



## **NEWSLETTER- MARCH 2017**

Dear Readers,

We would like to wish all our readers a very happy Easter and Pesach.

The March 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 NEWS AND LEGISLATION**

#### **VW Car Emissions**

Volkswagen pleaded guilty to fraud, obstruction of justice, and falsifying statements as required by the \$4.3 billion settlement agreement between the German auto manufacturer and the US Department of Justice Department . The guilty plea was accepted by US District Judge Sean Cox. In addition to various reforms and oversight the company must undergo under the pending plea agreement; the DOJ has levied charges against seven current and former VW executives for crimes related to the company's emissions testing

(Full article from <http://www.jurist.org/paperchase/2017/03/volkswagen-pleads-guilty-for-diesel-emissions-scandal.php>)

#### **Fracking in the Karoo**

The Minister of Mineral Resources, Minister Mosebenzi Zwane, announced this week that the go-ahead for shale gas development in the Karoo region has been given.

Interestingly, the Minister assured that the regulatory framework would ensure that shale gas was "orderly and safely developed" through hydraulic fracturing, commonly known as fracking.

What is of particular importance is the fact that the Minister commented on the finalisation of the Mineral and Petroleum Resources Development Act (MPRDA) amendments, stating that this finalisation would help to expedite the development of shale gas.

Zwane said on Thursday that they were mindful of the risks and challenges of the development, especially on water and the environment.

He said a socio-economic and environmental assessment had been conducted beforehand.

"This was necessary to enable a process of data and information collection for informed decision-making on shale gas development."

He said they were committed to developing the resource sustainably.

Assurances were made that the farming community would benefit from shale gas development, while the Square Kilometer Array would not be affected.

(Full article <http://www.news24.com/SouthAfrica/News/govt-gives-green-light-for-shale-gas-fracking-in-karoo-20170330> )

### Legislation

The Department of Water and Sanitation published new Regulations regarding the Water Use Licence and Appeal process on 24 March 2017. The Regulations can be found at: <http://www.gov.za/documents/national-water-act-regulations-procedural-requirements-water-use-licence-applications-and>

## **NATIONAL CASE LAW**

### *Macassar Land Claims Committee v Maccsand CC and Others*

The issue regarding land claims and mining rights has been lingering for many years with the case of Maccsand in the wings. The case began where a right to land and possible expropriation, which had a mining right held by Maccsand, was heard by the Land Claims Commission. In 2008, the LCC (per Gildenhuys J) concluded that the Minister of Public Works was empowered to expropriate a mining right for purposes of restitution and that it had the power to order the Minister to affect such expropriation. The order given by the court questioned the strength of mining rights and the application of the MPRDA in such instances.

The matter continued to the Supreme Court of Appeal and the SCA heard a special plea from Maccsand and the State, which stated that the LCC had no jurisdiction to expropriate mining rights.

The SCA found in favour of Maccsand and upheld the special plea. Wallis JA found that even if the Committee were to acquire title to the erf in question that would not afford it any right to undertake mining itself or to interfere with a right properly obtained by Maccsand under the MPRDA in relation to that erf. The SCA accordingly upheld the special plea and found that the LCC had no power to order the expungement or expropriation of Maccsand's mining right.

The Constitutional Court dismissed the Committee's subsequent application for leave to appeal on the basis that it bore no prospects of success, thus preserving the stability of the

mining regime under the MPRDA and avoiding that stability from being engulfed with uncertainty and undermined.

*Earth Life Africa v Department of Environmental Affairs & Others*

In what is deemed to be the country's first climate change law suit, the North Gauteng High Court heard arguments by ELA, stating that the DEA is required to instruct coal-fired power stations to undertake climate change impact assessment reports before an Environmental Authorisation can be issued.

The court case follows a long-winded process which began with the DEA issuing an Environmental Authorisation to Thabametsi Power Company (Pty) Ltd for the proposed coal-fired power station. The Centre for Environmental Rights, on behalf of ELA, appealed the issuing of the Environmental Authorisation, on the basis that the effects of climate change had not been determined and that the Minister has not taken into account all relevant environmental impacts.

The Minister of Environmental Affairs dismissed the appeal but stated in the appeal decision that Thabametsi would be required to conduct a climate change impact assessment report and such report would have to go out for public participation and be open for comment. Upon reaching such decision, CER took the Minister's decision on review to the High Court. The CER stated that, whatever the results of the climate change impact assessment report stated and should it show huge climate change impacts, the Minister was not in a position to revoke the Environmental Authorisation, as the Minister become *functus officio* upon giving the appeal decision.

Thabametsi, upon the appeal decision, undertook to compile a climate change impact assessment report and at such time that the case was heard in the High Court, the report had been sent out for public comment, upon which CER had commented.

On 8 March 2017, the High Court ordered that the review is upheld and that the dismissal of the appeal is set aside. The Court ordered that the Minister reconsider the appeal, now, taking into account a full climate change impact assessment report, and all public comments received.

*Mineral Sands Resources (Pty) Ltd v Magistrate for the District of Vredendal, Kroutz NO and Others (18701/16) [2017] ZAWCHC 25 (20 March 2017)*

*"This case concerns the validity of a search warrant issued by the first respondent on 26 September 2016 in which he authorised a search of the applicant's Tormin sand mine near Lutzville. Among other issues, the application raises questions (i) about the interpretation of statutory provisions giving effect to the government's One Environmental System agreement, an arrangement intended to establish a single environmental system for assessing the environmental aspects of activities, including mining activities, and (ii) about the powers of the various kinds of inspectors appointed to monitor and enforce compliance with environmental legislation."*

## JOKE OF THE MONTH



Submit your commercial, mining or environmental law joke to Gunn Attorneys at [alexarae@gunnattorneys.co.za](mailto:alexarae@gunnattorneys.co.za) and the best jokes will be published in our next newsletter.

### 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.

#### Our contact details:

Adam Gunn

Office: +27 11 788 2000

Fax: +27 86 459 2405

Mobile: +27 72 533 4399

Physical: 15 Glenhove Road, Melrose, 2196.

E-mail: [adam@gunnattorneys.co.za](mailto:adam@gunnattorneys.co.za)  
[professionals@gunnattorneys.co.za](mailto:professionals@gunnattorneys.co.za)

Website: [www.gunnattorneys.co.za](http://www.gunnattorneys.co.za)

Social media: [https://www.facebook.com/gunnattorneys/?ref=aymt\\_homepage\\_panel](https://www.facebook.com/gunnattorneys/?ref=aymt_homepage_panel)  
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