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20 SEPTEMBER 2019

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My Ref: 6833/17/Z46
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Ref: Rakhee Bhoora / Lara Bezuidenhout/
Justice Sweet/ Margo-Ann Werner / 300231.00003

Ms Koyama and Ms Bezuidenhout

CC
Ms Michelle Koyama
Centre for Environmental Rights
Email: mkoyama@cer.org.za
Ref: CER 54.1.RH/MK

Re: GROUNDWORK TRUST V THE MINISTER OF ENVIRONMENTAL AFFAIRS AND OTHERS (CASE NO. 61561/17)
ACWA POWER KHANYISA ENVIRONMENTAL AUTHORISATION

We refer to the correspondence received in the above matter from the Centre for Environmental Rights, acting for the applicants in this matter, dated 19 August 2019.

We record that the Environmental Authorisation was granted subject to compliance with the conditions contained therein.

Our instructions, based on the available information, are that although ACWA Power Khanyisa commenced with some of the listed activities, it would appear that ACWA had not fulfilled all of the conditions in the Environmental Authorisation when they commenced with the development. Specifically, there are two conditions in the EA that ACWA did not comply with:

1) Condition 27:

“The holder of this authorisation must obtain a Water Use Licence from the Department of Water Affairs (DWA) prior to the commencement of the project should the holder impact on any wetland or water resource. A copy of the license must be submitted to the Director: Environmental Impact Evaluation at the Department.”

2) Condition 39.2:

“The construction may not commence before the agreed amendment design for the proposed Khanyisa Coal Power Station, indicated in the letter from the Department of Water Affairs Engineer dated 11 June 2013, is approved by the Director: Licensing.”

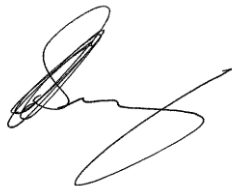
Condition 27 and 39.2 of the Environmental Authorisation in peremptory terms not only requires the fulfillment of those conditions prior to commencement with any of the listed activities authorised, but Condition 39.2 in no uncertain terms states that construction may not commence before the agreed amendment design for the proposed Khanyisa Coal Power Station, indicated in the letter from the Department of Water Affairs Engineer dated 11 June 2013, is approved by the Director: Licensing. Without compliance with the suspensive condition contained in specifically Condition 39.2 of the Environmental Authorisation, ACWA was not authorised to commence with any of the listed activities.

Unless ACWA can provide us with written proof that compliance with conditions 27 and 39.2 occurred prior to the commencement with the listed activities authorised in the Environmental Authorisation, you are hereby notified of our instructions as follows:

1. ACWA's commencement with some of the listed activities was unlawful in that ACWA had not fulfilled peremptory conditions of the Environmental Authorisation prior to commencement of the activity.
2. Due to the suspensive nature of the conditions in the Environmental Authorisation, unlawful commencement with any of the listed activities cannot operate to interrupt the lapsing of the Environmental Authorization.
3. The Environmental Authorisation had lapsed on 31 October 2018.
4. The lapsing of the Environmental Authorisation renders the pending review application moot.

Kindly revert as soon as you are able to.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a long, sweeping flourish that extends to the right.

C E SNYMAN
FOR STATE ATTORNEY PRETORIA