right to AAV is evidenced by the approval by the DG of the recommendation made to him by the various officials within the DMR.
7. Nevertheless, it appears from the contents of the Minister's letter that the Minister withdrew the decision made by the DG and took a fresh decision to grant the mining right to AAV. Our clients' instructions are to launch review proceedings in the High Court against that decision of the Minister.
8. In the circumstances, our clients request that the appeal be suspended pending the outcome of the review proceedings. In the event that the appeal proceeds after the determination of the review, our clients' rights to supplement its appeal submissions are reserved, including but not limited to, incorporating any aspects arising from the review and the furnishing of reasons for the grant of the right by the DG which remain outstanding.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

per:


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