

IN THE MATTER of the Resource Management Act 1991 ("the Act")

AND

IN THE MATTER of an application by the New Zealand Fish and Game Council and the North Canterbury Fish and Game Council for a Water Conservation Order under section 201 of the Act

**STATEMENT OF EVIDENCE OF BRYCE JOHNSON
ON BEHALF OF THE APPLICANTS
30 March 2009**

Introduction

Qualifications and Experience

1. My name is William Bryce Johnson. I am the Chief Executive of the New Zealand Fish and Game Council, based in Wellington.

2. I have a Bachelor of Science degree, and Post Graduate Diploma in Agricultural Science from Massey University, and a Post Graduate Diploma in Wildlife Management from Otago University.

3. I began my employment in the fish and game sector in 1980, when I was appointed to the combined positions of Director of the National Executive of Acclimatisation Societies, and Secretary to each of the North Island and South Island Councils of Acclimatisation Societies. The Acclimatisation Societies were the day to day statutory managers of sports fish and game birds, established pursuant to the Wildlife Act 1953, with each of the Island Councils established by separate Regulations made pursuant to that Act. The National Executive of Acclimatisation Societies was established pursuant to a special power held by the Minister of Internal Affairs, who was then responsible for the administration of the Wildlife Act. I was the first permanent employee of each of these three entities.

4. In 1990 the 22 regional Acclimatisation Societies and two Government run Acclimatisation Districts of Central North Island and Southern Lakes were restructured into 12 regional Fish and Game regions, with only the Lake Taupo fishery remaining under departmental (Department of Conservation) management as if it was a Fish and Game Council. The two Island Councils, and National Executive, were effectively amalgamated into the New Zealand Fish and Game Council, with increased powers of national advocacy, regional co-ordination, policy development and Ministerial advice. I transferred into the position of its Director. In 2006 my designation was changed to Chief Executive.
5. I have therefore worked continuously in the fish and game sector since 1980 (29 years). I am a keen freshwater angler and game bird hunter.
6. Throughout my career with the Acclimatisation Societies/Fish and Game Councils I have been centrally involved in many national issues of interest and concern to the respective organisations and their angler/hunter constituents. One of these was the creation of the statutory provisions introducing water conservation orders as a legislative tool to obtain strong, longer term, protection for water bodies.

Fish and Game Organisation

7. Fish & Game New Zealand, a brand name created to collectively present the total organisation to the wider public, is comprised of 12 regional Fish and Game Councils (six in each Island) and a national New Zealand Fish and Game Council all established pursuant to Part VA of the Conservation Act 1987. Each of the regional councils is comprised of up to 12 councillor governors elected triennially by anglers and hunters. Each regional council appoints one of its number to sit on the New Zealand Fish and Game Council. In this regard it should be noted that New Zealand councillors are not 'representatives' of their respective regional councils, but rather are obliged to present themselves as truly national councillors once they sit around the national council table.
8. Regional Fish and Game Councils are established (s 26P) for the purpose of the "...management, maintenance and enhancement of sports fish and game"... for each region defined by the Minister of Conservation, and are obliged to discharge their functions "...in the recreational interests of anglers and hunters". The particular

functions of these councils are extensive, and are **attached** as appendix 1 to this statement.

9. In effect, the regional Fish and Game Councils conduct the day-to-day management of their respective sports fish and game populations and their annual harvest, issue the compulsory licences that are required to fish for sports fish or hunt game birds in New Zealand, and conduct compliance monitoring associated with the various bag limits, season lengths and method restrictions. They are obliged to do all this in accordance with an annual operational work plan or sports fish and game management plan, approved by the Minister.
10. The New Zealand Fish and Game Council is established (s26B) to "...represent nationally the interests of anglers and hunters and provide co-ordination of the management, enhancement and maintenance of sports fish and game". The particular functions of the council are **attached** as appendix 2 to this statement.
11. In effect the New Zealand Council endeavours to co-ordinate and oversee the day-to-day management of sports fish and game by the regions, and handles national advocacy to the general public, Members of Parliament, Select Committees, the head offices of relevant Government departments, other national organisations, and national media enquiries.
12. Today, the predominant activities of both the regional and national councils relate to the protection of habitat (be it lowland streams, wetlands or backcountry fisheries) and of the pastimes of angling and hunting from privatisation. In the vast majority of cases Fish & Game New Zealand has adopted the view that if the habitat is protected and looked after, the plants and animals that are dependent upon it will generally look after themselves. In the case of issues relating to the privatisation of what is, in effect, a publicly accessible resource, the conflicts are on-going, as tourism operations and land occupiers seek from time to time to capture these public natural resources for exclusive private use.
13. Fish & Game New Zealand is funded solely from the sale of sports fishing and game bird hunting licence fees, and employs approximately 70 staff, many of whom are tertiary graduates in biological science or resource management. This translates into a direct capability for the organisation to fund and discharge its own work programmes, rather than be dependent upon other agencies. It also means the

organisation is not captured by the restrictions that can arise for the likes of the Department of Conservation from the constrictions associated with collective Cabinet decision-making. This perhaps explains why the vast majority of the water conservation orders applied for and obtained in New Zealand have been taken by Acclimatisation Societies/Fish and Game Councils, and not the Department of Conservation which actually has the explicit function "...to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats." The Department of Conservation, in the name of the Minister, has made only one application for a water conservation order, although it has supported applications made by others.

Political History of Water Conservation Order Law

14. The idea of 'wild and scenic rivers' legislation had been discussed casually in New Zealand for some years prior to the creation of the original law establishing water conservation orders. Natural resource preservation and protection law existed for land, but not natural water. All water law, to my knowledge, was essentially "use" focused through the Soil Conservation and Rivers Control Act 1941 and the Water and Soil Conservation Act 1967.
15. In 1980 New Zealand was involved in a controversial debate over the prospect of an aluminium smelter being built at Aramoana near Dunedin, for which the then proposed Clyde Dam on the Clutha River would provide the huge block of electricity required for the smelting process. This was the hey-day of the then National Government's 'Think Big' strategy, supported by the National Development Act 1979, which essentially fast-tracked consent procedures for natural resource use – not dissimilar to what the present National Government is now doing with its current Resource Management (Simplifying and Streamlining) Bill. In effect, the Government of the day was moving to turn hydro energy into an export commodity, by selling it to a large foreign company to turn it into aluminium in New Zealand for the international market.
16. At a meeting of the Council of South Island Acclimatisation Societies in 1980 the decision was taken to actively oppose the smelter proposal, not because of any specific concern with aluminium production generally, but because of its high requirement for electricity. In the New Zealand context this electricity was to come from the Clyde dam, which in turn would have taken this large block of energy away

from its potential use to meet ordinary (growing) domestic demand, and hence hasten the probable requirement to dam other (trout and salmon) rivers to meet future domestic demand. At that time there was also great interest in Local Authority hydro development, heightening the South Island Acclimatisation Societies' concerns that the smelter/Clyde dam development would also greatly increase the pressure on the medium- sized trout and salmon rivers for hydro use.

17. The National Executive of Acclimatisation Societies lodged a prominent public advertisement, which showed a picture of the then Minister of National Development, Hon Bill Birch, with the caption "To buy his smelter will we have to sell our country", and the tension within the public debate escalated considerably.
18. Some participants at this hearing may recall the rather amazing public events that followed at the time, but the upshot was that the Government (with what I believe was the genuine support of Mr Birch) agreed that a "balancing" piece of law was justified, to reflect the equally strong public sentiment against the National Development Act. And so that "wild and scenic" rivers amendment to the Water and Soil Conservation Act 1967 was finally passed in 1981, complete with its own explicitly stated objective, added at the Third Reading. Indeed it was this later action, of adding this specific objective to the Amendment, that finally won the Rakaia Water Conservation Order for the Acclimatisation Societies at the Court of Appeal in the mid 1980s. The new objective added to the Act's Long Title is underlined below:

"An Act to promote a national policy in respect of natural water, and to make better provision for the conservation, allocation, use, and quality of natural water, and for promoting soil conservation and preventing damage by flood and erosion, and for promoting and controlling multiple uses of natural water and the drainage of land, and for ensuring that adequate account is taken of the needs of primary and secondary industry, [community water supplies, all forms of water-based recreation, fisheries, and wildlife habitats, and of the preservation and protection of the wild, scenic, and other natural characteristics of rivers, streams, and lakes]"

19. Prior to its passage the prevailing attitude to natural water in New Zealand had been focused towards use, with any conservation notion only being reflected as a component of the term 'multiple use'. Generally this had led to unpopular outcomes for all parties.
20. The 1981 Amendment, as the wild and scenic/water conservation order law was generally called, therefore had a controversial and very publicly tested history. Following its passage the Acclimatisation Societies applied for Orders on most of the

larger to medium high quality trout rivers and lake wetlands in the country and some of the smaller regionally important rivers. But a few worthy of such protection still remain formally unrecognised.

21. The 1981 Amendment contemplated two levels of order – a National Water Conservation Order, for which the test was that the water body had to be “nationally outstanding”, and a Local Water Conservation Notice, for which the test (from memory) was that it had to be “regionally significant”. Fish and Game or its predecessors applied for and obtained National Orders for the Rangitikei, Mohaka, Motueka, Buller, Grey, Rakaia, Ahuriri, Kawarau, Motueka and Mataura Rivers. National Orders were also successfully sought for Lake Wairarapa and Lake Ellesmere/Te Waihora. Local Notices were taken and subsequently made for the Stony, Hautapu, Makuri, Mangatainoka, Wainuiomata, Riwaka, Pomahaka, Mararoa, Oreti and Aparima Rivers and Lake Tuakitoto. This list may not be complete, but it does provide an indication of the original statute’s popular use. In addition to applications by Fish and Game and its predecessors, orders have been applied for by other parties including the QEII Trust, Wildlife Service and DOC respectively for the Motu, Manganuiateao, and Kawarau Rivers, which were supported by Fish and Game. From memory the Grey River application was not granted in complete accordance with the application, but was granted, and protects the Grey for outstanding natural characteristics and scenic features. From memory the application for the Wairau River was processed as a local notice but this process was superseded by the regional plan provisions of the RMA.
22. The development of the Resource Management Act 1991 continued the previous water conservation order law, but in an amended form. Following consultation with Fish & Game New Zealand, and other parties with an interest in this piece of law, the RMA established a single category of water conservation order, dropping the previous hierarchy of National Orders and Local Notices, and recasting the primary legislative test to simply “outstanding”. Fish & Game New Zealand agreed to this on the basis that it would therefore be possible to still obtain an Order for a water body that was “outstanding” in either a national or regional context.
23. The passage of the RMA required existing Local Water Conservation Notices to be reflected in all relevant Regional and District Council Plans. Regional plans are most analogous to Local Water Conservation Notices.

Significance of Water Conservation Orders to Fish and Game New Zealand

24. The fundamental strength of water conservation order law is, in my opinion, three-fold. As it is a special part of the RMA and not subject to Part II, it gives primacy to in-stream ecological and amenity values. It is heard by a national tribunal with higher standing than regional politically driven Regional Councils, and it contemplates an unbounded life of protection of the subject water body, once granted. Unlike Regional Water Plans, which have a maximum life expectancy of ten years, and are based on the old concept of 'multiple use', a water conservation order stands until it is repealed –presumably because it no longer possesses its original “outstanding” features (which should not normally occur if the original order is doing the intended job) or is somehow displaced by some higher requirement (which I cannot contemplate, short of a deliberate decision by Parliament to weaken the intent of the present law). To date no existing water conservation orders have been challenged for repeal, and only the Buller WCO has been challenged for amendment in the respect of the Gowan River specifically. The challenge to weaken its provisions failed, and a subsequent application to increase the protection the Buller Water Conservation Order afforded the Gowan River was successful.
25. A point to consider is that while water *per se* may be held to be a renewable resource, the places where it exists (rivers, lakes etc) are finite. There are only so many of them, and each time some “use” is made of one, or part of one, the overall stock of what was naturally there before is diminished. I like to use the phrase “the salami syndrome” – *the loss of a little bit more of what then becomes a little bit less*. The purpose of water conservation orders is to provide a legislative mechanism to arrest the cumulative effects of the salami syndrome. With the passage of time, it is easy for the casual observer to forget, or not realise, that many of this country’s rivers were once much bigger and cleaner than they appear today. In the case of the Rangitata, for example, something like a third of its flow has already been sliced off into the Rangitata Diversion Race, yet the general perception of a river downstream and around the corner of such an abstraction is that it is as it ever was. The sad reality is that cumulative effects are usually insidious, such as the adverse environmental effects of irrigation based agricultural intensification. Until the advent of water conservation orders and local notices under the ‘wild and scenic rivers’ legislation in 1981, cumulative effects were not able to be addressed, and regrettably are still not able to be effectively addressed with the advent of regional plans in many cases, as these are too weak to effectively set and hold adequate standards of water quality and quantity, or habitat.

26. Those who seek to use water for industrial purposes (be it abstraction for irrigation, damming for electricity generation, or dissipation of discharges to water) are involved in a progression of increasing use for which they have to date never been prepared to say 'enough is enough'. To the extent that they have any "vision" for a river it is primarily as a natural resource in a way that diminishes it, similar to mining. In my experience, the notion of finite resources does not occur to them, and when directly challenged on the subject the inevitable response is along the lines "...well, we should perhaps consider such limitations on further use after this current application has been granted". Serious consideration of avoiding, remedying or mitigating their (cumulative) effects is seldom apparent. Yet when confronted with the direct question should we de-water our rivers *totally*, for irrigation, or dam them *all* for hydro power, or pollute them *all* with industrial and other waste, everyone shouts "no". I hope this Tribunal will test the opponents to this water conservation order application on these important philosophical matters and thereby force them to contemplate the inevitable longer term effects of their proposed actions that are, in effect, part of a one-way use continuum of a finite resource.
27. Previous political moves to "review the protective mechanisms for nationally important water bodies" have been, in my opinion, nothing more than an attempt to downgrade the strength and effectiveness of the present water conservation order law, and return to the old 'multiple use' approach that was proved to be so ineffective two decades ago and which became a key component of the rationale for the present law. If the parties proposing the 'review' were seriously contemplating an improvement in water protection law they would focus on the failure of water management planning by Regional Councils to deliver comprehensive and consistent protection to the many lesser water bodies than those worthy of water conservation order protection, and leave the present and successful water conservation order process alone.
28. This water conservation order for the Hurunui River will in fact contemplate matters that extend way beyond the catchment of this river. New Zealand's attitude to the use of river water in dry environments, accentuated by the inevitable consequences of global warming, is on the table at this hearing.
29. In my opinion New Zealand must not allow one sector of a regional community to solve its inevitable and growing threats from climatic change by further degrading the natural water resource that is important to another, wider, sector of the community or whole of the country.

30. Just because some members of the rural community want to change their land use in order to capitalise on the prospect of greater personal profits it does not follow that the rest of the community should have to bear the higher ecological consequences of their wishes. Agriculture does not hold a mortgage over nature and past assumptions around access to public water for private wealth generation through production and land value increases are becoming increasingly unacceptable unless these developments are environmentally sustainable. Sadly, I do not think notions of *environmentally sustainable agriculture* disturb their dreams, where the historical reality is that agriculture has been dumping its adverse environmental effects on the wider community for years and, ironically, undermining the “100% Pure / clean and green” brand we use to differentiate our country in world markets. The unavoidable reality is that Canterbury agriculture will need to come to grips with the probability that some of its dreams involving the finite land and water resource are unreasonable and unfair in this wider context.
31. These are all important matters that this Tribunal should contemplate as it sets about hearing the case for this outstanding wild and scenic river.

Appendix 1

[26Q Functions of Fish and Game Councils

- (1) The functions of each Fish and Game Council shall be to manage, maintain, and enhance the sports fish and game resource in the recreational interests of anglers and hunters, and, in particular,—
- (a) To assess and monitor—
 - (i) Sports fish and game populations; and
 - (ii) The success rate and degree of satisfaction of users of the sports fish and game resource; and
 - (iii) The condition and trend of eco-systems as habitats for sports fish and game:
 - (b) To maintain and improve the sports fish and game resource—
 - (i) By maintaining and improving access; and
 - (ii) By maintaining the hatchery and breeding programmes, where required for stocking or restocking the sports fisheries and game habitat; and
 - (iii) By formulating and recommending to the [[New Zealand Fish and Game Council]] conditions for fishing and game seasons; and
 - (iv) By ensuring that there are sufficient resources to enforce fishing and hunting season conditions; and
 - (v) By undertaking such works as may be necessary to maintain and enhance the habitat of sports fish and game, subject to the approval of the Minister, the land owner, or the administering authority, as the case may require:
 - (c) To promote and educate—
 - (i) By defining and promoting ethical standards of behaviour to be followed by anglers and hunters; and
 - (ii) By promoting recreation based on sports fish and game; and
 - (iii) By keeping anglers and hunters informed on matters affecting their interests:
 - (d) In relation to costs,—
 - (i) To assess the costs attributable to the management of sports fish and game; and
 - (ii) To develop and recommend to the New Zealand Fish and Game Council appropriate licence fees to recover costs [[and game bird habitat stamp fees]]; and
 - (iii) To represent the region's interests with the New Zealand Fish and Game Council in the determination and distribution of levies on licences:
 - (e) In relation to planning,—
 - (i) To represent the interests and aspirations of anglers and hunters in the statutory planning process; and
 - (ii) To formulate and adopt an annual operational work plan; and
 - (iii) To prepare draft sports fish and game management plans in accordance with this Act; and
 - (iv) To identify and recommend to the New Zealand Fish and Game Council the region's sports fish and game requirements for research; and
 - (v) To implement national policy determined by the New Zealand Fish and Game Council; and
 - (vi) To liaise with local Conservation Boards; and
 - (vii) To advocate the interests of the Council, including its interests in habitats:
 - (f) To issue—
 - (i) Licences to hunt or kill game, [[and game bird habitat stamps,]] in accordance with the Wildlife Act 1953 and any regulations made under it; and
 - (ii) Licences to take sports fish, in accordance with this Part of this Act and any regulations made under this Act[; and]]
 - [[iii) Game hunting guide licences in accordance with the Wildlife Act 1953 and sports fishing guide licences in accordance with this Act.]]
 - [[g) To sell or arrange the sale of, in New Zealand or outside New Zealand, game bird habitat stamps and associated products:]]

[[(h) To recommend to the New Zealand Fish and Game Council the form of game bird habitat stamps.]]

(2) Each Fish and Game Council shall have such other functions as are conferred on it by or under this Act or any other Act.

(3) The following provisions shall apply in respect of operational work plans:

(a) Each Fish and Game Council shall prepare such a plan annually:

(b) Such plans shall be submitted to the Minister for the Minister's approval if there is no sports fish and game management plan for the time being in force for the area:

(c) The Minister shall approve or amend plans submitted under paragraph (b) of this subsection:

(d) Subject to paragraph (e) of this subsection, such plans shall have effect on and from the date of their completion by a Council but shall be subject to any amendments made by the Minister:

(e) If there is no management plan for any species of sports fish or game for the time being in force for the region of a Council, those provisions of the Council's operational work plan that relate to the management of those species for which there is no management plan shall not have effect until approved by the Minister.]

Appendix 2

[26C Functions of New Zealand Fish and Game Council

- (1) The functions of the New Zealand Fish and Game Council shall be—
- (a) To develop, in consultation with Fish and Game Councils, national policies for the carrying out of its functions for sports fish and game, and the effective implementation of relevant general policies established under the Wildlife Act 1953 and this Act:
 - (b) To advise the Minister on issues relating to sports fish and game:
 - [[(ba) To co-ordinate the preparation and recommendation, for the Minister's approval, of Anglers Notices and notices for game seasons; to advise the Minister in relation to such matters; and to publish in the Gazette Anglers Notices and notices for game seasons:..]]
 - (c) To participate, with the Director-General and other interested parties, in the development of a research programme promoting the management of sports fish and game:
 - (d) To oversee the electoral system by which members of Fish and Game Councils are elected:
 - (e) To recommend to the Minister an appropriate fee for fishing and hunting licences, after having regard to the views and recommendations of Fish and Game Councils:
 - [[(ea) To recommend to the Minister fees for game hunting guide licences and sports fishing guide licences, after having regard to views and recommendations of Fish and Game Councils:]]
 - (f) To determine, in consultation with Fish and Game Councils, the amount of the levy payable by Fish and Game Councils to the New Zealand Fish and Game Council, from licence sales, for—
 - (i) The administration of the New Zealand Fish and Game Council; and
 - (ii) Redistribution between Fish and Game Councils; and
 - (iii) Advocacy and research:
 - (g) To advocate generally and in any statutory planning process the interests of the New Zealand Fish and Game Council and, with its agreement, of any Fish and Game Council in the management of sports fish and game, and habitats:
 - (h) To provide regular reports to Fish and Game Councils:
 - (i) To liaise with the New Zealand Conservation Authority:
 - (j) To audit the activities of Fish and Game Councils:
 - [[(ja) To recommend to the Minister, after having regard to the views and recommendations (if any) of Fish and Game Councils and the New Zealand Game Bird Habitat Trust Board, an appropriate fee in respect of any game bird habitat stamp and the form of such stamps:]]
 - [[(jb) To sell or arrange the sale of, in New Zealand or outside New Zealand, game bird habitat stamps and associated products:]]
 - (k) To perform such other sports fish and game functions as the Minister may require.
- (2) The New Zealand Fish and Game Council shall have such other functions as are conferred on it by or under this Act or any other Act.]