



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no.: 73278/15

In the matter between

EARTHLIFE AFRICA JOHANNESBURG First Applicant

BIRDLIFE SOUTH AFRICA Second Applicant

**MINING AND ENVIRONMENTAL JUSTICE
COMMUNITY NETWORK OF SOUTH AFRICA** Third Applicant

ENDANGERED WILDLIFE TRUST Fourth Applicant

**FEDERATION FOR A SUSTAINABLE
ENVIRONMENT** Fifth Applicant

GROUNDWORK Sixth Applicant

**ASSOCIATION FOR WATER AND RURAL
DEVELOPMENT** Seventh Applicant

BENCH MARKS FOUNDATION Eighth Applicant

and

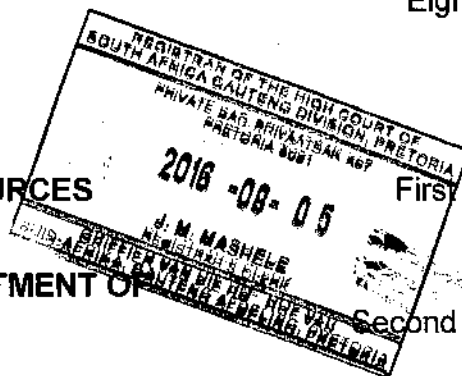
MINISTER OF MINERAL RESOURCES First Respondent

**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



**NOTICE OF FILING: APPLICANTS' SUPPLEMENTARY FOUNDING
AFFIDAVIT**

BE PLEASED TO TAKE NOTICE THAT the above-named Applicants intend to supplement their founding affidavit *jurat* 7 September 2015 in terms of Rule 53(4).

BE PLEASED TO TAKE NOTICE FURTHER THAT the affidavit of PHILLIPINE MAKOMA LEKALAKALA, filed herewith, supplements the founding affidavit accordingly.

DATED at PRETORIA on this 2nd day of August 2016.



CENTRE FOR ENVIRONMENTAL RIGHTS

Applicants' Attorneys

2nd Floor, Springtime Studios

1 Scott Road

Observatory

Cape Town

Tel: 021 447 1647

Email: chorsfield@cer.org.za

Care of:

DU PLESSIS AND KRUYSHAAR

Suite No. 2, Route 21 Corporate Park

118 Sovereign Drive

Irene

Pretoria

Tel: 0861 000 779

Fax: 086 548 0837

Email: kruyshaar@dupkruys.co.za

Ref: Rentia Kruyshaar / RK 0136

TO: **THE REGISTRAR**
NORTH GAUTENG HIGH COURT
PRETORIA

AND TO:

THE STATE ATTORNEY

Attorney for the First, Second, Third and Fourth Respondents

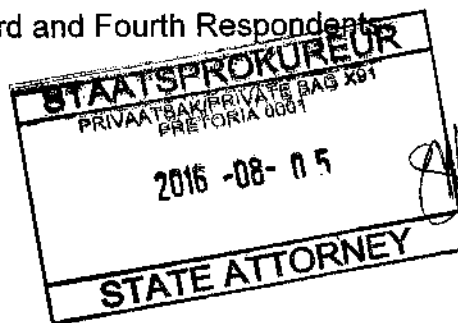
Salu Building Ground Floor
316 Thabo Sehume Street
Pretoria

Tel: (012) 309 1572

Fax: 086 406 6203

Email: tmukasi@justice.gov.za

Ref: 7515/2015/Z42/DM



AND TO:

GFJ ATTORNEYS

Attorney for the Fifth Respondent

3 Oakfields, 67 Portebello Drive
Highveld Ext 7, 0169

Cel: 083 680 2075

Tel: (011) 442 3242

Email: randeree4@law.co.za / joubert@gfjattorneys.co.za

Ref: Francis Joubert/Ashleigh

05/08/2016, 08:40am

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case no.: 73278/15

In the matter between

EARTHLIFE AFRICA JOHANNESBURG	First Applicant
BIRDLIFE SOUTH AFRICA	Second Applicant
MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA	Third Applicant
ENDANGERED WILDLIFE TRUST	Fourth Applicant
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	Fifth Applicant
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

A *RM*

SUPPLEMENTARY FOUNDING AFFIDAVIT

I, the undersigned –

PHILLIPINE MAKOMA LEKALAKALA

do hereby make oath and say that –

1. I deposed to the founding affidavit on behalf of the Applicants and am likewise duly authorised to depose to this supplementary affidavit on behalf of each of the respective Applicants.

2. The facts and circumstances set out in this affidavit fall within my personal knowledge and belief, except where the context indicates otherwise, and are true and correct. Where I make submissions of a legal nature, I do so on the advice of the Applicants' legal representatives, which advice I believe to be true and correct.

3. This affidavit is filed in response to the Rule 53 record filed by the Second Respondent. I deal with the delays in the filing of the Rule 53 records and the implications for the review. Thereafter, I supplement the grounds of review in the founding affidavit. Lastly, I rectify errors which took place in the collation and description of the annexures attached to the founding affidavit.

The Rule 53 records

4. The primary relief which the Applicants seek is orders:-
 - 4.1 reviewing and setting aside the decision taken by the Minister of Mineral Resources (*"the Minerals Minister"*) reflected in a letter dated 14 April 2015 addressed to the Fifth Respondent (*"AAV"*);
 - 4.2 reviewing and setting aside the decision taken by the Director-General: Department of Mineral Resources (*"the DG"*) to grant a mining right to AAV as reflected in a letter dated 19 September 2014 addressed to AAV (*"the mining right"*), to the extent that the DG's decision was not replaced in its entirety by the decision taken by the Minerals Minister referred to in paragraph 4.1 above.
5. In terms of Rule 53(1)(b), the Applicants' Notice of Motion called upon both the Minerals Minister and the DG to despatch, within fifteen (15) days of receipt of the Notice of Motion, to the Registrar of this Honourable Court, the record of their respective decisions together with any reasons that each of them desires to give or is in law required to give, and to notify the Applicants that they have done so.
6. The respective records were required to be dispatched to the Registrar by 6 October 2015.

Handwritten signatures in black ink, appearing to be initials or names, located at the bottom right of the page.

7. On 23 October 2015 the Centre for Environmental Rights ("CER"), on behalf of the Applicants, addressed a letter to the Minerals Minister and the DG calling on them to dispatch the respective Rule 53 records by no later than 30 October 2015. On 3 December 2015 Ms Catherine Horsfield of the CER had a telephonic discussion with Mr Terrence Mukasi, the State Attorney on record for the Minerals Minister and the DG, who informed her that the Rule 53 record was in his possession. Agreement was reached that the record would be dispatched by 18 January 2016.
8. On 22 January 2016 a notice in terms of Rule 53 was served on the CER's correspondent attorneys reflecting that "*the Respondents hereby file the records*". The CER received the dispatched documents from its Pretoria-based correspondent attorneys on 1 February 2016.
9. Given the volume of the dispatched documents (2865 pages), on 2 February 2016 the CER requested an extension of the period for the Applicants to file any supplements to their Notice of Motion and Founding Affidavit to 4 March 2016. AAV acceded to this request in an email dated 3 February 2016. Copies of this request and acceptance are annexed, marked "PML21" and "PML22".
10. However, on 9 February 2016, it came to the attention of the CER that the Rule 53 record that had been filed and dispatched appeared to pertain only to the decision taken by the DG. The last document in the Rule 53 record is



the DG's letter dated 19 September 2014 notifying AAV of the decision to grant the mining right (Rule 53 record pp. 2863-2865).

- 11. Accordingly, on 9 February 2016, the CER addressed an email to Mr Mukasi and to Mr Francois Joubert of GFJ Attorneys, AAV's attorneys of record, informing them that the dispatched documents do not contain the record pertaining to the Minerals Minister's decision and requesting that Mr Mukasi dispatch that record at his earliest convenience. A copy of this email is annexed, marked "**PML23**".

- 12. On 24 February 2016 the CER addressed an email to Mr Mukasi in which they requested that he advise the Applicants of his instructions regarding the outstanding record of the Minerals Minister's decision. A copy of this email is annexed, marked "**PML24**".


- 13. On 3 March 2016 the CER's Ms Horsfield telephonically contacted Mr Mukasi and explained to him that the Applicants are anxious about the delay in the main application caused by the Minerals Minister's failure to dispatch the record of his decision. Ms Horsfield requested that he advise when the record will be dispatched. He said he would revert.

- 14. On 7 March 2016 Ms Horsfield again addressed an email to Mr Mukasi confirming their telephonic discussion and advising him that, in the absence of confirmation of the filing of the record, the CER's instructions were to bring



an application to compel the dispatch of the record. A copy of this email is annexed, marked "PML25".

15. By 18 March 2016 the Minerals Minister had still not notified the Applicants of the dispatch of the record. Accordingly, on that day, the Applicants served a Notice in terms of Rule 30A(1) requiring the Minerals Minister to dispatch the record and to notify the Applicants that he has done so within ten (10) days of the date thereof.
16. The Minerals Minister failed to do so, and on 13 May 2016 the Applicants served an application to compel the Minister to file the Rule 53 record. The matter was allocated to the unopposed motion roll for hearing on 29 June 2016.
17. On 14 June 2016 the CER again communicated with Mr Mukasi, confirming that the Applicants are anxious that the review be determined and emphasising that there are two separate decisions in respect of which Rule 53 records are sought: the DG's decision and the Minerals Minister's decision. The CER expressly requested Mr Mukasi to let them know if there is no record of the Minerals Minister's decision. I attach a copy of the letter marked "PML26".
18. On 22 June 2016, the CER received a notice of intention to oppose the application to compel on behalf of the state respondents. To date, a whole month later, the state respondents have not filed an answering affidavit in

Two handwritten signatures are present at the bottom right of the page. The first is a stylized signature that appears to be 'RM' with a large flourish. The second is a more cursive signature, possibly 'RM' or similar, written in black ink.

the application to compel, nor furnished the CER with any reasons for the failure to file the record of the Minerals Minister's decision.

Implications for the review

19. The review application was served on the Minerals Minister on 14 September 2015. The Rule 53 notice that was filed (see paragraph 8 above) reflected that the records^s as required by Rule 53 were being filed. Nonetheless, only the record of the DG's decision was filed (see paragraph 10 above). Some 9 months after the review was launched, and despite repeated requests, as well as the launch of an application to compel, the Minerals Minister has not filed any further record in addition to what was filed in terms of the original Rule 53 notice.

20. In the light of these circumstances, the Applicants have decided to file this supplementary affidavit without such a further record having been furnished. Firstly, given the lengthy delay caused by the Minerals Minister's failure to provide the record of his decision under Rule 53, there is now a risk that other regulatory approvals – particularly those to which the crucial issues raised in this review, and particularly this Honourable Court's findings on those issues, are pertinent - may be considered and determined before this application can be determined.

21. Secondly, there is overwhelming evidence to support the inference that the Minerals Minister did not have regard to any documents when he took the

[Handwritten signatures]

impugned decision reflected in his letter dated 14 April 2015 addressed to AAV ("PML17" to the founding affidavit).

22. Such an inference is consistent with the format and contents of the Minerals Minister's letter. There is no reference in the letter to regard having been had to any documents or information. In particular, there is not even a reference to the letter from AAV dated 19 November 2014.
23. Thirdly, the Applicants are advised that they are legally entitled to proceed without a complete Rule 53 record. However, given the extent of the steps taken by the Applicants to obtain a record from the Minerals Minister, if the Minerals Minister relies on such a record when filing an answering affidavit in the review, the Applicants' reserve their rights to file a further supplementary founding affidavit.

Supplementation of the grounds of review

24. There are two documents in the Rule 53 record which the Applicants have not previously had sight of and which are highly relevant to the grounds of review. The first document is the record of decision regarding AAV's environmental management programme ("EMPR") (Rule 53 record pp. 2847-2855) ("*the MEM ROD*") and the second document is the internal memorandum to the DG recommending that the DG grant the mining right and sign the "granting letter" attached thereto ("*the memorandum*") (Rule 53 record pp. 2867-2872). I deal with each in turn below.

The MEM ROD

25. The purpose of the MEM ROD was to "obtain the Regional Manager of the Department of Mineral Resource's ("DMR") agreement to refuse the EMPR" (in other words, to provide reasons for the rejection of the EMPR by the Regional Manager) for the following reasons:

25.1 *"the application falls within the Wakkerstroom wetland grassland area... comprise[d] of irreplaceable sites that are characterised by highly threatened species and large intact ecosystem;*

25.2 *"the proposed mining activity and its associated infrastructure is intended to be located over the existing wetlands and rivers which will be directly affected and the proposed measures provided for the management of impacts towards the aforesaid water resources cannot be considered reliable to contain or remedy the cause of pollution or degradation... in that the said water bodies are interlinked and the destruction of one will ultimately destroy the entire ecosystem of the area;*

25.3 *"the aforesaid water bodies forms an integral part of fresh water system and has also been identified as a source of fresh water supply for the country. The area in question forms an integral part of the headwaters of three of South Africa's twenty-two primary catchments...;*

25.4 *"the measures proposed to address the impact in relating to the wetlands and other water bodies within the area applied cannot be*

★ RML

considered reliable to contain or remedy the cause of pollution or degradation... due to the nature of the environment;" and accordingly

25.5 *"the application does not meet the requirements of Section 23(1)(d) of the Act."* (Rule 53 record p. 2854-2855).

26. Although the annexures to the MEM ROD are not included in the Rule 53 record, a further reason for the recommendation appears to be that the application falls within the Mabola Protected Environment ("MPE") (Rule 53 record p. 2855).
27. The MEM ROD was signed by the Deputy Director: MEM Mpumalanga Region, the Assistant Director: MEM Mpumalanga Region and the Environment Officer, Mpumalanga Region. The copy of the MEM ROD provided as part of the record was not signed by the Regional Manager.

The memorandum

28. Inexplicably, despite the conclusion reached in the MEM ROD and the recommendation made to the Regional Manager, approval was sought for the DG to approve the grant of the mining right, which he did by signing the memorandum and the granting letter. The memorandum was signed by the Regional Manager, the Chief Director: Mineral Regulation Northern Regions, the Deputy DG: Mineral Regulation and the DG (and not by the junior officials who prepared and signed the MEM ROD).

[Handwritten signatures]

29. The DG's signature of the memorandum and the "granting letter" attached to the founding affidavit as Annexure 13 to "PML1" constitute his approval of the grant of the mining right.
30. Paragraph 4.1 of the memorandum is headed "Assessment of Environmental aspects". It reads as follows:-

"As contemplated in Section 23(1)(d) of the Act, the Regional Manager confirms that in accordance with the Mine Environmental Management report attached here to as (Annexure C), although the MEM ROD state that the applicant does not meet the requirements of Section 23(1)(d) of the act, in that the EMP[R] does not meet the requirements of section 39(3)(d) of the Act and does not comply with approval criteria set out in Section 39(4)(a) of the Act.[sic] It has been established that the matter revolved around mitigation measures and it is therefore proposed that, the following mechanisms/condition be set to address this:

- (i) The granting shall exclude any areas that constitute wetlands*
- (ii) Surface mining or related activity, as well as erection/installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment*
- (iii) The applicant shall formulate proper mitigation measures relative to the area in consultation with other stakeholders/authorities that administer matters affecting the environment at National and Provincial (Mpumalanga) level.*

Handwritten signatures, possibly initials, located at the bottom right of the page.

(iv) A proper plan/map shall be submitted with a clear depiction of such exclusions as indicated on (i) above.

NB: These conditions shall be met prior to the execution of the mining right"
[emphasis added]

31. The recommendation in paragraph 6.1 of the memorandum reads as follows:-

"In light of the fact that the applicant has complied with all the requirements of Section 23(1) of the Act, as indicated in paragraphs 4.2 and 4.3 above it is recommended that you please,

(i) Consider the granting of the mining right with the set conditions.

(ii) sign the attached granting letter and Power of Attorney." [emphasis added]

32. In the circumstances, and even in isolation, the memorandum is nonsensical.

33. It is noteworthy that, in the section of the memorandum dealing with assessment of the environmental aspects, reliance appears to be placed on the view of the Regional Manager (who is a signatory to the memorandum).

34. It is further striking that the MEM ROD, the conclusion of which is quite clearly at odds with the recommendation made in the memorandum, was not signed by the Regional Manager, despite it being his approval or rejection

Two handwritten signatures are located at the bottom right of the page. The first signature is a stylized, cursive 'A' or similar character. The second signature is a more complex, cursive signature that appears to be 'RM' or similar.

that was sought in respect of the recommendation to reject the EMPR. Both the DG's granting letter of September 2014 and the Minister's granting letter of April 2015 state that the EMPR will be approved by the Regional Manager.

35. On the face of it, for the reason set out below, there may well be a legal difficulty with the powers exercised by the Regional Manager in respect of the approval or rejection of the EMPR and reliance on his assessment in the memorandum of compliance with section 23(1)(d) of the MPRDA for purposes of the grant of the mining right.
36. Under section 103 of the MPRDA, decisions in terms of section 39 of the MPRDA are delegated to the Regional Manager in the event that no objections are received and to the Chief Director [Mineral Regulation, Northern Regions] in the event that objections are received. On page 3 of the MEM ROD (page 2849 of the record) reference is made to objections received from WWF and the MTPA, and to the fact that the DWA does not support the project.
37. Turning to the assessment of the environmental aspects, the memorandum might, at a stretch, be read in two ways. On the one hand, the assertion seems to be that, although the MEM ROD states that section 23(1)(d) has not been met, that conclusion is incorrect because "*the matter revolved around mitigation measures*", and the applicant has in fact complied with section 23(1)(d) (see paragraph 6.1, Rule 53 record p. 2861).



38. The other possible interpretation is that, although the MEM ROD stated that the applicant had not met the requirements of section 23(1)(d), this could be cured by the imposition of various mechanisms/conditions on the grant of the mining right aimed at addressing the inadequate mitigation measures in the EMPR (see the Rule 53 record p. 2869). The exact conditions specified in the memorandum formed part of the DG's granting letter (Annexure 13 to "PML1").
39. On either interpretation, the motivation is fundamentally misconceived. Firstly, the conclusion in the MEM ROD was that the application does not meet the requirement of section 23(1)(d) of the MPRDA precisely because the mitigation measures proposed to address the impact on the wetlands and other water bodies within the area are not reliable to contain or remedy the cause of pollution or degradation resulting from the proposed mining operations due to the nature of the environment. In other words what is arguably the central purpose of an EMPR under section 39 of the MPRDA read with regulation 51 of the Mineral and Petroleum Resources Development Regulations, 2004, was not met.
40. To emphasise, one of the very reasons the MEM ROD found that mitigation measures cannot be considered reliable is that the area which the application relates to is mostly wetlands. Yet, the first condition imposed was that "*the granting shall exclude any areas that constitute wetlands*".



41. Secondly, it was self-evident from the MEM ROD (attached as annexure C to the memorandum) that the conditions that were imposed by the DG were impossible to comply with. Indeed, as outlined in the founding affidavit, as soon as AAV became aware of the conditions, it applied for their amendment on the basis that they were "*impossible to abide by.*"
42. In the light of all of the above, it is abundantly clear that the mandatory requirement for the grant of a mining right in section 23(1)(d), read with 23(3) of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("*MPRDA*"), namely that the mining will not result in unacceptable pollution, ecological degradation or damage to the environment, was not met when the DG granted the mining right.
43. Accordingly, the DG's decision (to the extent that it was not replaced in its entirety by the Minerals Minister's decision) falls to be set aside on the grounds of review in the founding affidavit, as amplified by the evidence contained in the Rule 53 record.

The Minerals Minister's decision

44. I now turn to deal with the Minerals Minister's decision. As I mentioned above, the overwhelming inference arising from the Minister's failure to file the Rule 53 record in respect of his decision, and the format and content of the Minerals Minister's letter of 14 April 2015 ("PML17") is that, as a matter of fact, the Minister did not have regard to relevant documents when he took



his decision. If that is so, this adds even greater force to the review grounds articulated in the founding affidavit.

45. In addition to the format of the letter, the Minerals Minister's approach (as reflected in the letter) also seems to suggest that he may well not have had regard to any documents at all. Moreover, the letter suggests that the Minerals Minister had no regard to any environmental impacts. This is evidenced by the complete removal of the conditions pertaining to the environment imposed by the DG and, instead, deferring the consideration of all environmental impacts onto the Department of Water Affairs ("DWA") and the Department of Environmental Affairs ("DEA") by imposing the conditions that AAV may not commence mining operations prior to obtaining a water use licence from the DWA and an environmental authorisation from the DEA.
46. This approach reflects a profound misunderstanding on the Minerals Minister's part of his statutory responsibilities. Irrespective of whether or not the Minister amended or substituted the DG's decision (as discussed in the founding affidavit), the Minister was obliged to satisfy himself that the requirement in section 23(1)(d), read with section 23(3), of the MPRDA was met. That responsibility cannot be met by "fobbing it off" onto other departments.
47. In order to comply with that statutory duty, the Minerals Minister, at the very least, ought to have had regard to the MEM ROD and the memorandum (as discussed above) when he took his decision. Irrespective of whether or not



he did do so, his decision clearly, for all the reasons discussed above, also falls to be reviewed and set aside on the basis that it is unlawful because the requirement in section 23(1)(d), read with section 23(3), of the MPRDA was not met.

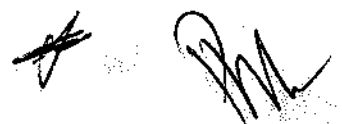
Errors in the collation and description of annexures

48. There were errors in the collation and labelling of the annexures attached to the founding affidavit. For ease of reference, I annex a fresh bundle of the annexures, marked "**PML27: annexures to founding affidavit**". The bundle now corresponds to the references in the founding affidavit, save for the following:-

48.1 The references to "**PML12**" and "**PML13**" in paragraph 115, p. 56 of the founding affidavit should be read as only "**PML13**";

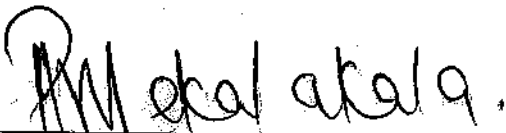
48.2 The reference to "**PML15**" in paragraph 143, p. 71 of the founding affidavit should be read as "**PML17**".

49. The Applicants submit that no prejudice has been caused by these errors. Due to the delays in respect of the Rule 53 record, the Respondents have not yet been required to file any answering affidavits, and the Respondents have not raised any complaints in this regard with the Applicants' attorneys. The errors are corrected in their entirety by annexure "**PML27**".



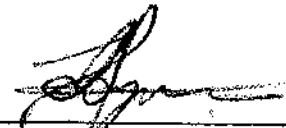
Conclusion

50. The Applicants accordingly stand by the review grounds in the founding affidavit and persist in the relief sought in the notice of motion.


PHILLIPINE MAKOMA LEKALAKALA

I certify that:

1. the deponent acknowledged to me that –
 - (a) s/he knows and understands the contents of this declaration;
 - (b) s/he has no objection to taking the prescribed oath;
 - (c) s/he considers the prescribed oath to be binding on her/his conscience;
2. the deponent thereafter uttered the words "I swear that the contents of this declaration are true, so help me God";
3. the deponent signed this declaration in my presence at the address set out hereunder on 26th JULY 2016.


Commissioner of oaths

Louis Snyman
Attorney
Commissioner of Oaths
Centre for Applied Legal Studies
University of Witwatersrand

Thobeka Gumedede

From: Catherine Horsfield <chorsfield@cer.org.za>
Sent: 02 February 2016 09:57 AM
To: Mukasi Terrence; Francois Joubert
 Thobeka Gumedede; Marthán Theart
Subject: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL
 RESOURCES & 4 OTHERS
Attachments: 02 02 16 CER letter to resps attorneys.pdf; _Certification_.htm
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Sirs

Please see the attached correspondence for your attention.

Yours faithfully

Catherine Horsfield
 Attorney and Programme Head: Mining
 Centre for Environmental Rights NPC
 A non-profit organisation with registration number 2009/020736/08
 PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
 and a Law Clinic registered with the Law Society of the Cape of Good Hope
 2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
 Tel: 021 447 1647 Fax: 086 730 9098
 Email: chorsfield@cer.org.za
 Web: www.cer.org.za and follow us on Facebook: www.facebook.com/CentreEnvironmentalRights



**Centre for
 Environmental Rights**
 Advancing Environmental Rights in South Africa

Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations, even if you have done so elsewhere. For more information about this CER campaign, visit <http://cer.org.za/news/numbers-matter-join-us-in-reporting-violations-of-environmental-rights>



Centre for Environmental Rights
Advancing Environmental Rights in South Africa

315

Mr Terrence Mukasi
The Office of the State Attorney
Your ref: 7515/2015/Z42/DM

By Email: tmukasi@justice.gov.za

Mr Francois Joubert
GFJ Attorneys
Your ref: Francois Joubert/Ashleigh

By Email: joubert@gfjattorneys.co.za

Our ref: CH/MT/TG
2 February 2016

Dear Sirs

**EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS
CASE NO. 73278/2015**

We refer to the state respondents' Notice in terms of Uniform Rule 53.

Please be advised that we received the record from our correspondents yesterday, 1 February 2016. We note that it is 2865 pages. Given the volume of the record, we request an extension of the 10 days provided for our clients to supplement their papers. In this regard, our senior Counsel is in an opposed application for the first 2 weeks of February and then in an arbitration for the next two weeks. Accordingly, we seek an extension to 4 March 2016 to file supplementary papers.

Kindly let us know whether our request is acceptable to your clients.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:

**Catherine Horsfield
Attorney**

Programme Head: Mining

Direct email: chorsfield@cer.org.za

2nd Floor, Springtime Studios,
1 Scott Road, Observatory, 7925
Cape Town, South Africa
Tel 021 447 1647, Fax 086 730 9098
Email info@cer.org.za, www.cer.org.za

[Handwritten signatures]

Thobeka Gumedede

From: Francois Joubert <joubert@gfjattorneys.co.za>
Sent: 03 February 2016 12:02 PM
To: Catherine Horsfield; 'Mukasi Terrence'
 Thobeka Gumedede; Marthán Theart; praveer.tripathi@athagroup.in;
 morgam.munsamy@athagroup.in; arun.thakur@athagroup.in; 'Fanie Botha'
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL
 RESOURCES & 4 OTHERS
Attachments: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL
 RESOURCES & 4 OTHERS
Importance: High

Dear Ms Horsfield,

Your e-mail of yesterday in respect of the above-mentioned matter refers. Your request for an extension of time to file supplementary papers is accepted as requested.

Best regards,

Francois Joubert

Cell: +27 (0)83 680 2075



ATTORNEYS

The information contained in this email and any attachments is confidential and/or privileged. If you are not the intended recipient, you must not disclose or use the information in this email in any way. If you received it in error, kindly notify us immediately by return e-mail and delete the original message.

[Handwritten signatures]

Thobeka Gumede

From: Catherine Horsfield
Sent: 09 February 2016 03:55 PM
To: Francois Joubert; 'Mukasi Terrence'
Cc: Thobeka Gumede; Suzanne Powell
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS

Dear Mr Mukasi and Mr Joubert

Thank you for the email below accepting our request for an extension.

However, it has, since my email of 2 February 2016, come to our attention that the record filed is that in relation to the decision of the Director General only. There is no record of the Minister's decision.

Kindly file the record of the Minister's decision at your earliest convenience. We will naturally only be in a position to supplement fully once the Minister's record of decision has been made available.

Regards

Catherine Horsfield
Attorney and Programme Head: Mining
Centre for Environmental Rights NPC
A non-profit organisation with registration number 2009/020736/08
PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
and a Law Clinic registered with the Law Society of the Cape of Good Hope
2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
Tel: 021 447 1647 Fax: 086 730 9098
Email: chorsfield@cer.org.za
Web: www.cer.org.za and follow us on Facebook: www.facebook.com/CentreEnvironmentalRights



Centre for Environmental Rights
Advancing Environmental Rights in South Africa

Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations, even if you have done so elsewhere. For more information about this CER campaign, visit <http://cer.org.za/news/numbers-matter-join-us-in-reporting-violations-of-environmental-rights>

From: Francois Joubert [mailto:joubert@gfjattorneys.co.za]
Sent: 03 February 2016 12:02 PM
To: Catherine Horsfield <chorsfield@cer.org.za>; 'Mukasi Terrence' <TMukasi@justice.gov.za>
Cc: Thobeka Gumede <tgumede@cer.org.za>; Marthán Theart <mtheart@cer.org.za>;
praveer.tripathi@athagroup.in; morgam.munsamy@athagroup.in; arun.thakur@athagroup.in; 'Fanie Botha' <stelpos@mweb.co.za>
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS
Importance: High

Thobeka Gumedede

From: Catherine Horsfield
Sent: 24 February 2016 03:20 PM
To: 'Mukasi Terrence'
Cc: Thobeka Gumedede; Suzanne Powell; Francois Joubert
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS

Dear Mr Mukasi

I refer to my email below and to Mr Joubert's email of 11 February on a similar point.

Kindly advise us of your instructions regarding the outstanding record of the Minister's decision. Specifically, when will this be filed?

Kind regards

Catherine Horsfield
 Attorney and Programme Head: Mining
 Centre for Environmental Rights NPC
 A non-profit organisation with registration number 2009/020736/08
 PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
 and a Law Clinic registered with the Law Society of the Cape of Good Hope
 2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
 Tel: 021 447 1647 Fax: 086 730 9098
 Email: chorsfield@cer.org.za
 Web: www.cer.org.za and follow us on Facebook: www.facebook.com/CentreEnvironmentalRights



**Centre for
 Environmental Rights**
 Advancing Environmental Rights in South Africa

Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations, even if you have done so elsewhere. For more information about this CER campaign, visit <http://cer.org.za/news/numbers-matter-join-us-in-reporting-violations-of-environmental-rights>

From: Catherine Horsfield
Sent: 09 February 2016 03:55 PM
To: 'Francois Joubert' <joubert@gfjattorneys.co.za>; 'Mukasi Terrence' <TMukasi@justice.gov.za>
Cc: Thobeka Gumedede <tgumedede@cer.org.za>; Suzanne Powell <spowell@cer.org.za>
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS

Dear Mr Mukasi and Mr Joubert

Thank you for the email below accepting our request for an extension.

However, it has, since my email of 2 February 2016, come to our attention that the record filed is that in relation to the decision of the Director General only. There is no record of the Minister's decision.

Thobeka Gumedede

From: Catherine Horsfield
Sent: 07 March 2016 12:34 PM
To: 'Mukasi Terrence'
Cc: Thobeka Gumedede; Suzanne Powell; Francois Joubert
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS

Dear Terrence

I refer to our telephone conversation on 3 March 2016.

As mentioned, my clients are anxious about the delay in this matter caused by your client's failure to file the record of the Minister's decision.

Our clients' Notice of Motion was served on the Minister on 14 September 2015. That Notice of Motion called for the record to be filed within 15 days of its receipt. While we later agreed that the record would be filed after the end of year break, on 18 January 2016, seven weeks have since lapsed and the record has still not been filed. As indicated before, our clients will only be able to supplement fully once the record of decision is received.

There have been 3 emails on behalf of the parties, calling on your client to file the record of his decision. We still have no indication when this will be filed.

Please would you indicate per return when your client will file the record of the Minister's decision. Our instructions are otherwise to bring an application to compel.

Kind regards
Catherine

From: Catherine Horsfield
Sent: 24 February 2016 03:20 PM
To: 'Mukasi Terrence' <TMukasi@justice.gov.za>
Cc: Thobeka Gumedede <tgumedede@cer.org.za>; Suzanne Powell <spowell@cer.org.za>; 'Francois Joubert' <joubert@gfjattorneys.co.za>
Subject: RE: EARTHLIFE AFRICA JOHANNESBURG & 7 OTHERS V MINISTER OF MINERAL RESOURCES & 4 OTHERS

Dear Mr Mukasi

I refer to my email below and to Mr Joubert's email of 11 February on a similar point.

Kindly advise us of your instructions regarding the outstanding record of the Minister's decision. Specifically, when will this be filed?

Kind regards

Catherine Horsfield
 Attorney and Programme Head: Mining
 Centre for Environmental Rights NPC
 A non-profit organisation with registration number 2009/020736/08
 PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
 and a Law Clinic registered with the Law Society of the Cape of Good Hope
 2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
 Tel: 021 447 1647 Fax: 086 730 9098

Suzanne Powell

From: Catherine Horsfield
Sent: Tuesday, 14 June, 2016 5:48 PM
To: 'Mukasi Terrence'
Cc: Suzanne Powell; Thobeka Gumede; Francois Joubert
Subject: Earthlife Africa and others / Minister of Mineral Resources and others
Attachments: AAV letter to DMR 19 11 14.pdf; Min MR letter s.103 grant 14 04 15.pdf

Dear Terrence

I refer to our conversation earlier this afternoon and confirm that our clients are anxious that the review application is determined.

While we appreciate the filing of the record of the Director General's decision to grant a mining right to Atha Africa Ventures, the Minister subsequently amended or withdrew that decision in terms of section 103 of the Mineral and Petroleum Resources Development Act. Atha Africa Venture's letter to your client, dated 19 November 2014, requesting the removal of certain environmental conditions and the Minister's letter to Atha Africa Ventures confirming the amendment/withdrawal of the DG's decision, and grant of the mining right, dated 14 April 2015 - which form part of the record - are attached for ease of reference.

As discussed, our clients require the record of the Minister's decision to properly supplement their papers. Hence making application to compel the filing of his record, following a host of requests that he does so, without result.

If there is no record, please let us know this. If there is a record, please let us have it. In either event, please let us know your instructions in respect of our clients' application set down for hearing on 29 June 2016 in the Pretoria High Court, specifically, whether your clients intend to oppose same, or are happy for us to take the order sought in the Notice in terms of Rule 30A(2).

Many thanks
Catherine

Catherine Horsfield
Attorney and Programme Head: Mining
Centre for Environmental Rights NPC
A non-profit organisation with registration number 2009/020736/08
PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
and a Law Clinic registered with the Law Society of the Cape of Good Hope
2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
Tel: 021 447 1647 Fax: 086 730 9098
Email: chorsfield@cer.org.za
Web: www.cer.org.za and follow us on Facebook: www.facebook.com/CentreEnvironmentalRights



**Centre for
Environmental Rights**
Advancing Environmental Rights in South Africa

Report violations of environmental rights to the 24-hour Environmental Crimes & Incidents Hotline on **0800 205 005**. More reports of environmental violations assist in justifying more investment in more inspectors, and more enforcement of environmental laws. Numbers matter! Take the time to report violations. For more information about this CER campaign, visit <http://cer.org.za/news/numbers-matter-join-us-in-reporting-violations-of-environmental-rights>


ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

 8th Floor, Sinosteel Plaza, 159 Rivonia
 Road, Morningside, Sandton, 2144
 Tel: +27 11 784-1885
 Fax: +27 11 784-7467

 The Regional Manager: Mpumalanga Region
 Department of Mineral Resources
 Private Bag X 7279
 Emalahleni
 1035

Date: 19 November, 2014

 PER FAX: 013 690 3288
 PER EMAIL: Aubrey.Tshivhandekano@dmr.gov.za
 PER HAND DELIVERY

FOR ATTENTION: MR. A TSHIVHANDEKANO

Dear Sir,

YOUR REFERENCE: MP 30/5/1/2/2/10069 MR

RE: GRANTING OF A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERALS AND PETROLEUM RESOURCE DEVELOPMENT ACT, ACT 28 OF 2002 ON THE FARMS BLOEMHOF 92 HT, GOEDGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF NAAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, REMAINDER OF VAN DER WALTSPOORT 81 HT, VIRGINIA 91 HT, PORTION 1 OF YZERMYN 96 HT, REMAINDER OF YZERMYN 96 HT AND ZOETFONTEIN 94 HT SITUATED IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM: MPUMALANGA PROVINCE.

The correspondence letters received by Atha Africa Ventures Proprietary Limited ("AAV") from the Department of Mineral Resources ("DMR"), dated 12 November 2014, regarding the granting of a Mining Right to AAV in respect of the abovementioned Properties, refer:

As per your letter dated 12 November 2014, AAV would like to extend our sincere appreciation for the opportunity to approach you regarding our request to give consideration to this motivation letter to amend the current conditions attached to the Mining Right in order for AAV to be in a position to execute the long-awaited mining right.

As a starting point, AAV is committed to adhere to all conditions listed in the Granting Letter annexed to the letter dated 12 November, 2014 ("the Granting Letter"), except for some of the conditions imposed under paragraph 6 of the Granting Letter.

In the ensuing paragraphs AAV will provide you with our bonafide and best endeavours to motivate why certain of the current conditions, notably the conditions imposed under paragraphs 6(i) and 6(ii) of the Granting Letter, are impossible to abide by if AAV must adhere to the strict interpretation of the wording used in the relevant paragraphs.

Our sincere request is that you give due consideration to amending the current paragraphs 6(i) and 6(ii) conditions of the Granting Letter, based on the following motivation:

1



ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Smoosteel Plaza, 159 Rivonia
Road, Morningside, Sandton, 2144
Tel: +27 11 784 1885
Fax: +27 11 784 7467

1. Paragraph 6 (l) of the Granting Letter dated 19 September 2014, as attached to your letter dated 12 November 2014 :
 - 1.1 Paragraph 6(i) provides that "The granting shall exclude any areas that constitute wetlands." It is our sincere submission that the current wording is ambiguous and, as it stands, poses a significant risk to the entire Yzermyn Underground Coal Project ("YUCP"), since the wording as it currently stands, fails to recognise that the total of YUCP's mining process, in our opinion, must be regarded as a three dimensional activity.
 - 1.2 A total exclusion, as proposed by the current wording: "The granting shall exclude any areas that constitute wetlands" can be interpreted to mean that mining and infrastructure activities are prohibited in all surface areas within and in close proximity to wetlands, as well as a total prohibition of any mining activities in the underground portion of the Yzermyn Project, where there are surface wetlands. It may also be noted that the entire YUCP is consisting of underground mining of coal by Bord & Pillar mining method, and thus will have no surface mining as well as zero subsidence.
 - 1.3 It is important to note that during the extensive assessment of the impacts that the proposed mining activities might pose on the area, especially consideration to the risk that the mining development might pose to the wetland areas, it was found that the impact of the proposed mining activities, which will take place in an already, previously disturbed wetland area, falls within the boundaries of recognised guidelines and that the proposed mitigation measures will in fact result in, initial further disruption, but eventually an improvement of the already disturbed wetlands after closure.
 - 1.4 It is also important to note that during the assessment process of the Mining Rights application of the applicant, the Mabola Protected Environment was declared and that as part of the declaration process, Portion 1 of Yzermyn 96 HT was excluded from the Mabola Protected Environment.
 - 1.5 It is our submission that the MEC: MDEDET's (as ultimate regulatory custodian of the environment in Mpumalanga) decision to exclude Portion 1 of Yzermyn 96 HT from the Intended declaration of the Mabola Protected Environment in its entirety, for purposes of all relevant above-ground infrastructure of the mine, must be taken into consideration.
 - 1.6 In light of the abovementioned we request that the Department of Mineral Resources consider AAV's proposed amendment of paragraph 6(l) to read that "the granting shall exclude surface areas for development of surface infrastructure outside Portion 1 of Yzermyn 96 HT".
 - 1.7 As a token of our commitment to implement the best practical environmental mitigation measures, AAV has already agreed to amend its Mine Works Programme



ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sinosteel Plaza, 159 Rivonia
Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784-7467

in that the Residue Stockpile (Disposal Facility) will be removed from the plans; which will result in a mining project that will have no physical disturbance of channel valley wetlands, and in addition the proposed disturbance to seep wetlands will be confined to the historically disturbed wetlands. It is important to note that the mitigation measures proposed to enable the best functioning of the wetland will initially disturb the wetland, however, *the future impact brought about by these mitigation measures, will ultimately result in an improvement of the current functioning of the wetland*

2. Paragraph 6 (ii) of the Granting Letter dated 19 September 2014, as attached to your letter dated 12 November 2014:

2.1 Paragraph 6(ii) states that *"Surface mining or related activity, as well as erection installation of surface infrastructure shall be prohibited from taking place in any area that constitute wetlands or is deemed to be a sensitive environment."*

2.2 One of the statutory compliance requirements that AAV needs to adhere to is compliance with Government Notice Regulation 704, promulgated (4 June 1999) under the National Water Act, Act 36 of 1998 (this Regulation is specific to the use of water or impact on water resources by mining activities);

2.3 Since it is AAV's submission, supported by its wetland specialist, that the wetland area to be disturbed is small in comparison with the larger wetland area for the catchment. In addition to that, a large portion of these wetlands have been previously disturbed by agriculture, having been ploughed, and therefore are not pristine. AAV intends to submit an application, based on the findings of our specialists, to the Department of Water and Sanitation to exempt AAV from having to comply with certain provisions of GNR 704 promulgated under the National Water Act, Act 36 of 1998.

2.4 In order for AAV to legally operate the proposed Yzermyr Mining Project, AAV shall endeavor to obtain all the necessary approvals and or exemptions provided for under GNR 704, from the Department of Water and Sanitation as custodian of the water resources of the country, prior to commencement of any mining operations on the relevant mining area.

2.5 In light of the above mentioned, it is proposed that the current wording of paragraph 6(ii) of the Granting Letter be amended to read as follow: *"Surface mining or related activities, as well as the construction, erection or installation of surface infrastructure shall be subject to the applicant (AAV) obtaining the required exemption and/or any other approvals to comply with the relevant provisions of GNR 704, promulgated under the National Water Act, Act 36 of 1998, from the Department of Water and Sanitation."*

2.6 In essence, AAV's request is that the Department of Mineral Resources considers granting AAV permission to disturb certain wetlands in line with the GN 704

A

3



ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/020746/07

8th Floor, Sibossteel Plaza, 159 Rivonia
Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784-7467

Regulations under the National Water Act. This will entail AAV obtaining the necessary exemption from Department of Water and Sanitation as custodian of the water resources of the country, prior to commencement of any mining activity.

3. Request to consider proposed environmental mitigation measures together with the potential socio-economic impact of the Yzermyn Underground Mining Project

3.1 In addition to the abovementioned environmental mitigation motivation, it is important to AAV to confirm that we are not only committed to be a responsible miner who will implement effective mitigation measures to manage any potential impact on the environment, but that we are also committed to create real and definite socio-economic benefit to the region, as well as the South African national interest in driving the sustainable development agenda.

3.2 We also want to reiterate our submission that AAV is committed to be a potentially valuable partner to the Mpumalanga Provincial Government as well as, in assisting the Province to fulfil the mandate and objectives of the Wakkerstroom Biodiversity Site ("WBS"), within the context of the Millennium Development goals, National Development Plan, Comprehensive Rural Development Programme, Anti-Poverty Strategy and local LED programmes, which provides a platform for "rural" provinces such as Mpumalanga, the opportunities to participate fully in the economic, social and political life of the country.

3.3 AAV's proposed approach is to work together with your Department and all other relevant Departments, to develop a sustainable co-existence model between mining and conservation, undertaking a combined radical revision of past strategies, take the success stories from these past strategies and introduce a strengthened, long term mutually benefitting sustainability strategy and action plan which, through innovative linkages, will be aligned with national, provincial and local government biodiversity and sustainable development planning priorities.

3.4 Atha-Africa Ventures believes that its own Mining and Integrated Development Planning Process is clearly aligned with the National and Provincial Development Plans, in that the AAV's Planning Process seeks to invest in the mining, manufacturing/ beneficiation and energy sectors, which AAV believes place the Mpumalanga Province and National economy on a positive growth path.

3.5 We also believe that our approach is aligned with government's advocacy to promote Public, Private Partnerships (PPP) as a strategy to kick start and support development in social and economic service delivery programmes in line with the ideal of delivering a better life for all South Africans.

3.6 In light of the abovementioned we sincerely believe that allowing AAV to operate within the framework of the proposed amended conditions of paragraph 6(i) and 6(ii) of the Granting Letter, AAV will be in a position to responsibly mine the



ATHA-AFRICA VENTURES (Pty) Ltd

Registration No. 2004/O20746/07

8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144
Tel: +27 11 784-1885
Fax: +27 11 784-7467

proposed 104 million total in situ tons of proven coal resource in Yzerwyn underground coal mine project. AAV planned to spend initial capital of approximately 950 Million Rands on the YUCP project. Approximately 12.94 billion Rands out of the revenue generated from the YUCP project during first the 10 years of the project operation will be spent under various heads (logistics, mining services, contractors etc) within the Republic of South Africa.

3.7 As a direct result, the mine will create an estimated 550 direct job opportunities, ensure a development income spent in South Africa exceeding R 1 billion Rand, ensure a regional income stream to the National and Provincial Government in respect of Royalties, Rates and Taxes, as well as ensuring that socio-economic growth opportunities are provided to the regional SLP commitments that will cater for skills development programmes, training and Local Economic Development Projects.

3.8 It is a fact that the lifestyles of ordinary people in the area will be improved as disposable income will become more available. This specific mining environment is a complex system requiring a multitude of skills and the opportunity for the creation of contractors to support those skills around the mine.

AAV accepts that by granting AAV a Mining Right, the Yzerwyn project is supported by the DMR and that the wording of Paragraphs 6(i) and 6(ii) may have been done in an effort to protect the environment and not to frustrate the applicant and stopping the development. However, we sincerely hope that you will review our proposed amendments to the above mentioned paragraphs favourably, in order to reach a mutually acceptable, reasonable and practically implementable set of conditions.

We trust that you will find the above in order and look forward to a sympathetic consideration of our motivation to revise the paragraph 6(i) and 6(ii) of the Grant Letter.

Yours sincerely,

PRAVEER TRIPATHI
SR. VICE PRESIDENT
072 804 8250
praveer.tripathi@athagroup.in



MINISTER
MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA

Enquiries: L Muggagadell
Ref No: MP 30/S/1/2/2/10069MR

REGISTERED MAIL

The Directors
Atha-Africa Ventures (Pty) Ltd
P O Box 1569
SANDTON
2157

Fax No. (011) 784 7467

Gentlemen/Ladies:

APPLICATION FOR A MINING RIGHT IN TERMS OF SECTION 22 OF THE MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002); IN RESPECT OF THE FARMS BLOEMHOF 92 HT, GOEDEGEVONDEN 95 HT, KROMHOEK 93 HT, PORTION 1 OF THE FARM NAUWGEVONDEN 110 HT, PAARDEKOP 109 HT, UITZICHT 108 HT, PORTION 2 AND THE REMAINING EXTENT OF THE FARM VAN DER WALTSPGORT 81 HT, VIRGINIA 91 HT, WAALHOEK 87 HT, PORTION 1 AND THE REMAINING EXTENT OF THE FARM YZERMYN 96 HT AND ZOETFONTEIN 94 HT SITUATED IN THE MAGISTERIAL DISTRICT OF WAKKERSTROOM.

1. After careful consideration, I, Ngoako Abel Ramatlhodi, Minister of Mineral Resources, in terms of section 103(4)(b) of the Act, hereby amend the decision made by the Director-General on 19 September 2014, to grant a mining right to you subject to the conditions contained in the granting letter.
2. This therefore serves to inform you that your abovementioned application for a mining right to mine Coal in respect of the abovementioned properties has been granted in terms of section 23(1)

of the abovementioned Act. The Regional Office will prepare the final copies of the right to be signed.

3. Take note that the Regional Manager will approve the relevant Environmental Management Programme and sign the right.
4. Further note that in terms of Section 23(5) of the Act, the mining right comes into effect on the date on which the Environmental Management Programme is approved. In terms of Section 25(2) (b) mining activities must commence within one year of the effective date.
5. In light of the afore-going, you are requested to:

4.1. Ensure that all outstanding matters regarding your application are finalized and that relevant documents are submitted to the Regional Office no later than 30 days prior to the date mentioned in paragraph 2 above, which outstanding matters include the submission of:

- (a) financial provision be provided before execution
- (b) the particulars of your authorized representative who will sign the right,
- (c) the particulars of the public notary, before whom the right must be signed,
- (d) two (2) copies of the final mining work programme,
- (e) A diagram prepared by a surveyor ~~6~~ (six) originals in accordance with the requirements of the Mining Titles Registration Act and which shall indicate:
 - (i) the north point,
 - (ii) the scale to which the plan has been drawn.

- (iii) the name, number registration division and portion of the farm or farms on which the relevant area is situated;
- (iv) the shape of the relevant area in relation to the farm boundaries and co-ordinates points;
- (v) the region in which the relevant farm is situated and;
- (vi) be certified, approved signed and dated by the professional land surveyor, unless the Director General otherwise indicates.
- (vii) two (2) copies of the Social and Labour Plan


4.2. Please make arrangements for the public notary, authorized representative(s) of your company and a witness to be present and attend the signing of the mining right once the aforesaid outstanding matters are verified and an execution date has been finalized by this Office.

6. Note further that in terms of Section 25(2)(a), the signed/executed mining right must be lodged for registration at the Mineral and Petroleum Titles Registration Office, Pretoria, within 30 days as from the date of approval of the relevant environmental management program.

7. Finally, noting the provisions of section 23(6) of the Act, the following shall also be applicable:

(i) You may not commence with mining operations prior to the obtaining of a Water License from the Department of Water Affairs;

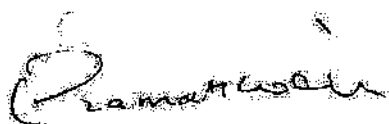
(ii) You may not commence with mining operations prior to the obtaining of an Environmental Authorization from the Department of Environmental Affairs; and

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized 'A' with a horizontal bar, and the second is a more complex, cursive signature.

(iii) You must comply with all other related legislations before the commencement of mining.

8. Failure to comply may result in the withdrawal, suspension or cancellation of the right in question.

Yours faithfully



ADV N A RAMATLHODI
MINISTER
MINERAL RESOURCES
DATE: 14/04/2015

