



**REFERENCE:** 14/2/4/2/2/F2/3/0017/18

**ENQUIRIES:** Ziyaad Allie

**REGISTERED MAIL**

Tel: (022) 921 3439

Email: grettchen@algestate.com

The Board of Directors  
ALG Boerdery (Pty) Ltd  
P.O. Box 8  
**CITRUSDAL**  
7340

**Attention: Ms Grettchen van der Merwe**

Dear Madam

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL DEVELOPMENT OF THE BOPLAAS DAM ON PORTION 17 OF FARM 467 CITRUSDAL**

With reference to your application dated 22 August 2018 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

**ENVIRONMENTAL AUTHORISATION**

**A. DECISION**

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities as described in the application dated 22 August 2018 and in the environmental assessment dated 20 March 2019.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C below and is subject to compliance with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

The Environmental Authorisation does not exempt the holder thereof from compliance with any other applicable legislation.

## B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

ALG Boerdery (Pty) Ltd.  
c/o Ms Grettchen van der Merwe  
P.O. Box 8  
CITRUSDAL  
7340  
Tel: (022) 921 3439  
Email: grettchen@algestates.com

The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as "the holder".

## C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p>Government Notice No. R327 of 07 April 2017</p> <p><b>Activity Number: 12</b></p> <p>Activity Description: <i>The development of—</i></p> <p><i>(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 100 square metres or more;</i></p>	<p>The Boplaas dam exceeds the threshold of 100m<sup>2</sup> and is constructed within a watercourse.</p>

<p>where such development occurs—</p> <p>(a) within a watercourse;</p> <p>(b) in front of a development setback; or</p> <p>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse.</p>	
<p>Government Notice No. R327 of 07 April 2017</p> <p><b>Activity Number: 19</b></p> <p>Activity Description:</p> <p>The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</p> <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <p>(a) will occur behind a development setback;</p> <p>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</p> <p>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.</p>	<p>The construction of the Boplaas dam entailed the excavation, removal, or moving of soil of more than 10m<sup>3</sup> from a watercourse.</p>
<p>Government Notice No. R327 of 07 April 2017</p> <p><b>Activity Number: 27</b></p> <p>Activity Description:</p> <p>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</p> <p>i. The undertaking of a linear activity; or</p> <p>ii. maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>The construction of the Boplaas Dam entailed the clearance of 1ha or more of indigenous vegetation.</p>

The abovementioned list is hereinafter referred to as "the listed activities".

#### D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Portion 17 of Farm Allendale 467, Citrusdal.

The SG digit code is: C02000000000046700017

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	32° 36' 22.22" South	19° 3' 41.10" East
2	32° 37' 10.99" South	19° 4' 6.26" East
3	32° 37' 10.07" South	19° 4' 23.27" East
4	32° 37' 41.06" South	19° 4' 28.55" East

Refer to Annexure 1: Locality Plan  
Herein-after referred to as "the site".

#### E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Pieter Badenhorst Professional Services

c/o Pieter Badenhorst

P.O Box 1058

WELLINGTON

7654

Email: [pbps@iafrica.com](mailto:pbps@iafrica.com)

#### F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The construction of the new instream Boplaas Dam (water storage dam) with a storage capacity of 118 533m<sup>3</sup> entailed the excavation of more than 10m<sup>3</sup> from a watercourse as well as the removal of more than 1ha of indigenous vegetation. The dam was constructed over two watercourses, however most of the dam area is located on

previously cultivated land. A small unnamed stream and drainage line merge at the Boplaas dam with the small stream originating in the valley to the east of the dam (stream A) and the drainage line in the valley to the north (stream B), which after their confluence, act as a tributary to the Boontjies River further downstream. Stream A is still in a pristine state in its upper reaches, degrading significantly as it enters agricultural land. Stream B is in a moderately to largely modified state from origin to the dam. Furthermore, a portable pump was installed at the Olifants River and a new pipeline was installed from the portable pump to an existing pipeline. The pipeline crosses two watercourses, however no excavation or removal of soil occurred as the pipeline is elevated over the watercourses.

## **G. CONDITIONS OF AUTHORISATION**

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

### **PART I**

#### **Scope of authorisation**

1. The holder is authorised to undertake the listed activities specified in Section C above in accordance with and restricted to implemented Alternative described in the application and assessment report dated 20 March 2019 on the site as described in Section D above.
2. The holder is authorised to continue, conduct or undertake listed activities as specified above within the period 10 years from the date of this environmental authorisation.
3. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
4. Any changes to, or deviations from the scope of the alternative described in Section F above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may

request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

## **PART II**

### **Written notice to the competent authority**

5. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of commencement of construction activities.

5.1 The notice must make clear reference to the site details and 24G Reference number given above.

## **PART III**

### **Notification and administration of an appeal**

6. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision –

6.1 notify all registered Interested and Affected Parties ("I&APs") of –

6.1.1 the outcome of the application;

6.1.2 the reasons for the decision as included in Annexure 2;

6.1.3 the date of the decision; and

6.1.4 the date when the decision was issued.

6.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.

6.3 draw the attention of all registered I&APs to the manner in which they may access the decision.

6.4 provide the registered I&APs with:

6.4.1 the name of the holder (entity) of this Environmental Authorisation;

6.4.2 name of the responsible person for this Environmental Authorisation;

6.4.3 postal address of the holder;

6.4.4 telephonic and fax details of the holder;

- 6.4.5 e-mail address, if any, of the holder; and
  - 6.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.
7. The listed activities, including site preparation, may not commence within 34 (thirty-four) calendar days from the date of issue of this Environmental Authorisation. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

#### **PART IV**

##### **Management of the activity/development**

8. The Boplaas Dam - Environmental Management Programme – Construction & Operational of September 2018 ("EMPr") compiled by Pieter Badenhorst Professional Services and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
9. The EMPr must be included in all contract documentation for all phases of implementation.

#### **PART V**

##### **Monitoring**

10. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities, and must be made available to anyone on request, including a publicly accessible website (if applicable).
11. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

## **PART VI**

### **Auditing**

12. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and submit such Environmental Audit Reports to the competent authority upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

## **PART VII**

### **Activity/ Development Specific Conditions**

13. The mitigation measures as outlined in the Freshwater Assessment of May 2018 must be implemented.
14. Rehabilitation activities around the dam should entail rehabilitation and re-vegetation with appropriate terrestrial vegetation in order to lower erosion potential.
15. Access to the pump on the Olifants River should be kept to a 3m wide corridor leading to the pump station.
16. The excavation of the pipeline ditch is to fall within a 3m wide corridor both at the Olifants River banks and sections crossing the drainage lines. All areas falling outside this corridor and within the Olifants River buffer area is to be strictly treated as No-Go areas.
17. Any further agricultural development is to take place outside of a 50m buffer area (from the top of the bank) along the section of the Olifants River falling on the Holder's property.
18. All parts of the pipeline falling within the 50m buffer area of the Olifants River should be fully rehabilitated and re-vegetated after construction activities.



## H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not continue, conduct or undertake listed activities within the period referred to in Condition 2 of Section G, this Environmental Authorisation shall lapse for that activity or activities, and a new application for Environmental Authorisation must be submitted to the competent authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment must be made on condition that the environmental authorisation is valid on the date of receipt of such amendment application.

Note that:

(1) In terms of regulation 28(1A) of the *EIA Regulations, 2014* the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application, but may consider an application for environmental authorisation for the same development.

(2) In terms of regulation 28(1B) of the *EIA Regulations, 2014* an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.

(3) It is an offence in terms of section 49A(1)(a) of the NEMA for a person to commence with a listed activity if the competent authority has not granted an environmental authorisation for the undertaking of the activity.

4. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

## **I. APPEALS**

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –

- 1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.

2. An appellant (if NOT the holder) must –

- 2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

3. The holder (if not the appellant), the decision-maker, I&APs and Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

4. This appeal and responding statement must be submitted to the address listed below:

By post: Western Cape Ministry of Local Government, Environmental  
Affairs and Development Planning  
Private Bag X9186  
CAPE TOWN  
8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter  
Room 809  
8th Floor Utilitas Building, Dorp Street, Cape Town, 8001

By e-mail: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

**Note:** You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

5. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

#### **J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS**

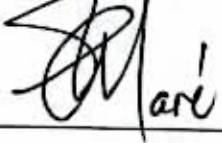
Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

#### **K. DISCLAIMER**

The Western Cape Government, the Municipality, committees or any other public authority or organisation appointed in terms of the conditions of this Environmental Authorisation shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation

subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully



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**ADV. CHARMAINE MARÉ**

**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

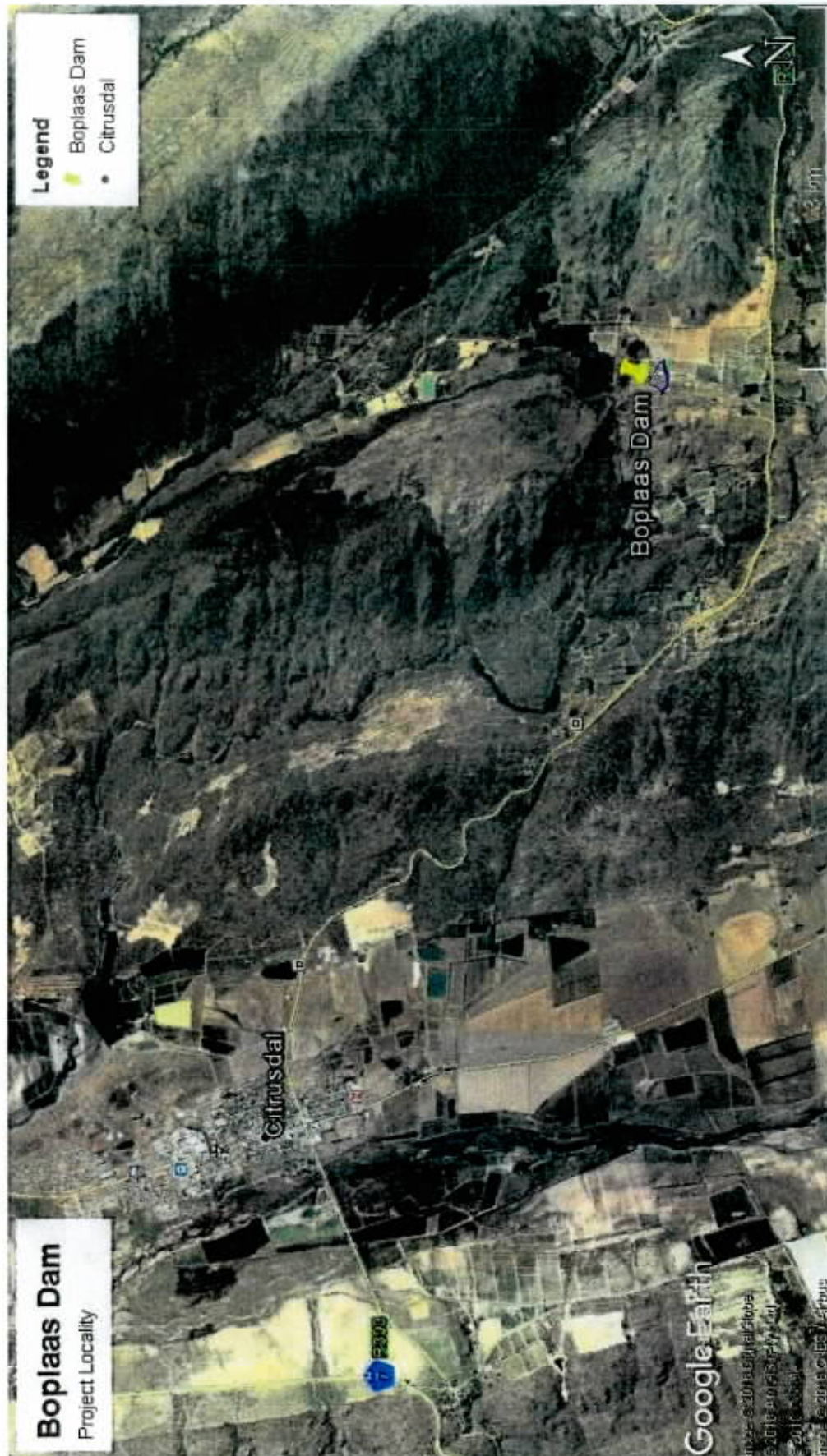
DATE OF DECISION: 29 AUGUST 2019

Copied to: (1) Mr. Pieter Badenhorst/Mische Mollie (EAP)

Fax: (086) 672 1916

Email: [mische@pbps.co.za](mailto:mische@pbps.co.za)

ANNEXURE 1: LOCALITY MAP



## **ANNEXURE 2: REASONS FOR THE DECISION**

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R125 000 (One hundred and twenty-five thousand Rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the application form dated 22 August 2018 and the Assessment Report received by the competent authority on 27 March 2019, and the Environmental Management Programme ("EMPr") submitted together with the Assessment Report.
- b) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- d) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- e) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- f) The site visit conducted on 03 April 2019 attended by officials from this Department.

All information presented to the competent authority was taken into account in the consideration of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

## 1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- An advertisement was placed in the "**Ons Kontrei**" newspaper on 1 June 2018.
- A site notice was erected; and
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 21 November 2018.
- I&APs were afforded the opportunity to provide comments on the application and assessment reports.

### 1.1 Consultation with organs of state in terms of section 24O of the NEMA

- Cederberg Municipality
- West Coast District Municipality
- Heritage Western Cape
- Department of Water and Sanitation
- Department of Agriculture
- CapeNature

At the end of the public participation process, CapeNature provided comments on the application. A summary of the comments received and the responses thereto from the EAP follows below.

CapeNature ("CN") stated that according to the Western Cape Biodiversity Spatial Plan of 2017, there is no Critical Biodiversity Areas on the property however most of the property has been mapped as an Ecological Support Area ("ESA"). It was noted by CN that the site of the new dam is mapped as an ESA 1 and 2 and that a freshwater specialist assessment was conducted. The freshwater specialist assessed the cumulative impacts of the dam and concluded it to be low given the relatively small size and ephemeral nature of the watercourse, as well as the size of the dam in relation to the catchment area. CN supports the proposed mitigations measures which includes:

- Revegetation around the dam;
- Strict management of current alien invasive species, inclusive of areas up and downstream of the dam; and
- Removal of construction rubble.

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.

The competent authority concurs with the EAP's responses to the issues raised during the public participation process and has included appropriate conditions in this Environmental Authorisation and in the EMPr.

## **2. Alternatives**

### **2.1 Location Alternatives**

#### Alternative 1 (Herewith authorised)

This entails the construction of the new instream Boplaas Dam (water storage dam) with a storage capacity of 118 533m<sup>3</sup>. The dam was constructed over two watercourses, however most of the dam area is located on previously cultivated land. A small unnamed stream and drainage line merge at the Boplaas dam with the small stream originating in the valley to the east of the dam (stream A) and the drainage line in the valley to the north (stream B), which after their confluence, act as a tributary to the Boontjies River further downstream. This alternative was considered as the preferred option since most of the dam would be constructed on disturbed land. Furthermore, the dam is located on an elevated area which is considered to be the best option for irrigation as less electricity will be required to pump water from the dam.

#### Alternative 2- Enlarging the existing downstream dam.

This alternative was not considered preferred since the enlargement would entail the loss of existing plantations. This will, in turn, lead to less revenue.



## 2.2 The option of not implementing or continuing with the activity ("No-Go" Alternative)

This alternative has been considered but is not a viable option for the following reasons:

- Availability of water for irrigation during the summer months will be of great concern.
- The applicant will not be gaining financial benefits.
- Better management of both water resources and water use will not be achieved.
- No job security for existing workers and future workers.

Therefore, this alternative is not deemed preferred.

### 3. **Environmental Impact Assessment (EIA) and Mitigation Measures**

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

#### 3.1. Activity Need and Desirability

The dam was constructed within two watercourses in order to contain water and it is located on cultivated agricultural land. As such, the location factor of the dam was taken into account. The dam is located on agricultural land and is used for irrigation of crops.

#### 3.2. Regional/ Planning Context

The dam construction is in line with its existing land use which is agricultural. The development of the existing dam is, therefore, the expansion of the existing use.

#### 3.3. Biophysical and Biodiversity Impacts

The area on which the new dam lies is classified as an Ecological Support Area (ESA 1 and 2). The section of the Olifants River that will be affected by the new portable pump as well as its larger corridor is classified as Aquatic Critical Biodiversity Area (CBA1) and the drainage lines flowing across the agricultural land is classified as ESA2. A small unnamed stream and a drainage line merge at the new Boplaas Dam, with the small stream originating in the valley to the east of the dam (Stream A) and the drainage line in the valley to the north (Stream B), which after their confluence, act as tributary to the Boontjies River further downstream. Stream A is still in a pristine state in its far upper reaches, degrading

significantly as it enters agricultural land. Stream B is in a moderately to largely modified state from origin to the dam. Downstream of the Boplaas Dam the stream is in a largely to seriously modified state, being completely channelled to where it flows into a downstream dam. Both streams were found to be of ephemeral nature, only flowing after rainfall events and not sustaining any aquatic vegetation directly upstream of the dam. The impacts of the dam construction have had a localised impact on biodiversity.

#### 4. NEMA Principles

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the competent authority is satisfied that the listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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—END—

## **Nabeelah Khan**

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**From:** Ziyaad Allie  
**Sent:** Friday, August 30, 2019 8:54 AM  
**To:** 'Gretchen van der Merwe'  
**Cc:** Nabeelah Khan; 'Mische Mollife'  
**Subject:** Farm\_467\_Citrusdal\_Environmental\_Authorisation  
**Attachments:** Farm\_467\_Citrusdal\_EA.pdf

FYA

Ziyaad Allie

Specialised Environmental Officer  
Directorate: Environmental Governance  
Sub-directorate: Rectification  
Department of Environmental Affairs and Development Planning

1st Floor, 1 Dorp Street, Leeusig Building, Cape Town, 8001

Telephone : 021 483 2991  
Facsimile : 021 483 4033  
Email : [Ziyaad.allie@westerncape.gov.za](mailto:Ziyaad.allie@westerncape.gov.za)  
Website : [www.westerncape.gov.za/eaddp](http://www.westerncape.gov.za/eaddp)