



# DIRT ROAD TRADERS

## Newsletter 3, 2021

Time, as always, is marching on and the 2022 event is not too far away so arrangements continue to be made to ensure participants' enjoyment.

FOSAF won the recent court case in the ongoing "Trout Wars" saga, a brief summary of the ruling has been included in this missive. The Minister has, presumably at the behest of her "advisors", seen fit to lodge an appeal against the ruling.

As taxpayers, I have no doubt that all of us resent this type of wasteful expenditure at the behest of misguided dogmatists. However, the problem is that litigation is a costly exercise and not only in monetary terms but impacts on caring and involved people's state of health as well.

The WTA has been contributing to the FOSAF" war chest for several years and the most recent contribution of R20 000 increased the total "investment" to R140 000. I understand that very few, if any other fly fishing organisations have made a contribution to date. This includes entities such as tackle retailers and service providers or purveyors of accommodation as well professional guides who include trout in the packages. I would be more than happy to be proved wrong. I also hope that via the grapevine, we see contributions being made to support the cause.

While on the topic of donations, the WTA topped Eastern Cape club donations by providing R12 500 to the Hare Street Hatchery in Grahamstown as a contribution towards the cost of a 10KVA power generation system. The EPFFC and Bankberg FFC each provided R10 000 towards the R120 000 cost.

Being the central venue where visiting flyfishers can purchase day permits, the Rhodes Info Centre (RIC) is an integral part of providing an important service to visitors. In addition, accommodation and much more can be arranged by Margie Murray and Xolelwa Yaleko, the Info incumbents. Accordingly, a donation of R12 500 was also made to the entity. I look forward to festival participants supporting the RIC not only during the festival but for other return visits as well.

So all-in-all, the WTA has made good use of the funds generated by the annual festival and in particular from the event auction. Our sincere thanks to all participants and auction buyers in particular.

In closing, we still have several spots open and Ed Herbst has kindly offered to make his flyfishing encyclopaedia available to participants. So, we need to source memory/flash sticks for the purpose. Any sponsors out there with branded "sticks"?

Cheers,  
Dave.

## Very Brief Summary of the Judgment in FOSAF vs The Minister of Environmental Affairs

This morning Acting Judge of the Gauteng North High Court Adrian Vorster delivered a Judgement in the application for a declaratory order in the matter of the Federation Of Southern African Fly Fishers vs The Minister of Environmental Affairs.

In simple terms the Court decided the following main aspects:

1. That the application was not moot by reason of the subsequent gazetting of the 2020 AIS Lists and Regulations because the issues in question (especially in relation to trout) were still open for debate and in addition it was in the interests of justice and because the application raises important questions about constitutional rights and duties and would have broad practical effect.
2. That FOSAF had locus standi to bring the application both in its own right and in the public interest.
3. That the sufficiency of the information contained in the original Notices (Draft AIS Lists and regulations) and the various attempts by the Minister to correct these, was not sufficient to allow for meaningful representations or objections and did thus not comply with the legal requirements of Section 100 of NEMBA. The court found that there was initially no information at all and that the subsequent references to various documents to found on the Department's website did not meet the basic requirements because the public still was none the wiser as to what considerations the Minister took into account and because the vast majority of South Africans do not have access to the internet.
4. In the light of this finding it did not need to rule on the other alleged procedural shortcomings;
5. FOSAF was awarded costs.

It is important to note that the judgement does not declare the 2020 AIS lists and regulations invalid. While these notices list trout as invasive, the implementation of this specific listing was suspended by the Minister pending discussions in a task team comprising the Department and Aquaculture stakeholders, including the trout value chain. This is ongoing.

This decision has a much wider implication than just "the trout fight". It goes to heart of "informed consultation" and the public's right to be taken seriously by government during consultation processes.

The Constitution, the NEMA principles and NEMBA set out a simple set of requirements that must be complied with when e.g. the Minister intends exercising a power. These include that the public must receive sufficient information about why what is being proposed, is required and what the expected implications of this will be.

This is proper governance. This case reinforces these values, principles and requirements.

FOSAF is sincerely grateful for the kind assistance and commitment of our legal team, all of whom acted on a pro bono basis: Julian Bartlett of Bartletts Inc., Adrian van Niekerk of MacRobert Attorneys, Advocates Alistair Franklin SC and Julian Joyner. We could not have achieved this without them and without the support of our many donors, contributors, our membership and other stakeholders.