

Mantashe withdraws appeal against 2010 Mining Charter ruling

Mineral Resources and Energy Minister Gwede Mantashe has withdrawn his appeal against the declaratory order by the full bench of the Gauteng High Court in 2018 on whether the ownership empowerment efforts of mining companies continued after the end of the first Mining Charter.



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The declaratory order was held that black economic empowerment (BEE) ownership transactions should continue to be recognised for regulatory certainty purposes and for the duration of the mining right even where the BEE partner has sold or transferred part or all of its equity.

Then in 2019, the Minerals Council South Africa instituted proceedings in the High Court to take the 2018 Mining Charter on review. The application was heard by a full bench in May 2020.

"During the course of the hearing, it became apparent that it would be prudent for the minister to abandon his appeal in respect of the 2010 Mining Charter. This is because some of the important issues, in relation to the 2018 Mining Charter, that were before the full bench would also have been heard by the Supreme Court of Appeal in relation to the 2010 Mining Charter.

Legal certainty

"The withdrawal of the minister's appeal does not signify any change of position in relation to the transformative measures in the two charters. On the contrary, it paves the way to legal certainty over the current 2018 Mining Charter, which strengthens, enhances and extends the transformative measures that were previously set out in the 2010 Mining Charter," the Department of Mineral Resources and Energy said in a statement.

“The full bench expressed concern that this overlap may delay it in pronouncing upon all of the issues in the review of the 2018 Mining Charter. It was against this backdrop, and on advice from his legal team, that the minister decided to withdraw his appeal in respect of the 2010 Charter,” the department said.

The full bench, on 30 June 2020, ordered that the Minerals Council join the parties representing affected communities, trade unions and black economic empowerment entrepreneurs in the review proceedings in respect of the 2018 Mining Charter. It also ordered the Minerals Council to pay the costs of the application.

The department said the full bench will consider the merits of the review of the 2018 Mining Charter once the Minerals Council has complied with the order made on 30 June 2020.

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