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umNyango weZelimo
UkuThuthukiswa kweNdawo zemaKhaya,
iNarha neeNdaba zeBhoduluko

Reference : 17/2/3GS-131

CENTRE FOR ENVIRONMENTAL RIGHTS

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APPEAL IN TERMS OF SECTION 43 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998, READ WITH THE ENVIRONMENTAL IMPACT (EIA) REGULATIONS OF 2010, AGAINST THE ENVIRONMENTAL AUTHORISATION ISSUED IN FAVOUR OF ATHA-AFRICA VENTURED FOR LISTED ACTIVITIES ASSOCIATED WITH THE PROPOSED UNDERGROUND COAL MINE LOCATED ON PORTION 1 OF THE FARM YZERYMN HT, UNDER THE LOCAL MUNICIPALITY JURISDICTION OF PIXLEY KA SEME LOCAL MUNICIPALITY MPUMALANGA PROVINCE.

By the powers vested in me in terms of **section 43 (6) of the National Environmental Management Act 107 of 1998 As Amended** and after thorough consideration of all the facts presented to me; the Statement setting out the Grounds of the appeal, the Responding statements, all the submissions related to this appeal and the subsequent **Recommendations from the Panel** your appeal is hereby dismissed.

The Reasons for the decision are set out hereunder:

1. A scoping report was compiled for the proposed Yzermyn underground coal mine in accordance with all relevant South African environmental legislation. Draft copies of the scoping report were made available to the public for a period of 73 days from 25 of March to the 10 of June 2013 (NEMA Process) all stake holders and commenting state departments were notified of the public review periods as well as the locations of draft

scoping reports via fax and e-mail. All comments received were recorded and included in the report.

2. The comments were received from the Mpumalanga Tourism and Parks Agency, the Department of Environmental Affairs; branch; biodiversity and conservation, the Department of Water and Sanitation, the South African Heritage Resource Agency and Interested and Affected Parties as included in the amended EIR dated January 2015.
3. The Interested and Affected parties who registered in the EIA process, from the eight Appellants were only Bird Life South Africa, Endangered Wild Life Trust (EWT) and the Federation for Sustainable Environment (FSE).
4. Only Birdlife South Africa provided the comments on the amended EIA report ("EAIR") which comments were considered, responded to and incorporated into the report.
5. The Eco- Partners lacked objectivity during the EAIR lacks substance in that intense independent specialist reports were made public for comments in compliance with the EIA regulations and submitted to the competent authority. Therefore, the Brown Lee's review was not interrogated, comments were not submitted during the public participation, neither the applicant had an opportunity to comment on the review nor dispute the findings.
6. Therefore, the **Public Participation Process** was conducted in accordance with the applicable Environmental Impact Assessment (EIA) Regulations.¹ The amended report indicates further that the stake holder consultation process was undertaken in English, Afrikaans and Zulu to ensure the widest range of stake holders were able to participate in the process. According to section 56 of NEMA (EIA) regulations, the EAP must give notice to all potential stake holders of the project.
7. All the activities associated with mining have been applied for, described, assessed and have been authorised.²

¹ Environmental Impact Regulations of June 2010

² From page 4 to page 10 of the environmental authorisation.

8. It is common cause that the applicant intends to operate a mining activity in the vicinity of a declared protected environment, known as Mabola protected environment.
9. In mitigation to negative impact to the environment the applicant has reduced the mining footprint to 22 hectares.
10. 12.1 ha of the total wetland area will be disturbed by the surface infrastructure, however 7.62 ha of wetland has already been transformed through agricultural development. With the Best Environmental option, the discard dump (residue stockpile) and associated wash plant will not be constructed, thereby reducing the impact on the sensitive biodiversity and wetland areas.
11. Mitigation measures have been stipulated in the EMPr and environmental authorization to further reduce potential risk to the wetland areas.
12. Underground mining will occur within the Mabola Protected Environment, the surface infrastructure required for the mine will be located outside of the protected environment.
13. The historical transformation of the environment in this area indicates that disturbance to the biodiversity will be limited. The areas identified for the preferred surface infrastructure layout have been mostly disturbed by agricultural and old mining practices.
14. The ecosystem is fragmented in the proposed area of the surface infrastructure and the development of the area can be mitigated to ensure ecologically sustainable development.
15. The mining will enhance the developing export markets for South African products and services and to specifically invite new foreign direct investment into South Africa thus boosting the socio-economic landscape throughout the country.

16. Furthermore, the severely impoverished communities of both Pixley Ka Seme and Mkhondo local municipalities will benefit directly both social and economically from the mine in that work opportunities and the Social Labour Plan developed by the mine will have a significant positive impact through infrastructure development and to alleviate poverty.
17. It is further submitted that bolstered by the free trade agreements, BRICS and other bilateral agreements, the international trade initiative India, invited Indian companies to participate and invest in six specific sectors in South Africa including the mining and beneficiation sector.
18. One of the key factors considered in making the decision is that, the project, need and desirability was sufficiently addressed. Furthermore, South Africa is heavily reliant on thermal coal for power generation. The identification and exploitation of new coal reserves in South Africa is therefore a prerequisite in meeting the demand.
19. The amended EIR identified all relevant environmental legislations and guidelines that have been considered. The methodology used in assessing the potential impacts identified in EIR dated January 2015 and the Specialist Studies have been adequately indicated.³
20. One of the key areas identified for the preferred surface infrastructure layout have been mostly disturbed by agricultural and old mining practices.
21. The proposed mitigation of impacts identified and assessed adequately curtail the identified impacts. The EMPr for the pre-construction, construction and rehabilitation phases of the development will be implemented to manage the environmental impacts during the construction.
22. The approved EMPr addresses all the environmental impacts that are associated with the mining activities on site and provide acceptable the mitigation measures.

³ Page 22 of the Authorisation date 07 June 2016.

23. The Department of Mineral Resources has issued a mining right, the Department of Water and Sanitation has issued the Water Use Licence, the Department of Environmental Affairs has issued Section 48 Permit in terms of NEMPAA.
24. The Environmental Management Committee (EMC) is to be established for the construction and operational phases of the project.⁴
25. The EMC will consist of Department of Mineral Resources, Department of Water and Sanitation, Department of Environmental Affairs, the Mpumalanga Tourism and Parks Agency Parks and the DARDLEA. The responsibility of the EMC will be to monitor compliance of all the permits, authorisations and licences issued to the mine and will further monitor the implementation of the Social Labour Plan to ensure that the Socio-Economic and infrastructure commitments by the mine are benefitting the intended communities within the two local municipalities mentioned hereinabove.
26. Considering all of the above, I am thus satisfied that the impacts culminating from the proposed development will be mitigated furthermore, all the abovementioned government departments, through the EMC will monitor the implementation and ensure compliance with all the permits, licences and authorisations issued for the proposed underground Yzermyn Coal Mine.

Kind Regards,



Mr VR SHONGWE (MPL)

MEC: Department of Agriculture, Rural Development, Land and Environmental Affairs

DATE 23/11/2017

⁴ The Environmental Management Committee is one of the conditions of the authorisation.