



water affairs

Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

TO: ALL MEDIA

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WATER AFFAIRS DEPARTMENT TO APPEAL EXXARO JUDGMENT

The Department of Water Affairs is to appeal the North Gauteng High Court judgment in the matter between Exxaro Coal (Mpumalanga) Pty Ltd and Exxaro Coal vs the Minister of Water and Environmental Affairs.

Minister Edna Molewa has studied the judgment and is of the view that she acted within her mandate when she suspended the Water Tribunal following the resignation of its chairperson in November last year (2011).

Exxaro lodged an urgent application to the North Gauteng High Court seeking the suspension of two directives issued by the Department related to contravention of the conditions of their Water Use License alternatively to stop the minister from taking further action including possibly pursuing a criminal case against the mine. The mine is illegally abstracting water for use at its operations at Leeuwpan in Mpumalanga.

The North Gauteng High Court handed down a judgment on the matter in which it ruled in favour of Exxaro and ordered the following:

- 1.1 Suspension of the two Directives namely the first one for Glisa Colliery and the second one for Leeuwpan, alternatively interdict the Minister from taking any steps against it (criminal prosecution).
- 1.2 Ordered the Minister to call for nominations for the Chairperson of The Water Tribunal (a lawyer that has to be recommended by the Judicial Services Commission) in the Government Gazette within 5 days of order;
- 1.3 Ordered the Minister to appoint a Chair of Water Tribunal on recommendation of JSC and the Deputy and other members on recommendation from the Water Research Commission;

- 1.4 Declared the Minister's Directive in terms of section 150 NWA for the implementation of mediation and negotiations as an alternative and interim solution to be invalid and of no force and effect, alternatively that this Directive is set aside and declaring that Exxaro is not obliged to comply with Directive

The department is of the opinion that the judgment can be challenged in fact and in law. In addition, there are grave unintended consequences if the order to suspend the directives is left unattended.

Such unintended consequences are far reaching as they effectively give Exxaro's Leeuwanpan operation the go ahead to continue mining on a wetland. The Department cannot allow the destruction of our environment in this way. If left unchallenged the judgment could open the way for other mines to mine wetlands.

ENDS

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