



Internet Article

Blue Scorpions defend their raid in court

4 June 2015

Officials of the Enforcement Unit in the Department of Water and Sanitation followed the correct legal steps when it removed sand and other obstacles from Umvoti River, north of Durban last year. These had been placed there for the purpose of conducting illegal sand-mining by KwaZulu Bulk Logistics CC.

This argument is presented in papers before court by the Head of the Blue Scorpions, Nigel Adams, where KwaZulu Bulk Suppliers (KBL) was applying for a court interdict to stop the department's Enforcement Unit from removing its sand from Umvoti River. The Department argues that KBL's activities contravened sections of the National Water Act which prohibits anyone from using water for commercial benefit without a water use license.

The case will be heard at the Durban High Court in KwaZulu-Natal on Monday, 8th June 2015. KBL is citing Minister Nomvula Mokonyane and the Judicial Services Commission as first and second respondents respectively. Also, the department contends that there is no legal rationale to site the Judicial Services Commission as a respondent as it is not a custodian of water.

In a raid during **Enforcement Month** in November 2014 the Blue Scorpions removed sand that was placed in the middle of Umvoti River by KBL to conduct sand mining. Adams argues that the action of KBL was illegal and it contravened sections of the National Water Act of 1998 which stipulates that for anyone to conduct sand mining in a river they needed a water use license.

Adams argues that in general, water use must be licensed unless it is listed in Schedule 1 of the National Act and it is permissible under a general authorization or if "a responsible authority waives the need for a licence".

KBL activities in Umvoti River were illegal and were contrary to the provisions of the National Water Act as the company did not have authorization to conduct its activities which are defined as water uses, Adams says.

He says the enforcement unit investigated complaints about the illegal activities of KBL from the communities that lived near the Mvoti River.

"On 30th September 2014 the departmental officials, colleagues from Umgeni Water and officials of KwaDuKuza Local Municipality – accompanied by the police – obtained a warrant from a local magistrate to remove berms and to protect the water resource quality and to investigate whether any condition in the Act, notice or directive was being contravened."

"During the investigation, inter alia, it transpired that indeed the company does have a right to mine sand on the left bank of Mvoti River that was issued by the Department of Minerals and Energy in 2006. However, we also found that KBL did not have authorisation to use water in its mining activities. We found that the company altered the bed, banks and characteristics of the river and has diverted its flow.

"KBL left left stock piles of sand inside and on the flood plain which have impacted on the characteristics of the river. In addition, they conducted mining activities inside the water



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course and left grease on site and closer to the river which has the potential of polluting the water.”

As a result of the river diversion, says Adams, water could not be channeled to the treatment plant which distributed it to formal and informal settlements in the area. This resulted in residents not receiving water at all. This would have resulted to a range of health hazards among the benefitting communities.

“As a result of our findings a pre-directive notice was issued and subsequently the department received representations from the applicant which were rejected. Subsequently, the impugned was issued to the applicant to stop its illegal activities. When we scrutinized KBL’s mining permission that was issued by the Department of Minerals and Energy we found that the applicant’s mining operations were clearly not in compliance with the Environmental Management Programme which is incorporated in its rights to mine”, says Nigel.

Furthermore, KBL failed to produce proof of its water use authorization for the water use authorization and its water use activities as contained in the Pre-directive. Subsequently, the department issued a Directive in terms of Section 53 (1) of the National Water Act which instructed KBL among others, to cease all mining operations in the river. This was that the company had failed to show cause why the Directive barring the activities should not be issued.

However, in defiance of the Directive KBL continued its activities and the transgression of the Environmental Management Programme, an act that had dire consequences for the environment and local communities that depended on water from Mvoti River.

By Themba Khumalo