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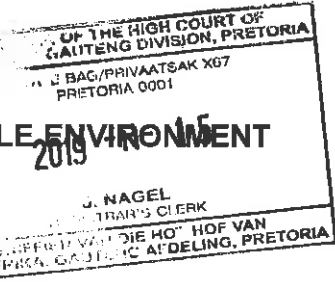
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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: **86261/19**

In the matter between:

ENDANGERED WILDLIFE TRUST



First Applicant

FEDERATION FOR A SUSTAINABLE ENVIRONMENT

Second Applicant

and

**DIRECTOR-GENERAL (ACTING),
DEPARTMENT OF WATER AND SANITATION**

First Respondent

THE WATER TRIBUNAL

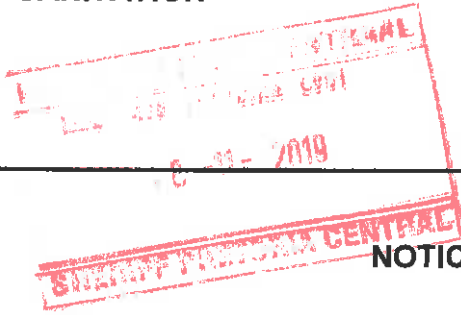
Second Respondent

ATHA-AFRICA VENTURES (PTY) LTD

Third Respondent

**MINISTER OF HUMAN SETTLEMENTS, WATER
AND SANITATION**

Fourth Respondent



NOTICE OF MOTION

**Gildenhuys Malatji Inc
WITHOUT PREJUDICE OF RIGHTS**

2019 -11- 25

Time:
Received By: *[Signature]*

KINDLY TAKE NOTICE that the Applicants intend applying to the Honourable Court for an order in the following terms:

- 1 The decision of the First Respondent, dated 7 July 2016, granting the Third Respondent a water use licence in respect of water uses associated with the proposed Yzermyn coal mine is –

- 1.1 declared to be unconstitutional, unlawful and invalid; and
 - 1.2 reviewed and set aside.
- 2 The decision of the Second Respondent, dated 22 May 2019, dismissing the Applicants' appeal against the First Respondent's decision referred to in paragraph 1 above, is –
- 2.1 declared to be unconstitutional, unlawful and invalid; and
 - 2.2 reviewed and set aside.
- 3 The decisions of the First and Second Respondents are substituted with a decision refusing the Third Respondent's application for a water use licence for its proposed Yzermyn coal mine.
- 4 *In the alternative to prayer 3 above, it is directed that:*
- 4.1 The Third Respondent's application for a water use licence is remitted to the First Respondent for reconsideration.
 - 4.2 The First Respondent is to decide the Third Respondent's application for a water use licence ('WUL') -
 - 4.2.1 Having due regard to the status of the proposed mine area as -
 - 4.2.1.1 A Freshwater Ecosystem Priority Area in terms of the Atlas of National Freshwater Ecosystem Priority Areas in South Africa, as recognised in

the National Water Resource Strategy promulgated in terms of the National Water Act 36 of 1998 ('NWA');

4.2.1.2 A Strategic Water Source Area in terms of the 2013 and 2018 Strategic Water Source Area Reports, as recognised in the National Water Resource Strategy promulgated in terms of the NWA;

4.2.1.3 Part of the Mabola Protected Environment, declared in terms of the National Environmental Management: Protected Areas Act 57 of 2003;

4.2.1.4 An endangered ecosystem in terms of the National Environmental Management: Biodiversity Act 10 of 2004; and

4.2.1.5 An area identified in the Mining and Biodiversity Guideline, 2013 as having the 'Highest Importance for Biodiversity' and as being at the 'Highest Risk from mining';

4.2.2 Having due regard, insofar as socio-economic impacts are concerned, to the socio-economic specialist study conducted by WSP Environmental (Pty) Ltd and the review conducted by Susan Brownlie;

4.2.3 On the basis that:

4.2.3.1 the Third Respondent has not applied for water uses associated with the post-closure treatment of contaminated water;

4.2.3.2 the licence period of the WUL is fifteen years from the date of issuance and the First Respondent has no power under the NWA or the WUL to compel the Third Respondent to apply for an amendment or extension of the WUL; and

4.2.3.3 in terms of section 30 of the NWA, the First Respondent has a power, coupled with a duty to use it in appropriate circumstances, to require, to the extent necessary to protect water resources or property, the provision of financial security in respect of any obligation or potential obligation arising from the WUL;

4.2.4 Having due regard to the precautionary principle in section 2(4)(a)(vii) of the National Environmental Management Act 107 of 1998, and, in particular –

4.2.4.1 the low confidence of the Delta H groundwater assessment;

4.2.4.2 the uncertainty and inadequate information regarding the impacts of dewatering;

4.2.4.3 the uncertainty and inadequate information regarding the risks and impacts of decant of contaminated groundwater and Acid Mine Drainage;

4.2.4.4 the uncertainty and inadequate information regarding cumulative impacts; and

4.2.4.5 the uncertainty and inadequate information regarding impacts on downstream water users; and

4.2.5 In compliance with the prescript in section 24 of the NWA that the WUL may not be granted to use water found beneath Zoetfontein 94 HT unless: (1) the owner of the land consents; or (2) there is good public reason to do so.

5 The costs of this application, and the Applicants' costs as appellants in the appeal to the Water Tribunal, are to be paid by the First to Third Respondents and any other respondent opposing the application, which costs are to include the costs of two counsel.

6 Further and/or alternative relief is granted.

TAKE NOTICE FURTHER that the founding affidavit of **YOLAN FRIEDMAN** (together with its annexes) will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the office of their attorneys, as set out below, as the address at which they will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that:

- (a) in terms of Rule 53(1)(a) of the Uniform Rules of Court, the Respondents are called upon to show cause why the decisions referred to in Prayers 1.1 and 1.2 above should not be reviewed and corrected or set aside by the above Honourable Court;
- (b) in terms of Rule 53(1)(b) of the Uniform Rules of Court read with Rule 2(2) of the Administrative Review Rules, 2019, the First and Second Respondents are called upon, within fifteen days of receipt of this notice of motion, to dispatch and file with the Registrar the record of all documents and electronic records (including correspondence, contracts, memoranda, advices, recommendations, evaluations and the like) that relate to the making of the decisions referred to in Prayers 1.1 and 1.2, and to notify the Applicants that they have done so, provided that, if any of these documents have already been provided to the Applicants, it will be sufficient for them to be identified in a schedule in such a way that they are readily identifiable;

- (c) in terms of Rule 53(4), the Applicants may within 10 days of receipt of the record from the Registrar, amend, add to or vary the terms of the notice of motion and/or supplement their founding affidavit, by delivery of a notice and accompanying affidavit.

TAKE NOTICE FURTHER that if the Respondents intend opposing this application, they are required to:

- (a) Within 15 days from the date of receipt of this notice of motion or any amendment thereto as contemplated in Rule 53(4), deliver a notice to the Applicants' attorneys that they intend to oppose this application;
- (b) Appoint an address within 15 kilometres of the office of the Registrar at which the Respondents will accept notice and service of all documents in this application; and
- (c) Within 30 days after the expiry of the time period set out in Rule 53(4), deliver their answering affidavit, if any.

TAKE NOTICE FURTHER that if no notice of intention to oppose is delivered, this application will be set down on the unopposed basis and proceed on a date to be determined by the Registrar of the above Honourable Court.

DATED at PRETORIA on this the 14TH day of NOVEMBER 2019.



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TO:

THE REGISTRAR
of the above Honourable Court
PRETORIA

AND TO:

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