



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

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Your Ref: AVV Appeal

Our Ref: 1/11/1/AA/2017/18MK

Centre for Environmental Rights

By Email: spowell@cer.org.za

Dear Ms Powell

REQUEST FOR REASONS IN RESPECT OF THE DECISION TO LIFT THE SUSPENSION OF A WATER USE LICENCE ISSUED TO ATHA AFRICA VENTURES FOR ITS PROPOSED YZERMYN UNDERGROUND COAL MINE

In compliance with the provisions of section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 5 of 2000) the Department, through a letter dated 31 January 2017, requested that you provide representation, for the Minister's consideration, as to why the Minister should not lift the suspension of the water use licence issued to Atha Africa Ventures (Pty) Ltd ("AAV").

You have since submitted your representations in that you are opposing the lifting of the suspension. In the main, you based your objection on the following reasons, as summarised below:

- (a) With regard to critical timelines, you alleged that AAV is not in possession of the necessary rezoning authorization for the project. You further assert that the application to lift the suspension is premature due to the rezoning application that is not completed, and that AAV's application is fatally flawed and cannot be granted lawfully;
- (b) On the issue of the socio-economic consequences, you have argued that AAV gives a one sided view of the disadvantages they submit will occur. You further submitted that you were not privy to the Social and Labour Plan referred to in the application and that alone is a fatal flaw in the application. As such, the consequences to the persons in the employ of AAV is to be placed squarely on AAV;

- (c) On whether there is reasonable prospect of success with the appeal by the AAV, you submitted that the balance of convenience favours the Appellants due to the high probability of success, and that the Water Tribunal and its experts are better suited to decide on the interest of AAV upon evaluation of the merits of the appeal; and
- (d) In general, you are of the view that, if the holder of a water use licence, which is a subject of an appeal, were to be allowed to act on the licence before the appeal has been determined, the appellant's right to appeal would be rendered nugatory.

Upon analysis of the application by AAV to lift the suspension and the representations you made, we are of the view that the issues raised are similar to those raised in the appeal and should be decided upon by the Water Tribunal. Furthermore, we view the reasons provided by AAV to lift the suspension as persuasive. Consequently, the Minister lifted the suspension of the license (**Annexure A**)

In summary AAV had reasoned as follows –

- (a) it has been granted a Mining Right (MPT 43/2016) on 28 June 2016 in respect of the Yzermyn underground coal mine;
- (b) it was granted an Environmental Authorisation (EA) on 07 June 2016;
- (c) it was granted water use licence on 07 July 2016; and
- (d) that the suspension is highly prejudicial and detrimental to its lawfully obtained authorisations.

Based on the above the Minister made a decision to lift the suspension on 26 March 2017.

Yours faithfully,



MR PUSELETSO LOSELO
CHIEF DIRECTOR: LEGAL SERVICES

DATE: 2017/05/11