

Constitutional Court dismisses coal mining company's bid to start mining

Civil society coalition welcomes the Constitutional Court decision to dismiss coal mining company Uthaka Energy's leave to appeal a 2021 High Court interdict, preventing the company from commencing mining in a Strategic Water Source Area.

The Constitutional Court's decision leaves intact a Pretoria High Court interdict granted earlier this year, which prevents Uthaka (formerly called Atha Africa Ventures) from conducting any mining activities for the proposed Yzermyn coal mine near Wakkerstroom in Mpumalanga, South Africa.

The decision is the latest milestone in a long-running legal battle by a coalition of eight civil society organisations, represented by the [Centre for Environmental Rights](#) (CER), to overturn the approvals given for the mine. At present there are six court challenges pending before the High Court.

"Over the last six years we have done everything within our power to overturn the approvals given for this mine in order to prevent the long-term threat to water security in South Africa that would arise from coal mining – a highly water intensive and water contaminating form of mining - in this ecologically sensitive area," says Mariette Liefferink, CEO of the Federation for a Sustainable Environment.

"The Constitutional Court's decision comes in a week when many world leaders gathered at COP26 committed to accelerate the transition away from coal power generation to avoid catastrophic climate change. That commitment includes refusing permits for new coal-fired power generation projects and promoting investment in and development of clean energy, in a way that benefits workers and communities," says groundwork director, Bobby Peek.

"We welcome the Constitutional Court decision as an important local acknowledgement of the need to pause development of new coal mining, particularly in our strategic water source areas, when the impact of coal mining and burning on global warming is irrefutable. Our focus, particularly here in Africa, needs to be on building our resilience to climate change, not making it worse," says Peek.

2021 Pretoria High Court interdict

The interdict prevents and restrains the coal mining company from conducting any mining activities and mining-related operations (including any activities preparatory, ancillary or incidental to mining) – save for survey pegging of the surface infrastructure boundary and wetlands demarcation pegging of the approved plan until the Coalition's court applications to set aside the approvals for the mine have been decided.

“The Constitutional Court’s decision leaves the High Court interdict intact and therefore allows proper judicial determination of the legal proceedings underway *before* the environmental harm is caused,” says Margaret Molomo, Chairperson, Mining and Environmental Justice Community Network of South Africa (MEJCON).

Long-term water security threatened

The proposed coal mine would fall within a Strategic Water Source Area – one of only 22 areas where more than 50% of South Africa’s freshwater originates. Protecting Strategic Water Source Areas is crucial for South Africa’s water security, and its ability to provide water for people, livelihoods and economic activity, particularly in light of the effects of global warming.

Until January 2021, the proposed mining area also fell within the Mabola Protected Environment, a protected area declared under the Protected Areas Act in 2014. In January 2021, the Mpumalanga MEC revoked the protected area status to allow the proposed coal mine to proceed in that environment but no longer under that protection. The MEC’s decision is one of those challenged by the Coalition in the High Court.

Both the recognition of the area as a Strategic Water Source Area and its declaration as a protected area were the result of more than a decade of government supported and funded research and planning by the Department of Water and Sanitation, the Department of Environmental Affairs, and a number of government agencies like the South African National Biodiversity Institute (SANBI), the Mpumalanga Tourism & Parks Agency, the Council for Scientific and Industrial Research (CSIR) and the Water Research Commission.

The Coalition defending the Mabola Protected Environment 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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The Centre for Environmental Rights is a non-profit organisation and law clinic based in Cape Town, South Africa. As a group of activist lawyers, the CER helps communities and civil society organisations in South Africa to realise our Constitutional right to a healthy environment by advocating and litigating for environmental justice.

