

**IMMEDIATE RELEASE**

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**Constitutional Court rules against coal mining in Mpumalanga Protected Area**

*Cape Town:* The Constitutional Court has had the final say on permission to mine for coal in an Mpumalanga Protected Area and Strategic Water Source Area.

The [Mabola Protected Environment](#) near Wakkerstroom, Mpumalanga (Mabola) was declared under the [Protected Areas Act](#) in 2014 by the Mpumalanga provincial government as part of the declaration of more than 70 000 hectares of protected area in the Mpumalanga grasslands. This followed years of investment, including extensive research and planning by a number of government agencies, including the [Department of Environmental Affairs](#), the [South African National Biodiversity Institute](#) and the [Mpumalanga Tourism & Parks Agency](#).

South Africa has [22 Strategic Water Source Areas \(SWSAs\) which comprise 10% of the land area that produces 50% of the country's fresh water](#). They supply water to South Africa's largest urban centres, agricultural areas and support downstream economies and ecosystems. The [Enkangala-Drakensberg Strategic Water Source Area](#), where Atha proposes to mine coal, specifically supports the economic hub of Gauteng as well as various towns and agricultural regions in Mpumalanga, KwaZulu-Natal and the Free State.

In November 2018, the Pretoria [High Court set aside](#) the 2016 decisions of the then Ministers of Mineral Resources and Environmental Affairs to permit a new coal mine to be developed inside Mabola, with a punitive costs order against the Ministers and the MEC for Environment in Mpumalanga.

Mining company Atha-Africa Ventures (Pty) Ltd (Atha) attempted four times to challenge that judgment. The Constitutional Court was the mining company's last hope. [The civil society coalition](#) (Coalition) defending Mabola was obliged to oppose all of those challenges and is delighted that the 2018 judgment remains intact. The Constitutional Court also awarded costs against the company.

"This is a significant victory. Our courts continue to recognise the importance of the protection of the environment, and our strategic water resources, especially at a time when we are already suffering the impacts of climate change. Decisions to authorise coal mines should be critically scrutinised and questioned," said Elton Thobejane, Chairperson of Coalition member the Mining and Environmental Justice Communities Network of South Africa (MEJCON-SA).

Coalition member groundWork's Director, Bobby Peek said "Defending the Mabola Protected Environment is more than an attempt to mitigate further climate change impacts. It is also about defending the rights of communities who will be impacted by the proposed mining activities. groundWork applauds this decision as it sends a strong message to decision-makers that mining and profits cannot come before communities and their sustainable livelihoods."

To proceed with its proposed coal mine in this Protected Area and Strategic Water Source Area, Atha would require a fresh approval under the Protected Areas Act from the new Minister of Environment, Forestry and Fisheries, Barbara Creecy, and the new Minister of Mineral Resources and Energy, Gwede Mantashe.

However, they may not consider giving permission until the Director General: Department of Mineral Resources (DMR) has decided the Coalition's Appeal of Atha's Environmental Management Programme (EMPR) for the proposed coal mine, which the DMR approved in 2016.

Through the Coalition's challenges, records have revealed that officials in various government departments had recommended that approvals for the mine be refused, but these recommendations were overruled by their superiors.

In the case of the DMR, officials had recommended that the EMPR be rejected, but these recommendations were then overruled. Some of the reasons given by the DMR officials for their recommendations include:

1. The fact that the proposed mine is in a National Freshwater Ecosystem Priority Area;
2. *'the proposed measures provided for the management of impacts towards water resources (i.e. wetlands, streams) cannot be considered reliable to contain or remedy the cause of pollution or degradation resulting from the proposed mining operations';*
3. The proposed mine area is mostly characterised by wetlands and rivers which form an integral part of the fresh water system and has also been identified as a source of fresh water supply for the country;
4. The mine area comprises of irreplaceable sites that are characterised by highly threatened species and largely intact ecosystem, the loss or transformation of which preclude the meeting of specific biodiversity conservation targets within the Mpumalanga Biodiversity Conservation Plan;
5. The treatment of the anticipated post closure decant through a water treatment plant is not considered environmentally sustainable; and
6. The financial provision of R5, 757, 031.00 cannot be considered to be acceptable since the measures provided are not sustainable to remedy the cause of pollution or degradation considering the sensitivity of the area.

In January 2019, the [Pretoria High Court refused Atha permission to appeal](#) the November 2018 judgment. The [Supreme Court of Appeal \(SCA\) found similarly in April 2019](#) – that there was no prospect of successfully overturning the High Court judgment. In July 2019, the [President of the SCA dismissed Atha's application to her to reconsider](#) the SCA's April 2019 refusal. Now the Constitutional Court has held similarly.

The Coalition defending the Mabola Protected Environment against this proposed coal mine and that secured the High Court victory that the Constitutional Court has left intact, comprises the [Mining and Environmental Justice Communities Network of South Africa](#), [groundWork](#), [Earthlife Africa Johannesburg](#), [BirdLife South Africa](#), the [Endangered Wildlife Trust](#), the [Federation for a Sustainable Environment](#), the [Association for Water and Rural Development \(AWARD\)](#) and the [Bench Marks Foundation](#). The Coalition is represented by the [Centre for Environmental Rights](#).

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NOTES TO EDITOR

Download:

- [Pretoria High Court judgment](#) of November 2018.

More information about the importance of legal protection for [Strategic Water Source Areas](#).

More information about the [civil society campaign to defend the Mabola Protected Environment](#).