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Call for Public Consultation on Water Licence for Mine

Earlier this week, the Centre for Environmental Rights requested the Department of Water and Sanitation's Western Cape Regional Office to order mining company Elandsfontein Exploration and Mining Pty Ltd (EEM) to conduct public participation in its application for a water use licence. Despite not yet having a water use licence, and with its environmental management programme still under appeal, EEM has already largely completed construction of an opencast phosphate mine on the edge of the West Coast National Park.

To date, EEM has not consulted with any of the interested and affected parties on its proposed water use, or the risks this water use may pose to the Elandsfontein aquifer which recharges the Langebaan Lagoon. Two public interest organisations, the World Wide Fund for Nature South Africa (WWF-SA) and the West Coast Environmental Protection Association (represented by Cullinans and Associates), have already asked the Department of Water and Sanitation to instruct EEM to conduct public participation, but the Department has to date failed to do so.

"In this instance, EEM is proposing an opencast phosphate mine which may cause significant detrimental impacts on the Elandsfontein Aquifer with implications for the Langebaan Lagoon. There are many West Coast residents who rely on the Langebaan Lagoon for their livelihoods. The Langebaan Lagoon is also a declared Ramsar Site, and any damage to the ecological functioning of the lagoon will have far-reaching environmental and social implications," the CER wrote.

"Moreover, at least three entities – including an organ of state – have objected in writing to the [licence] being issued, and two have expressly asked for public participation. In these instances, we have no doubt that the Water Tribunal – and a court, if necessary – will set aside any water use licence issued without such public participation."

The CER referred to an objection lodged by SANParks in December 2016, which was inexplicably withdrawn in early February 2017. In its objection, SANParks wrote that "[t]here are major concerns about the possible creation of artificial wetlands in the park and the water not being returned to the aquifer as planned, thus potentially endangering the Langebaan Lagoon." SANParks also warned that "[n]either SANParks nor South Africa wants to run the risk of the country having one of its important Ramsar sites removed from the Montreux Record."

SANParks' objection concluded that "based on all the mentioned concerns, uncertainties, knowledge gaps with regard to possible long-term negative impacts on the subterranean water system, surrounding ecosystem and the Langebaan lagoon, including EEM's failure to obtain an Environmental Authorisation, SANParks is unable to support the granting of a WUL to Elandsfontein Exploration and Mining. It is cordially requested that the Regulator reject granting a water-use licence to EEM."

CER Executive Director Melissa Fourie says: "The High Court has made it clear that the Department of Water and Sanitation must ensure that the requirements of the Promotion of Administrative Justice Act are met. To consider the granting of a water use licence to EEM without any public participation, when you're dealing with possible violations of international treaties, and objections lodged by two public interest organisations, will surely just result in the water use licence being set aside in due course. We call upon the Department to follow the law, to act fairly and in the interest of the protection of water resources, and to ensure that all interested and affected parties have adequate opportunity to understand what is being proposed, and to make their representations to the Department."