

CHARGE SHEET • KLAGSTAAT

*Make an X in the appropriate block.
Maak 'n X in die toepaslike blokkie.

Case Saak No. <u>3WRC 02/17</u>	Date Datum
Review Case Hersieningsaak No.	Date Datum
Investigation officer/Ondersoekbeampte <u>EMILY T. Stenela</u>	Date of first appearance/Datum van eerste verskyning <u>17/1/2017</u>

22/2
3/3

Police station/Polisiekantoor <u>Rawsonville</u>	CAS/CR/MAS/MR No. <u>294/4/2015</u>
District/Division-Distrik/Afdeling <u>Dri-Kaap</u>	Place of trial/Plek van verhoor <u>Mbongest</u>

Particulars of court officials must be furnished on the minutes of proceedings.
Besonderhede van hofbeamptes moet op die notule van verrigtinge verstrekkend word.

THE STATE versus/DIE STAAT teen

Particulars of accused/Besonderhede van beskuldigde(s):

Name Naam	<u>Die Staat Trust</u>		
Address Adres	<u>Torpedo Farm Rawsonville</u>		
Male Manlik <input checked="" type="checkbox"/>	Female Vroulik <input checked="" type="checkbox"/>	Nationality Nasionaliteit <u>SA</u>	Age Ouderdom
*In custody In hegtenis <input type="checkbox"/>	On bail Op borgtog <input type="checkbox"/>	Warned Gewaarsku <input type="checkbox"/>	Date of arrest Datum van arres
Name Naam	<u>Daniel Petrus Hugo Jordaan</u>		
Address Adres	<u>Torpedo Farm Rawsonville</u>		
Male Manlik <input checked="" type="checkbox"/>	Female Vroulik <input type="checkbox"/>	Nationality Nasionaliteit <u>SA</u>	Age Ouderdom <u>61</u>
*In custody In hegtenis <input type="checkbox"/>	On bail Op borgtog <input type="checkbox"/>	Warned Gewaarsku <input type="checkbox"/>	Date of arrest Datum van arres <u>25/3/2016</u>

(hereinafter called the accused) charged with the offence(s) as set out in Annexure(s) I to
(hierna die beskuldigde genoem) beskuldig van die misdryf(we) soos in Aanhangsel(s) I tot
as attached.
hierby aangeheg, uiteengesit.

Plea Pleit	<u>Guilty</u>
(Date/Datum)	<u>23/3/2017</u>
Judgement Uitspraak	<u>Guilty</u>
(Date/Datum)	<u>count 1,2,3 & 4 withdrawn against acc 2</u> <u>23/3/2017</u>
Sentence on Vonnis op	<u>see sentence annexure</u>
Date Datum	<u>23/3/2017</u>
Magistrate Landdros	<u>(-)/Malone</u>
Regional Magistrate Datum van aanstelling na die rang van Landdros	<u>Regional Magistrate</u>

Direction with regard to revision of sentence
Aanwysing met betrekking tot hersiening van vonnis

Direction with regard to filing of case record
Aanwysing met betrekking tot lissering van saakrekord

**IN THE REGIONAL COURT FOR THE REGIONAL DIVISION WESTERN
CAPE**

(HELD AT WORCESTER)

CASE NUMBER: **WSH 3/2017**

3 WRC 2 / 2017

In the matter between:

THE STATE

and (Accused 1)

DIE STRAAT TRUST

**AS REPRESENTED BY DANIEL PETRUS HUGO JORDAAN A TRUSTEE OF
THE SAID TRUST.**

**PLEA AND SENTENCE AGREEMENT IN TERMS OF SECTION 105A OF ACT
51 OF 1977**

PREAMBLE

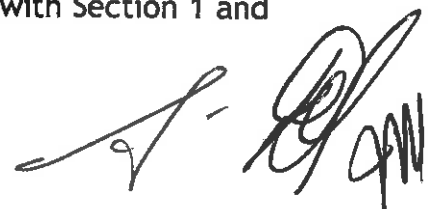
Whereas "Die Straat Trust" is a registered Trust in terms of the Laws of the Republic of South Africa, duly registered with registration number IT 3784/99, attached as per annexure "A" (hereinafter referred to as the accused)

Daniel Petrus Hugo Jordaan is a trustee of the accused and duly authorized to enter into a formal plea and sentence agreement. (As per annexure "B")

The accused is charged with the offences of:

COUNT: 1 (Unlawful Water Use)

The accused is charged with contravening section 151(1) (a), read with section 151(2), of Act 36 of 1998, the National Water Act, also read with Section 1 and



21 of the said Act, and with section 90 and 250 of the Criminal Procedure Act, Act 51 of 1977.

In that the accused during February 2015 and at or near Torpedo Farm Rawsonville, in the Regional Division of The Western Cape, unlawfully and intentionally used water otherwise than as permitted by the Act, by excavating soil from within the Breëderiver and thus impeding or diverting the flow of water in a watercourse and or altering the bed, banks, course or characteristics of a watercourse.

COUNT: 2 (Failed to register water use)

That accused is charged with contravening Regulation 3(b) (i) of The Water Use Registration Regulations, Published under (GN R1352 in GG 20606 of 12 November 1999) promulgated under the National Water Act 36 of 1998, read with Regulations 1; 2 and 13 of the above regulations and Government Notice no. 21215 of 26 May 2000 also read with section 1; 21; 26; 29 and 39 of the National Water Act 36 of 1998, and section 90 and 250 of the Criminal Procedure Act 51 of 1977.

In that the accused during February 2015 at or near Torpedo Farm Rawsonville, in the Regional Division of The Western Cape, whilst using water in terms of section 21 of the National Water Act, unlawfully and intentionally failed to register such use when requested to do so by the responsible authority by means of a notice published in Government Notice no. 21215 of 26 May 2000.

A handwritten signature in black ink, consisting of several stylized, overlapping loops and lines, located in the bottom right corner of the page.

COUNT: 3 (Act Detrimentally Affecting Water Resource)

The accused is charged with contravening section 151(1)(j), read with section 151(2), of Act 36 of 1998, the National Water Act, also read with Section 1 of the said Act

In that the accused during February 2015 and at or near Torpedo Farm Rawsonville in the Regional Division of The Western Cape, unlawfully and intentionally or negligently committed an act or omission which detrimentally affected, or was likely to affect, a water resource, by excavating sand from the Breëderiver.

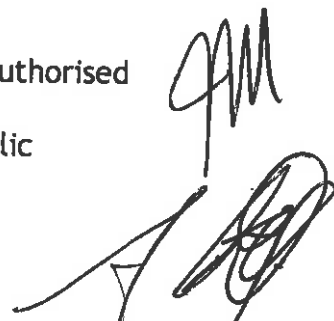
COUNT:4 (Act Detrimentally Affecting Water Resource)

The accused is charged with contravening section 151(1)(j), read with section 151(2), of Act 36 of 1998, the National Water Act, also read with Section 1 of the said Act

In that the accused during February 2015 and at or near Torpedo Farm Rawsonville in the Regional Division of The Western Cape, unlawfully and intentionally or negligently committed an act or omission which detrimentally affected, or was likely to affect, a water resource, by constructing a road with building rubble across the Breëderiver.

The state withdraws count 1; 2; 3 and 4 against accused 2.

1. The Regional Court Prosecutor (Mr A Theron) has been duly authorised (as per annexure "C" hereto) by the National Director of Public

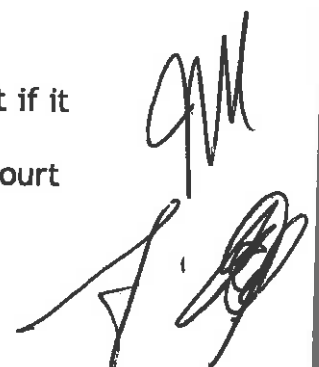


Prosecutions, as required by section 105 A of Act 51 of 1977, to negotiate and enter into an agreement with the accused. (Authorisation Dated: 17 August 2010)

2. The prosecutor is duly authorised to conduct proceedings in court on behalf of the State in connection with this agreement, after it has been duly entered into.
3. The accused as represented by its attorney (Mr J Marais), enter into this agreement in respect of a plea of guilty by the accused to the offence of which it may be convicted, as well as a just sentence to be imposed by this Honourable Court.
4. The accused has been informed of its rights referred to in section 105 A (2) (a) of Act 51 of 1977.

It has the right:

- 4.1. to be presumed innocent until proven guilty beyond reasonable doubt;
- 4.2. to remain silent and not to testify during the proceedings; and
- 4.3. not to be compelled to give self-incriminating evidence;
- 4.4. that it is not obliged to enter into this agreement, but that if it does so, the contents thereof will be made known to the Court



which may convict and sentence it in terms of the agreement or may refuse to accept the agreement, in which case the agreement will be null and void and the State will not be able to use or present such agreement against it as evidence in a criminal trial.

- 4.5. The accused has been informed that this agreement cannot bind the Court, and the Court may exercise its discretion to make a specific order or conduct a specific enquiry, in which event the accused will be entitled to follow any direction(s) given by the Court.
5. The accused admits guilt in respect of the charges mentioned above and pleads guilty thereto on the basis set out below.
6. The prosecutor has duly complied with the requirements of Section 105 A(1)(b) of Act 51 of 1977 in the following respects:
- 6.1. The investigating officer, W/O Prince, has been consulted. He is satisfied with the terms of the agreement, including the sentence. (See statement per annexure "D")
- 6.2. Due regard has been given to the circumstances prescribed in section 105A(b)(ii) of Act 51 of 1977.



6.3. The complainant, Mr T Stimela, has been afforded the opportunity to make representations to the prosecutor regarding the content of the agreement and the inclusion of conditions relating to compensation or service in lieu thereof in terms of section 105A(b)(iii) of Act 51 of 1977. He does not wish to make representations regarding the plea and sentence agreement and is satisfied that the matter is going to be finalised. (See statement as per annexure "E")

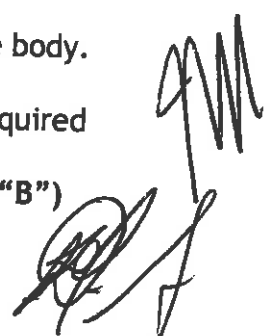
7. The prosecutor is prepared to accept such a plea of guilty.

NOW THEREFORE the prosecutor and the accused agree as follows in respect of the plea of guilty and a just sentence:

A. Plea of guilty and admissions

The accused pleads guilty to all the charges as mentioned above and make the following admissions:

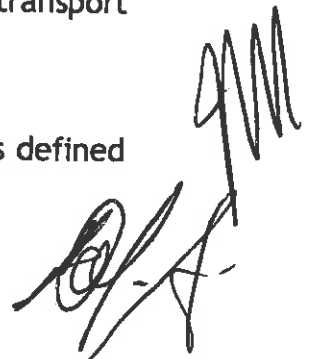
1. The accused (**Die Straat Trust**) admits that it is a registered Trust with registration number IT3784/99, duly incorporated and registered in terms of the laws of the Republic of South Africa.
2. The accused admits that the Regional Court of the Western Cape seated at Worcester has the required jurisdiction to deal with this case.
3. The accused admits that Mr Daniel Petrus Hugo Jordaan will appear before the court as the authorised representative of the corporate body.
4. The accused admits that Mr Daniel Petrus Hugo Jordaan has the required authorisation to submit this plea of guilty. (Attached as annexure "B")



5. The accused admits that it understands all the allegations against it.
6. The accused admits that it was in no way unduly influenced or threatened to plead guilty nor were any promises made to it should it plead guilty, other than the terms of this agreement.
7. Mr Daniel Petrus Hugo Jordaan, as the corporate body representative, admits that he is in his sound and sober senses at the time of entering into this agreement.

COUNT: 1 (Unlawful Water Use)

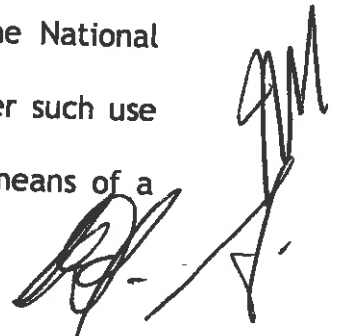
1. The accused admits that it is guilty of contravening section 151(1) (a), read with section 151(2), of Act 36 of 1998, the National Water Act.
2. The accused admits that during February 2015 at Torpedo Farm Rawsonville, in the District of Worcester / Regional Division of The Western Cape, it unlawfully and intentionally used water otherwise than as permitted by the Act, by excavating soil from within the Brëederiver and thus impeding or diverting the flow of water in a watercourse and or altering the bed, banks, course or characteristics of a watercourse.
3. The accused admits that it contracted a transport company to excavate sand from the Brëederiver on Torpedo farm.
4. The accused admits that the sand was utilised at other places on Torpedo farm and the rest of the sand was used by the transport company as they saw fit.
5. The accused admits that the Brëederiver is a watercourse as defined in the National Water Act, Act 36 of 1998.

A handwritten signature in black ink, appearing to be 'D. A. Jordaan', is located in the bottom right corner of the page. The signature is written in a cursive style and is positioned to the right of the fifth list item.

6. The accused admits that in terms of section 21 of the national Water Act, Act 36 of 1998 "Water Use" includes impeding or diverting the flow of water and altering the bed, banks, course or characteristics of a water course.
7. The accused admits that by excavating and removing the sand from the Brëederiver it caused water to be impeded or diverted and it altered the bed; banks; course and characteristics of the watercourse.
8. The accused admits that it had no right, permission or authority to have acted as explained above.
9. The accused admits that at all relevant times it knew that what it was doing was wrong and punishable by a court of law.

COUNT: 2 (Failed to register water use)

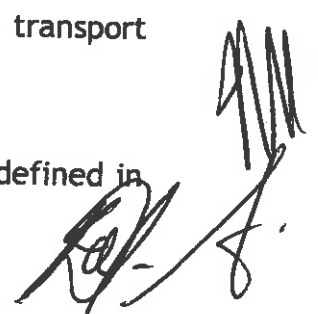
1. The accused admits that it is guilty of contravening Regulation 3(b) (i) of The Water Use Registration Regulations, Published under (GN R1352 in GG 20606 of 12 November 1999) promulgated under the National Water Act 36 of 1998, read with Regulations 1; 2 and 13 of the above regulations and Government Notice no. 21215 of 26 May 2000 also read with section 1; 21; 26; 29 and 39 of the National Water Act 36 of 1998, and section 90 and 250 of the Criminal Procedure Act 51 of 1977.
2. The accused admits that during February 2015 at Torpedo Farm Rawsonville, in the district of Worcester / Regional Division of The Western Cape, it used water in terms of section 21 of the National Water Act, but unlawfully and intentionally failed to register such use when requested to do so by the responsible authority by means of a



- notice published in Government Notice no. 21215 of 26 May 2000.
3. The accused admits that the Brëederiver is a watercourse as defined in the National Water Act, Act 36 of 1998.
 4. The accused admits that it "used" water as defined in terms of section 21 of the National Water Act, Act 36 of 1998 by impeding and diverting the flow of water in the watercourse and altering the bed, banks, course and characteristics of the watercourse.
 5. The accused admits that it failed to register such use with the responsible authority.
 6. The accused admits that at all relevant times it knew that what it was doing was wrong and punishable by a court of law.

COUNT: 3 (Act Detrimentially Affecting Water Resource)

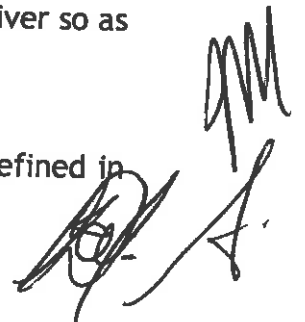
1. The accused admits that it is guilty of contravening section 151(1)(j), read with section 151(2), of Act 36 of 1998, the National Water Act.
2. The accused admits that during February 2015 at Torpedo Farm Rawsonville, in the District of Worcester / Regional Division of The Western Cape, it unlawfully and intentionally or negligently committed an act or omission which detrimentally affected, or was likely to affect, a water resource, by excavating sand from the Brëederiver.
3. The accused admits that it contracted a transport company to excavate sand from the Brëederiver on Torpedo farm.
4. The accused admits that the sand was utilised at other places on Torpedo farm and the rest of the sand was used by the transport company as they saw fit.
5. The accused admits that the Brëederiver is a watercourse as defined in

Handwritten signature and initials in black ink, located in the bottom right corner of the page. The signature appears to be a stylized name, possibly 'A. J.', with a large 'M' or 'N' above it.

- the National Water Act, Act 36 of 1998.
6. The accused admits that a water resource includes a watercourse.
 7. The accused admits that by excavating and removing the sand from the Brëederiver it detrimentally affected, or was likely to affect, a water resource.
 8. The accused admits that it had no right, permission or authority to have acted as explained above.
 9. The accused admits that at all relevant times it knew that what it was doing was wrong and punishable by a court of law.

COUNT:4 (Act Detrimentially Affecting Water Resource)

1. The accused admits that it is guilty of contravening section 151(1)(j), read with section 151(2), of Act 36 of 1998, the National Water Act.
2. The accused admits that during February 2015 at Torpedo Farm Rawsonville, in the District of Worcester / Regional Division of The Western Cape, it unlawfully and intentionally or negligently committed an act or omission which detrimentally affected, or was likely to affect, a water resource, by constructing a road with building rubble across the Brëederiver.
3. The accused admits that Torpedo farm lies on either side of the Brëederiver.
4. The accused admits that it constructed a road across the Brëederiver by using building rubble.
5. The accused admits that it was done in order to cross the said river so as to avoid unnecessary traveling time and expenses.
6. The accused admits that the Brëederiver is a watercourse as defined in

Handwritten signature and initials in the bottom right corner of the page.

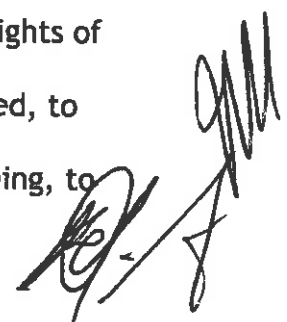
the National Water Act, Act 36 of 1998.

7. The accused admits that a water resource includes a watercourse.
8. The accused admits that by building a road with building rubble across the Brëederiver detrimentally affected, or was likely to affect, the water resource.
9. The accused admits that it had no right, permission or authority to have acted as explained above.
10. The accused admits that at all relevant times it knew that what it was doing was wrong and punishable by a court of law.

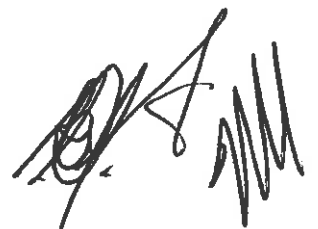
NOW THEREFORE the accused agrees with the State that it is guilty on all four charges mentioned above.

B. The substantial and other relevant facts

1. The gravity of the offences, the interests of the community and all the relevant circumstances of the accused have been taken into account and duly considered by all parties concerned.
2. **The general aggravating factors are as follows:**
 - a. All four charges are of an environmental nature which is seen in a very serious light.
 - b. Section 24 of the constitution of South Africa provides for the rights of current and future generations to have the environment protected, to have an environment that is not harmful to our health or well-being, to



- prevent ecological degradation and pollution and to secure ecologically sustainable development.
- c. Water is a scarce and unevenly distributed national resource occurring in many different forms.
 - d. Water is a natural resource and all citizens have a right and responsibility to make sure everybody including the animals has clean and sustainable water.
 - e. This country is currently going through a severe drought and thus every drop of water must be used with extreme care.
2. The under mentioned mitigating circumstances are taken into account:
- a) The accused has pleaded guilty and has shown remorse by doing so.
 - b) The accused is a first offender.
 - c) The accused is 64 years old and married.
 - d) He has no minor dependents.
 - e) The accused farms on two farms "Torpedo" and "Die Straat" both owned by the "Die Straat Trust".
 - f) Immediately after the accused received the summons he instructed legal and environmental specialists to advise him in dealing with above mentioned case.
 - g) These costs have amounted to R250 000-00.
 - h) It showed that the accused's intention, from the beginning, was to co-operate with the authorities and rectify the situation as soon as possible.



- i) The accused has and still is contributing to the economic and social development of the Breëderivier community through its farming operations.
- j) The accused provides employment to several people.
- k) A rehabilitation plan has been compiled, rehabilitation and rectification has already commenced according to the plan.
(Annexure "F")
- l) By pleading guilty the accused drastically curtailed criminal proceedings. Had the accused pleaded not guilty, the trial could have run for several days.
- m) The accused has fully co-operated with the prosecuting authority in this matter and has offered full assistance to the authorities, which is in the interest of the society and law enforcement agencies.

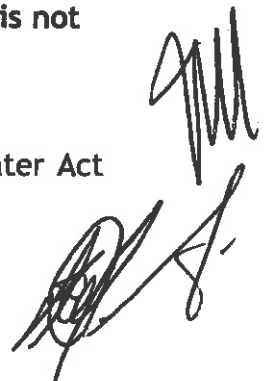
C. The just sentence agreed upon.

IT IS AGREED that the following is a just sentence in the circumstances of the charges mentioned above:

Count: 1 to 4 is taken together for purposes of sentence.

Sentence: One Hundred and Fifty Thousand rand (R150 000-00) wholly suspended for (5) years on condition that the accused is not convicted of an offence of:


- contravening Section 151 of Act 36 of 1998, the National Water Act and or

Two handwritten signatures in black ink are located in the bottom right corner of the page. The top signature is a stylized, somewhat illegible scribble. The bottom signature is more legible, appearing to be a name followed by a surname, possibly 'S. J. ...'.

- contravening Regulation 3(b)(i) of The Water Use Registration Regulations, Published under (GN R1352 in GG 20606 of 12 November 1999) promulgated under the National Water Act 36 of 1998 committed during the period of suspension.
- That the rehabilitation and rectification, regarding the above mentioned charges, commences and is finalized as per the attached rehabilitation plan. (Annexure "F")
- The rehabilitation and rectification must take place as per scheduled timeframe's indicated in the rehabilitation plan. (Annexure "F")

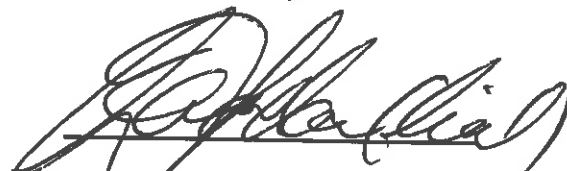
Signed at Worcester on the 23rd of March 2017.

REGIONAL COURT PROSECUTOR:



ANDRE THERON

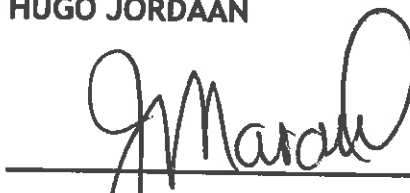
ACCUSED:



"DIE STRAAT TRUST" AS
REPRESENTED BY DANIEL PETRUS

HUGO JORDAAN

ATTORNEY:



JACQUES MARAIS