

**environmental affairs**

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

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Mr J A Bester
Department of Water Affairs
Private Bag X313
PRETORIA
0001

Fax no: (012) 336 7399

PER FACSIMILE / MAIL

Dear Mr Bester

AMENDMENT OF ENVIRONMENTAL AUTHORISATION: THE CONSTRUCTION OF NCWABENI OFF-CHANNEL STORAGE (OCS) DAM, UMZUMBE LOCAL MUNICIPALITY, KWAZULU NATAL PROVINCE

The Department's decision on the above application issued on 27 August 2013 and your correspondence dated 28 January 2014 refers.

Based on a review of the reason for requesting an amendment to the above authorisation, the Department in terms of regulation 42 of the Environmental Impact Assessment Regulations, 2010, has decided to amend the environmental authorisation (EA) dated 27 August 2013 as follows:

Amendment 1:

Condition 1 under scope of authorisation on Page 12 is amended:

From:

The proposed construction of off-channel storage dam at Ncwabeni River (site D2) with an alternative dam type CFR Dam and abstraction of weir at lower site within Mzimkhulu River is approved.

To:

The proposed construction of an off-channel storage dam on the Ncwabeni River (site D2) with an abstraction weir at the lower site within Mzimkhulu River is approved.

Amendment 2:

Condition 6 on Page 13 is amended:

From:

This activity must commence within a period of three (3) years from the date of issue of this authorisation. If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.

To:

This activity must commence within a period of five (5) years from the date of issue of this authorisation. If commencement of the activity does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.

Amendment 3:

Condition 13 on Page 14 is amended:

From:

The Environmental Management Programme (EMPr) for abstraction weir, abstraction works, pipeline and access road submitted as part of the Application for EA must be amended and submitted to the Department for written approval prior to commencement of the activity. The recommendations and mitigation measures recorded in the EIAR dated April 2013 and comments from Ezemvelo KZN Wildlife dated 12 July 2013 and condition of EA must be incorporated as part of the EMPr. Once approved, the EMPr must be implemented and adhered to.

To:

The Environmental Management Programme (EMPr) for the abstraction weir, abstraction works, pipeline and access road submitted as part of the Application for EA must be amended and submitted to the Department for written approval prior to commencement of the activity. The recommendations and mitigation measures recorded in the EIAR dated April 2013 and relevant comments from Ezemvelo KZN Wildlife dated 12 July 2013 and condition of EA must be incorporated as part of the EMPr. Once approved, the EMPr must be implemented and adhered to.

Amendment 4:

Condition 14.5 on Page 14 is amended:

From:

The ECO must remain employed until all rehabilitation measures, as required for implementation due to construction damage, are completed and the site is ready for operation.

To:

The ECO must remain employed until the end of the defects liability period.

Amendment 5:

Condition 26 on Page 16 is amended:

From:

A 20m buffer must be enforced around all homesteads situated in close proximity to the footprint of the dam to ensure that any associated graves are not impacted on. No construction may take place within the buffer area and any graves found must be left in situ. The buffer must be highly visible to construction crew to avoid accidental damage occurs.

To:

A 20m buffer must be enforced around all abandoned homesteads at site D2 that are situated in close proximity to the footprint of the dam to ensure that any associated graves are not impacted on. No construction may take place within the buffer area and any graves found must be left in situ. The buffer must be highly visible to the construction crew to avoid accidental damage.



Amendment 6:

Condition 34 on Page 17 is amended:

From:

Monitoring must be undertaken just above the delineated estuary in order to monitor whether the estuarine ecological reserve is being met. Appropriate actions must be contained in the EMPr in order to guide actions to be taken should the monitoring indicate the reserve is not being met.

To:

During the operational phase, DWA must conduct monitoring of the estuary in accordance with the requirements of the Reserve.

Amendment 7:

Condition 38 on Page 18 is amended:

From:

Apart from the abstraction weir, the abstraction works, the pump station, the pipeline, the spillway, a buffer of 100m, measured from the top of the banks, must be established around river Freshwater Ecosystem Priority Area (FEPA).

To:

Apart from the abstraction weir, the abstraction works, the pump station, the pipeline, the spillway, the access roads, and all associated activities, a buffer of 100m, measured from the top of the banks, must be established around river Freshwater Ecosystem Priority Area (FEPA). Site plan to be developed prior to the establishment of the site, which aims to identify construction activities, facilities and structures, must include the FEPA buffer zone.

Amendment 8:

Condition 39 on Page 18 is amended:

From:

Apart from the abstraction weir, the abstraction works, the pump station, the pipeline, the spillway, modifications to the bed and banks of river FEPAs must be avoided. No excavation and/or removal of substrate material should be allowed, unless this is for rehabilitation purposes. All disturbances to the banks and bed, where this cannot be avoided, must be rehabilitated, and the EMPr must cater for this.

To:

Apart from the abstraction weir, the abstraction works, the pump station, the pipeline, the spillway, the access roads, and all associated activities, modifications to the bed and banks of river FEPAs must be avoided. No excavation and/or removal of substrate material should be allowed, unless this is for construction or rehabilitation purposes. All disturbances to the banks and bed, where this cannot be avoided, must be rehabilitated, and the EMPr must cater for this.



Amendment 9:

Condition 40 on Page 18 is amended:

From:

Riverine buffers must be maintained in a natural and healthy condition so as to support the movement of flora and fauna.

To:

Apart from the construction domain and the permanent infrastructure, riverine buffers must be maintained in a natural and healthy condition so as to support the movement of flora and fauna.

This letter must be read in conjunction with the EA dated 27 August 2013.

In terms of regulation 10(2) of the Environmental Impact Assessment Regulations, 2010 (the Regulations), you are instructed to notify all registered interested and affected parties, in writing and within 12 (twelve) days of the date of the Department's decision in respect of the amendment made as well as the provisions regarding the submission of appeals that are contained in the Regulations.

Your attention is drawn to Chapter 7 of the Regulations, which prescribes the appeal procedure to be followed. This procedure is summarised in the attached document. Kindly include a copy of this document with the letter of notification to interested and affected parties.

Should the applicant or any other party wish to appeal any aspect of the amendment decision a notice of intention to appeal must be lodged by all prospective appellants with the Minister, within 20 days of the date of the EA, by means of one of the following methods:

By facsimile: (012) 320 7561

By post: Private Bag X447,
Pretoria, 0001; or

By hand: 2nd Floor, Fedsure Building, North Tower,
Cnr. Lilian Ngoyi (Van der Walt) and Pretorius Streets,
Pretoria.

If the applicant wishes to lodge an appeal, it must also serve a copy of the notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where, and for what period, the appeal submission will be available for inspection, should you intend to submit an appeal.

Please include the Department (*Attention: Director: Integrated Environmental Authorisations*) in the list of interested and affected parties, notified through your notification letter to interested and affected parties, for record purposes.

Appeals must be submitted in writing to:

Mr Z Hassam Director: Appeals and Legal Review, of this Department at the above mentioned addresses or fax number. Mr Hassam can also be contacted at:

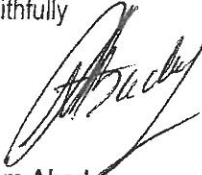


Tel: (012) 310 3271

Email: AppealsDirectorate@environment.gov.za

The authorised activities shall not commence within twenty (20) days of the date of signature of the authorisation. Further, please note that the Minister may, on receipt of appeals against the authorisation or conditions thereof suspend the authorisation pending the outcome of the appeals procedure.

Yours faithfully



Mr Ishaam Abader

Deputy Director-General: Legal, Authorisations, Compliance and Enforcement
Department of Environmental Affairs

Date: 26/03/2014

CC:	Mr Donaven Henning	Nemai Consulting	Tel: 011-781-1730	Fax: 011-781-1731
	Mr Sabelo Ngcobo	KZN DAEADR	Tel: 039-682-2040/5	Fax: 039-682-3325
	Ms LP Radebe	Umzumbe Local Municipality	Tel: 039-972-0005	Fax: 039-972-0099

APPEALS PROCEDURE IN TERMS OF CHAPTER 7 OF THE NEMA EIA REGULATIONS, 2010 (THE REGULATIONS) AS PER GN R.543 OF 2010 TO BE FOLLOWED BY THE APPLICANT AND INTERESTED AND AFFECTED PARTIES UPON RECEIPT OF NOTIFICATION OF AN ENVIRONMENTAL AUTHORISATION (EA)

APPLICANT	INTERESTED AND AFFECTED PARTIES (IAPs)
1. Receive EA from the relevant Competent Authority (the Department of Environmental Affairs [DEA]).	1. Receive EA from Applicant/Consultant.
2. Within 12 days of date of the EA notify all IAPs of the EA and draw their attention to their right to appeal against the EA in terms of Chapter 7 of the Regulations.	2. N/A.
3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA with the Minister of Water and Environmental Affairs (the Minister).	3. If you want to appeal against the EA, submit a notice of intention to appeal within 20 days of the date of the EA with the Minister of Water and Environmental Affairs (the Minister).
4. After having submitted your notice of intention to appeal to the Minister, provide each registered IAP with a copy of the notice of intention to appeal within 10 days of lodging the notice.	4. After having submitted your notice of intention to appeal to the Minister, provide the applicant with a copy of the notice of intention to appeal within 10 days of lodging the notice.
5. The Applicant must also serve on each IAP: <ul style="list-style-type: none"> a notice indicating where and for what period the appeal submission will be available for inspection. 	5. Appellant must also serve on the Applicant within 10 days of lodging the notice, <ul style="list-style-type: none"> a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.
6. The appeal must be submitted in writing to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.	6. The appeal must be submitted to the Minister within 30 days after the lapsing of the period of 20 days provided for the lodging of the notice of intention to appeal.
7. Any IAP who received a notice of intention to appeal may submit a responding statement to that appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.	7. An Applicant who received notice of intention to may submit a responding statement to the appeal to the Minister within 30 days from the date that the appeal submission was lodged with the Minister.

NOTES:

1. An appeal against a decision must be lodged with:-

- the Minister of Water and Environmental Affairs if the decision was issued by the Director- General of the Department of Environmental Affairs (or another official) acting in his/ her capacity as the delegated Competent Authority;
- the Minister of Justice and Constitutional Development if the applicant is the Department of Water Affairs and the decision was issued by the Director- General of the Department of Environmental Affairs (or another official) acting in his/ her capacity as the delegated Competent Authority;

2. An appeal lodged with:-

- the Minister of Water and Environmental Affairs must be submitted to the Department of Environmental Affairs;
- the Minister of Justice and Constitutional Development must be submitted to the Department of Environmental Affairs;

3. An appeal must be:-

- submitted in writing;
- accompanied by:
 - a statement setting out the grounds of appeal;
 - supporting documentation which is referred to in the appeal; and
 - a statement that the appellant has complied with regulation 62 (2) or (3) together with copies of the notices referred to in regulation 62.

