

UKUDALULA NGOKUGCWELE

Iqiniso Mayelana Nokulandelwa Kwemithetho YeLayisense Yokusetshenziswa Kwamanzi EziMayini Zamalahle

Umlando Omkhulu

Ukuhlolwa kokulandelwa kwemithetho ezinkampanini eziyisishagalombili ezinkulu zasemayini yamalahle eMpumalanga okumayelana namalayisense azo okusebenzisa amanzi kubonisa isithombe esibi: ukuxhashazwa okukhulu nokungcola kwamanzi okwenziwa ama-opharetha, kanye nokukhulu ukufeyila koMnyango wezaManzi nokuThuthwa Kwendle, phecelezi iDWS, nabacwaningi okuthiwa bazimele. Kulemisebenzi, kubonakala sengathi uhlelo lokulawula – kusukela kukhishwa ilayisense yokusetshenziswa kwamanzi kuya ekuphenduleni mayelana nokungalandelwa komthetho – luhlakazekile. Phezu kwalokho, esikhundleni sokuqinisekisa ukuvikelwa kwezinsiza zamanzi, izinkampani nabacwaningi abazimele bayazibandakanya ekuxhaphazeni imithetho elawulayo ebekiwe.

Ukumbiwa Kwamalahle Ezindaweni Zokuqoqa Amanzi Zomfula i-Olifants ne-Wilge.

Ukungcola kwemithombo yamanzi eyigugu eNingizimu Afrika kwenzeka ngesilinganiso esiphezulu kakhulu ezindaweni eziphezulu zomsebenzi wezimayini. Ukumbiwa kwamalahle emayini kunomphumela olimazayo, ngamanzi emigodini ye-asidi yasemayini yamalahle engcolisa indawo kanye namanzi angaphansi komhlaba ane-asidi, usawoti, nezinsimbi. Lokhu, umthelela wakho, kulimaza impilo yabantu,

yemfuyo, ukukhiqiza izitshalo kanye nemvelo.

Ku-Highveld yaseMpumalanga, ukumbiwa kwamalahle kube nomphumela oshaqisayo kakhulu ku- Olifants River Catchment. Ukusetshenziswa kwamanzi kuleyo ndawo kukhulile kakhulu kuleminyaka yamanje ngenxa yokumbiwa kwamalahle ukuze kukhiqizwe ugesi, nokumbhiwa kwamanye amaminerali ahlukahlukene, nezinhlelo zokuchelela izitshalo eziningi, nokuthuthukiswa kwamadolobha. Lokhu kube nomphumela omubi kakhulu kwezempilo zabantu, okubangelwa ukungcola kwamanzi, ukushoda kwamanzi, nokungcoliswa komoya nomhlaba. Ikakhulukazi i-Upper Olifants Catchment inenani elikhulu lezimayini zamalahle ezilaxaziwe nezisasebenza, iziteshi zamandla amalahlwe abasiwe, namasayithi okukhishwa kwamanzi ane-asidi.

Imifula ese-Upper Olifants Catchment ichithela edamini i-Loskop Dam, okuyilona elamukela konke okuqoqekile okuwumthelela wokumbiwa kwamalahle kanye nokukhiqizwa kwamandla amalahlwe e-Upper Olifants. Lokhu kuhlalanga kwezimayini ezigaphezu kwamakhulu ayisi-650 ezimayini ezilaxaziwe nezisasebenza kanye nokuhlangana kwamanzi ane-asidi aphuma emayini nodoti wasemayini, kuhambisana nokungcola kakhulu kwamanzi engcoliswa amaminerali avela ezikhungweni zokuhlaza amanzi (Ashton & Dabrowski, 2011), kuholele ekutheni izinga lamanzi libhede ngenxa yokungcola, kubandakanywa namanzi angaphansi komhlaba.

I- National Water Resources Strategy yangonyaka wezi-2013 eshicilelwe yi-DWS iveze i-Olifants Catchment njengenye “yezindawo zokuqoqa amanzi egqilazeke kakhulu eNingizimu Afrika kubandakanywa inani lamanzi kanye nekhwalithi yamanzi.”

Naphezu kocwaningo olunzulu nemibiko yemiphumela emibi yokumbiwa kwamalahle e- Olifants Catchment nokubonakala kobungozi ukumbiwa kwamalahle okunawo ezinsizeni zamanzi lapho kuqoqa khona amanzi, uMnyango wezaManzi nokuqoqa kweNdle awuthathi zinyathelo ukuvimba ukungcoliswa kwamanzi, nokuqinisekisa ukuthi izinkampani ezenza lokhu, kuba umthwalo wazo lokhu. Phezu kwalokho, i-DWS ayikaze yashicilela owayo umbiko omayelana nemiphumela yohlelo lwabo lokuqapha nokulandela imigomo, nokuthi i-DWS ayiziphoci izinkampani ukuba zikhiphe imibiko yazo yohlelo lokuqapha nokulandela imigomo, kujwayele ukuba nzima emphakathini ethintekayo ukuhlola ukuthi izinkampani ezisebenzela lapho kuqoqa khona amanzi zisebenza ngokwamalayisense okusebenzisa amanzi na. Esikwaziyo ke kodwa, ukuthi izinkampani zokumayina ziphoqelekile ngokomthetho ukuthola futhi zilandele imigomo yelayisense yokusebenzisa amanzi, nokuthi ukungayilandeli leyo migomo, kuyicala elingaholela ekutheni ilayisense yamanzi imiswe. Ukuhlolwa nokuqinisekisa ukuthi imigomo yelayisense yamanzi iyalandelwa, noma ukungabibikho kwayo, kubalulekile ukuze kuqondwe ukuthi kungani ukujinjwa kokungcola nokukulawula sekubheda ngalendlela e-Olifants River Catchment.

“Izinhlanga emhlabeni wonke jikelele, ziyakwazisa ukubaluleka kwamanzi. Amanzi ayimpilo. Ngaphandle kwawo, akukho zitshalo ezikhulayo. Abantu bayawadinga amanzi ukuze baphuze, bapheke, bawashe futhi sikhulise ukudla kwethu. Ngaphandle kwawo, sizofa.”

(Mazibuko and Others v City of Johannesburg and Others [2009] ZACC 28)



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Izinjongo zeprojekthi

Le projekthi ihlole izinkampani eziyisishagalombili ezimba amalahlle ezindaweni zase- Olifants nase Wilge Catchment, ibuza lokhu:

- Ukuthi ukuqapha nokuhlolwa okuzimele kokulandela imigomo yelayisense yokusebenzisa amanzi kwenziwa kanjani;
- Ukuthi abanamalaysense bayayilandela yini imigomo yelayisense yokusebenzisa amanzi; nokuthi
- Yiziphi izinyathelo ezathathwa ezimweni lapho kwatholakala khona ukuthi ayilandelwa imigomo.

Indlela esetshenziwe ukucwaninga

Okokuqala, sikhetha izindawo eziyi-13 lapho kumbiwa khona amalahlle ezindaweni zase- Olifants nase Wilge River Catchment, ukuze sizihlole.

Okwesibili, sichithe izinyanga ezimbalwa siqoqa amakhophi amalaysense amanzi nemibiko yabacwaningi abazimele yemisebenzi ehluahlukene ngokufaka izingozi kuyo i-DWS ngaphansi koMthetho okuthiwa iPromotion of Access to Information Act, 2000. Saphinde safuna eminye imininingwane ethe xaxa kwabanamalaysense qobo lwabo, njengemininingwane yekhwalithi yamanzi.

Amalaysense okusebenzisa amanzi akhishwe yi-DWS aqukethe imfanelo emile yokuthi kufanele kube nocwaningo lokuqinisekisa ukuthi imigomo iyalandelwa olwenziwa

umcwaningi ozimele, nokuthi imiphumela yalolo cwaningo ibikwe kwa-DWS. Ngenxa yokuthi kubonakale sengathi ayikho imibiko yokuqinisekisa ukulandelwa kwemigomo eyenziwe yi-DWS qobo lwayo, imibiko yomcwaningi ozimele kufanele, ngokubhalwe phansi, inikeze isithombe esicacile sokulandela imigomo yelayisensi yamanzi kulabo abanamalaysensi.

Okwesithathu, sithule imigomo yelayisensi nemibiko eyenziwe abacwaningi abazimele yokulandelwa kwemigomo yelayisensi kulezi zinkampani eziyisishagalombili ezimba amalahlle.

Ngaphandle kwe-Glencore Operations SA (Pty) Ltd enqabile ukukhipha imininingwane yekhwalithi yamanzi, bonke abanamalaysensi ohlelweni lwethu lokuhlola basebenzisane nathi ngendlela egculisayo basinika nemininingwane eminingi kwebiceliwe.

Lezi zinkampani eziyisishagalombili okukwazekile ukuthi kutholakale kuzo amalaysense okusebenzisa amanzi nemibiko yabacwaningi abazimele, okuyizonake ezihloliwe, yilezi:

- Yi Tweefontein South (ngesikhathi socwaningo yayiphethwe i Glencore Operations South Africa (Pty) Ltd)
- Manungu Colliery (Tshedza Mining Resources (Pty) Ltd)
- Leeuwpan Coal Mine (Exxaro Resources Limited)
- Khutala Colliery (South32 SA Coal Holdings (Pty) Ltd)
- Vanggatfontein Colliery (Wescoal Mining (Pty) Ltd)
- Isibonelo Colliery (Anglo American plc)
- Goedgevonden Colliery (Glencore Operations South Africa (Pty) Ltd)
- Kangala Colliery (Universal Coal Development 1 (RF) (Pty) Ltd)

Asikwazanga ukuthola imibiko yocwaningo ezinkampanini ezinhlanu kwi-DWS, ngoba i-DWS ayikutholanga lokhu kulezi zinkampani. Ngakhokhe lezi zinkampani azihlolwanga kulombiko yize kuzanyiwe:

- Wolvekrans (WUL ekhishwe ngaphansi kwe BHP Billiton Energy Coal of South Africa (Pty) Ltd)
- Kriel (WUL ekhishwe ngaphansi kwe Anglo Operations (Pty) Ltd)
- Optimum (WUL ekhishwe ngaphansi kwe Optimum Coal Mine (Pty) Ltd)
- Koornfontein (WUL ekhishwe ngaphansi kwe Koornfontein Mines (Pty) Ltd)
- Mooiplaats (WUL ekhishwe ngaphansi kwe Coal of Africa (Pty) Ltd)

OKUTHOLAKELE

Umpumela wokuhlolwa kwezimayini eziyisishagalombili zamalahle, lezi okukwazekile ukuthi kutholakale imibiko yazo, ukhombisa isithombe esibi ngesimo sokulandelwa kwemigomo yamalaysense. Kuvela ngokusobala ukwehluleka okukhulu kwezinkampani zasemayini, i-DWS, kanye nabacwaningi bezemvelo okuthiwa bazimele, ukuqinisekisa ukuvikeleka nokugcinwa kwezinsiza manzi zethu.

Izibonelo zalokhu okutholakele kulezi zinkampani eziyisishagalombili ezihloliwe zinikeziwe embikweni ophelele.

DWS

I-DWS ivela isesimweni sokwehluleka futhi hhayi kancane njengesikhungo nangokukulawula.

- Kuyavela ukuthi iyahluleka ukukhipha amalaysense ahambisana nemigomo efanelekile ngesikhathi esifanelekile, okuholela ekutheni lezi zinkampani ezihloliwe zisebenze ngaphandle kwemvume futhi ngaphansi kwemigomo yazo, ngaphandle kokulawulwa
- Ngalesisikhathi isize yakhishwa ilaysense, izinkampani zibuka imigomo yenqalasisinda esisunguliwe njengengabalulekile noma engasho lutho. Lokhu kubandakanya ukwakhiwa konqenqema emadamini anamanzi angcolile, nokufeza abazibophezela kukho abafaki zicelo ngenkathi befaka izicelo zamalaysense. Ezimweni lapho khona izinkampani zaqala ukusebenza ngaphandle kwelaysense – okuyicala – i-DWS yathatha izinyathelo mayelana nalezo zinkampani.
- Uma amalaysense ekhishwa, abhekwa ngabomvu, enemifanekiso eminingi, imigomo yelaysense ebhedayo futhi efuna ukuhlolwa okunganele.
- Izinkampani ziphinde zisebenzisa izicelo zokuchibiyela eziqhubekayo – i-DWS ezenza ngonyawo lwonabu – okwenza ukuqapha nokuqinisekisa ukulandelwa kwemigomo kubenzima.
- Yize noma ukumba amalahlle kunemiphumela eyingozi emanzini, cishe ayikho neyodwa ilaysense yokusebenzisa amanzi eyenza izihlanzi zamanzi – nebekelela ukubakhona kwesikhwama sokuhlazwa kwamanzi – okuyimfanelo ehamba phambili. Imali

yokulungisa izimayini ekhishwa uMnyango wezamaMinerali kufanele ngabe ibandakanya neyemiphumela yamanzi, kodwa zimbaliwa izinkampani ezibhekelela ukunakekelwa kwamanzi emumva kokuvalwa kemayini, emibandeleni ebekwe yi-DMR. Ngenxa yalokho, umbuso nomphakathi bathwele ubungozi bomthelela walokho.

- I-DWS futhi ivela ihluleka ukuqapha ukuthi imigomo iyalandelwa, noma ukuphendula kokungelona iqiniso okubikwa abacwaningi abazimele, noma ukuphendula emangeni ashiwo abacwaningi abazimele, futhi ingakwazi ukuphendula ekwepulweni komthetho okucaca bha uma beletha okufunekayo ngezikhathi okufunwa ngazo abanamalaysensi. Ngisho ukwepulwa kwemigomo okuphindayo okubikwa abanamalaysense akunakwa. Abukho nhlobo ubufakazi bokuqapha ukulandelwa kwe-WUL yi-DWS obutholakele kulesampula yokuhlola. Kunalokho, zonke izinto zikhomba ukuthi ukuqapha ukulandelwa kwemigomo nokuqinisekisa ukuthi iyalandelwa yinto engekho nhlobo kwa-DWS.
- I-DWS ayiyivumi futhi ayiyinqabi i-Integrated Water and Waste Management Plan (IWWMP) noma ama-Rehabilitation Strategies and Implementation Programmes (RSIP). Abanamalaysense bazishintshela bona ngokubona kwabo ukufaka izinguquko ezibophezelweni zabo.
- I-DWS futhi ayikaze yaphendula emininngwaneni yekhwalithi yamanzi noma eminye imibiko ethunyelwe ngokwemibandela yakwi-WUL, noma imibiko ekhombisa umthelela omubi konelaysensi ekutholeni izinsiza manzi.
- Ngenxa yokuthi i- DWS ayithathi zinyathelo ekwepulweni kwemigomo ebekiwe kulezi zinkampani ezihloliwe, abanama layisensi bathatha ukuthula kwe-DWS njengokuthi iyakuvumela lokhu kungalandelwa kwemigomo.

Izinkampani ezimba amalahlle

- Izinkampani zihumusha imigomo njengendlela enciphisa izinyathelo okufanele zithathwe, nokushaya indava noma yiziphi izidingo ezingabhalwanga, ngisho ngabe zibalulekile ekutheni zivikele izinsiza zamanzi.

- Izinkampani zizihlelela zona ngokuzimela kwazo ezibophezelweni ezenziwe ezicelweni zamalaysense abo.
- Akukho neyodwa kulezi zinkampani ezihloliwe eyenza isampula lokuhlola ikhwalithi yamanzi asuka kubo uma kunezimvula. Ukuhlolwa kwemifula okwenziwa ezinye, kwenziwa ngesikhathi linganethi, okungavezi ukungcola okungena emifuleni ngezikhathi zezimvula.
- Asitholanga neyodwa i- “IWWMP noma i-RSIP, yize imigomo ye- WUL ifuna izethulo njalo ngonyaka zalamadokhumenti ku-DWS ukuze avunyelwe noma angavunyelwa. Ukwehluleka kwe-DWS ukuphendula ezethulweni zaminyaka yonke zalemibiko kwenza abanamalaysense bazenzele umathanda, babe belokhu beshintsha abathe bazokwenza. Bese izinkampani zithatha lamapulani angaphasisiwe njengokuthi iwona amile ngokusemthethweni.
- Izethulo eziphoqekile ukuthunyelwa ezithunyelwa abanama layisense ku-DWS uma kuyisikhathi sokubukezwa, zijwayele ukuveza ukwepulwa kwemigomo yelaysense ngendlela eyisimanga, kanye nezinye izimfanelo.

Abacwaningi abazimele

I-WUL ibandakanya njengenye yemibandela ukuthi kufanele kwenziwe ucwaningo lwe- WUL oluzimele lwangaphandle. Imibiko yalolo cwango kufanele luthunyelwe ku-DWS, futhi ushicilielwe kuwebhusayithi yabanamalaysense (okuyiyona “engumgunyazi wezemvelo” ukuze kuhumushwe iSahluko 5 soMthetho wokuPhathwa kwezeMvelo kaZwelonke, 1998). Lemibiko yocwaningo olwenziwe abacwaningi bangaphandle ihlose ukuthi iveze ukulandelwa kwemigomo okuyikhonakhona kwalabo abanamalaysenses. Kulombiko ozimele wocwaningo, sithole iziphetho eziningi ezingenancazelo futhi ezingaqondile, nokwahluleka ukubika izigameko zokungcola, nokuqhela emigomweni yokuqapha ukungcola.

- Akukho noyedwa umcwaningi othobele izimfanelo zaloluhlobo locwaningo ngaphandle kweyodwa nje ifemu yocwaningo
- Abacwaningi bajwayele ukuthi inkampani “iyilandele imigomo” uma nje kuphela

kuqaphiwe. Ukuthi iminingwane yokuqapha iveza ukungalandelwa kwemigomo yekhwalithi yamanzi ebekwe yi-WUL akuvezwa. Ukupambuka ezindaweni ezinqunyelwe ukuqapha nakho akuvamisile ukufakwa emibikweni yocwaningo.

- Abacwaning bahlola ngokuhambahamba babuke ngamehlo ngosuku locwaningo, bese benza isiphetho sokuthi ilandelwe imigomo ngokuthi bahambahambile nje babukabuka, kwesinye isikhathi ababheki namarekhodi, futhi nasezintweni ezidinga iminingwane yobucwepheshe nobusayensi. Isibonelo, abacwaningi abaningi baqinisekisa ukuthi amanzi esiphetho awangcolanga, besho lokhu ngokuwabuka nje kuphela futhi

ngezikhathi zokungani kwezimvula futhi ngaphandle kokubheka imiphumela yokuqaphwa kwamanzi ethathwe ngezikhathi zezimvula.

- Abacwaningi bathe amapulani afunekayo ahanjisiwe, ngaphandle kokuhlola ukuqaliswa kwawo okuyimpumelelo.
- Abacwaningi abacwaningi izimfanelo zomthetho ezifunakalayo njengokuthatha izinyathelo zokuvimba ukungcola.
- Lezi zimfanelo bazimaka ukuthi ziyizinto okumele zibhekwe. Esikhundleni sokugqamisa ubudedengu nokungcoliswa kwezinsiza manzi ngamabomu ngokwesigaba 151(i) no (j) soMthetho waManzi kaZwelonke, 1998, phecelezi iNational Water Act.

Kuyavela ukuthi kulezi zimayini zamalahle ezihloliwe, uhlelo lolawulo, kusukela ekukhishweni kwelayisense yokusebenzisa amanzi kuya ekwaziseni ukulandela imigomo, kunoqhekeko.

Phezu kwalokho, esikhundleni sokuqinisekisa ukuvikelwa nokugcinwa kwamanzi ayigugu kithi futhi anikeza impilo, Izinkampani nabacwaningi okuthiwa bazimele bayaqhubeka nokuthatha kancane lokhu kulawula.

OKUBONAKALA KUFANELE UKUTHI KWENZIWE

Umbiko wethu ophela ubeka ngokucacile okubonakala kufanele kwenziwe mayelana nokuhumushwa okufanelekile nemigomo yokufakwa kwesicelo selayisense yamanzi kanye nemibono ehlose ukwenza ngcono ukuqaphwa nokulandelwa kwemigomo. Lokho kufaka kodwa kungacini lapho, lokhu okulandelayo

- I-DWS noma iKomidi leNdlu yesiShayamthetho kaZwelonke lezaManzi nokuThuthwa kweNdle babukeze ngokushesha izinsiza kanye nokuthi i-DWS iyakwazi yini ukufeza imisebenzi yayo yokulawula, ukuze izokwazi ukukhipha amalayisense ngesikhathi esizwakalayo, iqinisekise ukuqapha ukuthi imigomo iyalandelwa, ibukeze ngendlela enomthelela, imibiko yocwaningo eyenziwe abantu bangaphandle, nokuthatha izinyathelo zokwenza inguquko;
- Ukuba ama-WUL akhishwa kuleso sigaba esaqoshwa phansi ukuze ezobuyekwezwa noma kanye onikezwe i-WUL ngaphambi kokukhishwa kwe-WUL yokugcina. Impendulo ye-DWS kunoma ngabe yiziphi izicelo zokushintsha okuthile ezifakiwe ngesikhathi saloluhlelo lokubukeza kufanele zicace bha futhi zingabi nemiqondo emibili. Uma isichelo

soshintsho singaphasiswanga, kufanele kuchazwe ukuthi yingani siinqatshiwe. Lokhu kuqeda lenkinga ekhona njengamanje lapho khona kusetshenziswe amaphutha asobala ukufaka izicelo zoshintsho noma zokulungisa, okuvumela izinkampani ukuthi ziqhubeke kube ngathi ayikho ilayisense esemthethweni ekhona.

- Ukuba i-DWS yethule umgomo omisiwe mayelana nelayisense yokusetshenziswa kwamanzi ozovumela i-DWS igunya lokuthi yenze ucwaningo lwayo mayelana nelayisense yokusetshenziswa kwamanzi izindleko kube ngezalayo onelayisense. Lapho khona umbiko wocwaningo unghambisani nomthetho nanezinqubo ezifunakalayo, lomgomo ungavuswa ukuze kutholakale umbiko wangaphandle ozimele futhi kuvinjwe indlela abacwaningi abaziphethe ngayo;
- Ukuba isikhulu esiphuzulu salo onelayisense siqinisekise imibiko

yocwaningo yangaphandle ukuthi iyiqiniso futhi ishaya khona nqo esimweni sezwe samanje. Uma kuvela ukuthi lokhu kuyisifungo esingelona iqiniso, i-DWS kufanele ithathe izinyathelo zomthetho ngokumelene ne-CEO nomcwaningini wangaphandle ngokuzimela (ngokubhekelelwa isigaba 154 se-NWA nesigaba 34 se-NEMA). Isigameko esisodwa noma ezimbili ezinjalo kungenzeka zilethe ushintsho ngokushesha lokuphathwa kwamanzi kulomkhakha wezimayini; futhi

- Ukuba iNhlangothi yabaHloli bezeMvelo yaseNingizimu Afrika esanda kusungulwa ibheke ukuba izimfanelo zabo zokubhalisa, indlela yokuziphatha namandla ayo angasetshenziswa yini ukunikeza ukulawula okuqinile kwabacwaningi abazimele bamalayisense okusebenzisa amanzi okuyibona abenza lolocwaningo.



ISIPHETHO

Ngokwalombiko kusobala ukuthi izikhungo ezahlukahlukeni nababambe iqhaza kufanele banikwe inselelo yokuba baqale kabusha izindlela zokulawulwa nokusetshenziswa kwamanzi eNingizimu Afrika. Iningizimu Afrika ibhekene nenkinga enkulu mayelana nezinsiza zamanzu, nokungcoliswa kwamanzi ethu avele engemaningi, ikakhulukazi kulezi zinguquko ezinkulu ezilindelwe zesimo sethu sezulu, lokhu kusho ingozi enkulu ezizukulwaneni zamanje nezizayo. Ngakhokhe simema izishayamthetho, abalawuli, izimboni, abahlizeki bezimali, nabatshalizimali ukuba basebenzise amandla abo ukuba bathathe izinyathelo manje ukuze kube noshintsho oluphathekayo.