



NEWSLETTER- JULY 2017

Dear Readers,

GUNN ATTORNEYS HAS MOVED TO 11 GREENWAY ROAD GREENSIDE.

The July edition of the newsletter will look at updates in the environmental, mining and natural resources sector while also focussing on cases, law and news.

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NATIONAL LEGISLATION

Mining Moratorium

On 19 July 2017, the *Invitation for representations from relevant stakeholders on proposed restriction under s. 49 (1) on the granting or renewal of all applications for prospecting rights and mining rights in terms of ss. 16 and 22; and 18 and 24 respectively (GN 692 GG 40989)* was published. The notice advises of the intention to impose a moratorium on:

- the granting of any new application for a prospecting right and mining right in terms of sections 16 and 22 of the MPRDA;
- the processing of applications for renewal of a prospecting right and renewal of a mining right in terms of sections 18 and 24 of the MPRDA; and
- the granting of applications in terms of section 11 of the MPRDA.

The publishing of the notice is based on a pending court case to review new mining laws and it was stated by Mineral Resources Minister Mosebenzi Zwane that *“The moratorium would ensure that any applications ...are concluded in terms of the 2017 Mining Charter”*.

There has been uproar after the publication, particularly from the Chamber of Mines, who wants Zwane to withdraw the notice. If Zwane fails to withdraw the notice the Chamber has stated that they will apply for an urgent interdict to suspend and review the notice.

In the Gazette, Zwane specifically mentions placing a restriction on prospecting rights, mining rights and section 11 applications.

Section 11 of the Mineral and Petroleum Resources Act (MPRDA) specifically pertains to consent for the selling of underlying rights and the transfer of rights between companies.

Many have commented that the Minister has gone beyond his powers and that it is likely that ensuing court action to put the moratorium aside will be successful.

Rhino Poaching

In her statement made on 24 July 2017 regarding the Integrated Strategic Management of Rhinoceros, Minister of Environmental Affairs, Minister Molewa stated with regards to arrests of rhino poachers that *"In the reporting period, a total of 359 alleged poachers and traffickers have been arrested nationally. The number of arrests inside the Kruger National Park totaled 90 alleged poachers with 112 arrested adjacent to the KNP."*

Further, she stated in terms of rhino poaching numbers that *"There has been a slight decrease in the number of rhino poached nationally. A total of 529 rhino have been poached since January 2017, compared to 542 in the same period for 2016, representing a decrease of 13 rhinos."*

The statement goes on to address all the factors of the Integrated Strategic Management of Rhinoceros which involves the Justice, Crime Prevention and Security Cluster Departments and a number of State Agencies, namely the Departments of Defence, Environmental Affairs, Justice, Constitutional Development and Correctional Services, the South African Police Service (SAPS), Ministry of State Security and its Agency, South African National Parks (SANParks), the South African Revenue Service (SARS), as well as provincial conservation authorities.

It is great to have a progress report on the initiatives taken to address the crisis on rhino poaching and it seems more attention, legal force and practical solutions are being entertained in order to address the situation.

The full report can be accessed from:

https://www.environment.gov.za/mediarelease/molewa_proresson_integratedstrategic_managementofrhinoceros_rhinopoaching

Draft mine water strategy

On 7 July 2017, the Draft Mine Water Management Policy Position was published under GG No 40966 GN 568 (correction notice under GG NO 40987 GN 690 of 14 July 2017) for external consultation and discussion. The purpose of the policy is to provide the position of the Department of Water and Sanitation on mine water management, including acid mine drainage and to provide for measures for the protection of water resources from prospective, operational and historical mine activities that have negative quality impacts.

It can be accessed from: http://www.gov.za/sites/www.gov.za/files/40966_gon568.pdf

NATIONAL CASE LAW

Mabola Protected Environment and Ekwangala-Drakensberg strategic water source area

Below is an article written by Centre for Environmental Rights which illustrates the coalition of 8 NGOs and their fight to help save the Mabola Protected Area.

“Yesterday, the interdict application launched by the coalition of eight organisations challenging the proposed coal mine by Atha-Africa Ventures Pty Ltd inside the Mabola Protected Environment and Ekwangala-Drakensberg strategic water source area came before the Pretoria High Court.

This morning, the Court granted an order which had been agreed between the parties, recording that Atha-Africa has given the coalition a written undertaking that it will not commence any mining or mining-related activities before giving 3 weeks’ prior written notice to the Coalition’s attorneys. Atha-Africa also agreed to pay its own costs in opposing the Coalition’s interdict.

In its opposition to the interdict application, Atha-Africa had demanded punitive costs orders against the coalition and its attorneys of record, the Centre for Environmental Rights.

The effect of the order is that Atha is now obliged to give 3 weeks’ written notice to the Coalition’s attorneys before commencing any mining or mining-related activities. This is important because the Coalition is challenging all the licences granted for this mine, and Atha and the Coalition are not in agreement about what licences this mine would require. In view of the irreversible damage that would be caused by mining in this important area, the Coalition will take all steps necessary to prevent mining from commencing, including further court proceedings.

Atha-Africa’s mining right required it to start mining within 1 year from which its environmental management programme was approved, which is today. After the Coalition’s interdict was launched on 20 June 2017, Atha-Africa made application to the Minister of Mineral Resources for an extension of this period.

The coalition opposes this mine because the proposed mine would be inside a declared protected area and a strategic water source area. It will threaten water security not only in the local area, but in the region. The damage that this mine would do to water resources cannot be undone. All these organisations are deeply committed to job creation and improving the quality of life of local people, but we also know that coal mining has devastated the lives, health and well-being of communities across the Highveld.”

Full articles available at: <https://cer.org.za/news/civil-society-and-community-coalition-wins-crucial-concession-in-fight-against-coal-mine-in-water-hotspot>

Follow the link to watch a video on the Mabola Protected Environment:
<https://cer.org.za/news/watership-down-the-reality-of-mining-mabola>

JOKE OF THE MONTH



ABOUT GUNN ATTORNEYS

Gunn Attorneys was established in 2014 by Adam Gunn, leveraging on many years of experience in the natural resources sector. Amongst other things Adam was legal counsel to Ridge Mining and First Uranium Corporation and a partner at Edward Nathan Sonnenbergs and Eversheds. The vision of the firm continues to be to provide exceptional service to our clients in the natural resources sector.

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