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RAND WATER
522 IMPALA ROAD
Glenvista
2058

Email: apeens@apalaw.co.za
Our Ref: AP1465
Your Ref:
Date: 29 February 2024.

"By mail: lphalane@randwater.co.za

Dear Mr Lesiba Phalane

REDUCION OF BULK POTABLE WATER SUPPLY TO MERAFONG LOCAL MUNICIPALITY

We confirm that our offices act on behalf of our client, the Concerned Citizens of Fochville ("CCF" or "our client"), who instructed our offices to address this letter to you, as we hereby do, relating to water supply to members of our client in the resort of the Merafong City Local Municipality. Our client consists of citizens in Fochville and surrounds who pay for basic services and/or are exempted from payment and/or partly exempted. In short, our client members are in good standing.

On 28 February 2024 the Merafong Local Municipality ("the Municipality") communicated via a public notice that you commenced with the reduction of bulk potable water to the Municipality.

Our view is that your decision (in terms of inter alia section 4 of the Water Services Act) to reduce the bulk potable water supply is because the Municipality is in arrears with payment for water and not as a result of climate conditions as referred to by your spokesperson Makenosi Maroo.

Your decision to reduce the water supply by 70% has resulted in many of our client members not receiving water at all.

It is our instructions that your offices took a decision that impacts on the constitutional rights of our clients without engaging our clients / members of the public. To amplify,

- to date we could not establish if your offices properly informed our clients, and the rest of the Merafong community, as none of our clients can find any local media statement or notice relating to the potable water reduction and interruptions emanating from Rand Water's decision(s).
- Our client's input was not sought – our instructions are that you failed to partake in any form of public participation process engaging the end consumer, members of our client. It goes without saying that Rand Water did not consider the impact of the actions on our client members – Rand Water could not consider the impact as the facts were not sought and did not serve before it at the time of resorting to the stratagem reducing bulk supply of potable water.
- Our client is of the view that the pressure currently exerted on the Municipality to extort payment towards arrears culminating in the decision ostensibly directed to the limitation of supply of water, stands to be reviewed and set aside: in broad, some of the contentions on behalf of our client is that Rand Water did not comply with its statutory duties before deciding on the reduction and interruption of supply, as informed mainly by section 41 of the Constitution, section 44 of the Local Government Municipal Finance Management Act 56 of 2003 and sections 35, 40, 41, and 45 of the Inter-Governmental Relations Framework Act, 13 of 2005. It must be noted that our clients were not properly consulted or informed in terms of Promotion of Administrative Justice Act.

The extreme reduction and concomitant prolonged interruptions to water supply are, amongst other, causing damages to local businesses and citizens whilst ostensibly serving as a stick forcing the recovery of money from the Municipality. It is clear that Rand Water uses the reduction of, and effectively interruption to the supply of potable water, as a stick to hit the Municipality that is either

recalcitrant or incompetent (or both) without considering the dire needs of *inter alia* our client members.

It goes without saying that the prejudice suffered every minute that client members are without sufficient potable water, cannot be undone. The stratagem endangers lives and lives lost as a result of the reductions, and effectively interruptions, cannot be compensated for by money. Our client is currently auditing the impact of the reduced supply of water, although advising us that the loss of lives is a serious risk in Fochville and Merafong with its many elderly citizens that are suffering from the lack of enough water.

The history or pattern of default ought to have shown that the Municipality is not able to collect money on behalf of Rand Water as the Municipality is unable to manage their own service delivery portfolio. The local municipality ostensibly continues to mismanage funds received for services. As organ of state, Rand Water cannot shy away from the political interferences over many years whereby Rand Water contributed to and/or condoned the implosion of the Municipality. That said, it is also clear that had Rand water approached other spheres of government timeously to address its issue with the Municipality, it could, have resolved the issue at hand long ago. Yet all organs of state persist in turning a blind eye to the obvious solution electing to trump the rights of, and prejudice the lives and livelihoods of ordinary citizens instead.

We request that your offices respect our clients' basic rights and that your offices reconsider the water reduction. We are of the view that your offices have numerous other remedies available to collect your arrears from the Municipality, inter alia by involving COGTA, Provincial and National Treasury.

The situation in which Rand Water finds itself vis-à-vis a recalcitrant municipality is not unique. It is common that Eskom, another organ of state, had a similar stance when resorting to a stratagem to reduce bulk supply of electricity to outdated NMD (Notified Maximum Demand) levels to force payment from recalcitrant municipalities. The Constitutional court has frowned upon the actions of Eskom.

Our client is of the view that the Rand Water decision(s) to reduce bulk water supply (to effectively exert pressure on a recalcitrant local authority as apposite to the Eskom stratagem and is unlawful. To amplify, the reduction presents nothing other than an abuse of power and is not compliant with Rand Water's constitutional obligations and, maybe also, its licence conditions. A review may soon be sought to have the decision to reduce and/or interrupt supply (i.e. styled as limitation of potable water) be declared unlawful.

To sum, we note that the local municipality *in casu* (Merafong) defaulted on paying Rand Water. Our client members have however paid their water accounts in full. Our client's constitutional rights are prejudiced and trampled on without any lawful, rational or reasonable basis or cause. We furthermore record that our client members will assess the damage caused by the interruptions and may soon also take steps to recover the damages from, inter alia, Rand Water. We reserve our client's rights in this regard.

Accordingly, we hereby inform your offices that should you persist with the reduction in bulk water supply to the Municipality, our offices hold instructions to approach a court on urgency to interdict such reduction(s) pending a review of the decision(s) taken by Rand Water, alternatively jointly by Rand Water and the Municipality. If our reasonable requests do not result in the termination of the aforesaid reduction(s) necessitating our clients to approach a court on urgency, your offices will be

held liable for all legal cost incurred, inclusive of counsels' fees. We urge you to meaningfully respond by no later than **noon tomorrow 1 March 2024.**

We await your urgent reply.

Yours faithfully

Andreas Peens

A handwritten signature in black ink, appearing to read 'Andreas Peens', written in a cursive style.