

5 March 1983

Mr J.K. Guthrie

The Honourable A.P.D. Friedlander,
Minister of Works & Development,
Office of the Minister of Works
& Development,
Parliament Buildings,
WELLINGTON

Dear Mr Friedlander,

Re: Water Conservation Order - Ahuriri River

I refer to your letter of the 10th February 1983 which addressed certain matters arising from the application lodged with you for a Water Conservation Order for the Ahuriri River.

For ease of reference I refer to the paragraph numbers of your letter.

1. The National Executive of Acclimatisation Societies is not a body specifically constituted by any Act. It is the case for the National Executive however that it does have the requisite locus standi to be an applicant in these proceedings by virtue of its creation by the Minister of Internal Affairs exercising his powers under Section 41 of the Wildlife Act 1953. The establishment of the National Executive by the Minister of Internal Affairs was an exercise of powers conferred upon him by the legislation and whilst it may be arguable, the National Executive wishes to be an applicant in order to test its status under the Water and Soil Conservation Act 1967.

Accordingly, I am unable to assure you that the status of the National Executive is capable of withstanding any challenge. Indeed it is expected that the status of the National Executive will be argued by other parties and that is precisely the reason why it was included as an applicant with the other two bodies.

2. I accept that there is justifiable concern as to the lack of definition of "associated lagoons, ponds, tarns and swamps". The single map reference stated relates of course to the lowest point in the river system for which a Water Conservation Order is sought. It follows in my view that all water flowing to that point within the Ahuriri river catchment is to be subject to the Water Conservation Order. It is of course a feature of this river system that some of the marginal areas of tarns and swamps will change from time to time and will not be capable of specific delineation on a map. With

respect we would have thought the issue of definition is required to be answered in terms of the Water Conservation Order itself. The question which will require an affirmative answer is whether the reader of a Water Conservation Order can from the Order itself learn which waters it deals with and what the restrictions imposed by the Order are.

In short the Applicants seek the making of a Water Conservation Order in respect of all of the natural water within the Ahuriri river catchment because all of this water impinges upon the instream values within the river system which the application seeks to protect.

3. I regret I do not see why the Water Conservation Order sought cannot include conditions to meet both clauses 2 (b) and (c). Section 20D(2) of the Water and Soil Conservation Act 1967 uses the word "or" in a conjunctive way so that an Order may specify both the river to be preserved in its natural state and the features or qualities of that river to be protected. Precisely what those qualities and features are, and how they can best be described, will be a matter for draughtsmanship once the evidence on the application has been heard.

4. I accept that the application is based on the value of the water for fisheries, wildlife habitat, recreational and scientific purposes. It accordingly is appropriate to delete the words "of its wild scenic and other natural characteristics and because" from paragraph 2D. Thank you for drawing this matter to my attention.

I have noted your comment as to the likelihood of this application being dealt with contemporaneously with the application lodged by the Minister of Internal Affairs. I accept that the applications need not necessarily be dealt with together but I would make the respectful submission to you that it would be a serious waste of resources and would involve an unnecessary duplication of effort by witnesses, experts and Government departments to have two separate hearings, particularly if the applications are finally heard before the Planning Tribunal.

5. The expression "other purposes" was used to prevent an argument being raised, at the end of the day, that qualities other than those specifically listed would not be protected by the Water Conservation Order.

6. There are already some rights to abstract water from the Ahuriri river, those rights cannot be effected by the making of a Water Conservation Order. Applications to take further water from the river have been lodged and await decision. It seemed prudent therefore to leave open the option of providing for minima and maxima flow rates. The Applicants accept that if the words "natural state" mean "the present state" (at the time of the lodging of the Application for a Conservation Order) then the Applicants accept that maximum and minimum flow rates need not be defined.

7. With respect, it is possible that there may be situations where works of the type enumerated in paragraph 2(h)(ii) are thought to be capable of being undertaken without the need to apply for a water right. Whilst I accept that there is duplication between the two sub paragraphs they are intended to ensure that the river's protection is complete.

8. I agree with this comment, and agree that it is most probably ultravires the Water and Soil Conservation Act 1967. It will be interesting to see whether the similar condition which was applied for in the Motu application receives judicial comment and interpretation.

My clients will be happy to do whatever is required of them to advance this application.

Yours faithfully,
ANDERSON LLOYD JEAVONS & CO.

per:

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