Update Report

Hydroelectricity or wild rivers: Climate change versus natural heritage

June 2014





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Introduction

In May 2012 the Parliamentary Commissioner for the Environment released a report titled *Wild rivers or hydroelectricity: Natural heritage versus climate change*. The investigation began after the Commissioner received a number of letters from members of the public concerned about the now-defunct proposal to build a dam on the Mokihinui River on the West Coast of the South Island. The report is an evaluation of the system of policies, laws, institutions, and processes under which choices are made between the two environmental 'goods' of hydroelectricity and the protection of wild and scenic rivers.

Hydroelectricity is good for the environment because it is a way of generating electricity without emitting the greenhouse gas, carbon dioxide. Wild and scenic rivers are good for the environment too – they are a source of clean fresh water, habitat for bird and aquatic life, and a precious part of our cultural and environmental heritage.

It was found in the report that the way in which choices are made between the two 'goods' favours hydroelectricity for a number of reasons. For instance, hydroelectricity developments are encouraged through the National Policy Statement on Renewable Electricity Generation. Moreover, applications for water conservation orders for protecting wild and scenic rivers have become rare, largely due to the high cost of the process.

The report concluded with five recommendations from the Commissioner.

Update report on Hydroelectricity or wild rivers: Climate change versus natural heritage



Reaction to the report

The Minister of Conservation and the Minister for the Environment put out a joint press release stating that "*This is a complex area and Dr Wright has raised some important points. We will be considering her recommendations.*"¹

The Conservation spokesperson for Labour said the report raised "... critical issues about the future of our wild and scenic rivers and the need for a more comprehensive protection mechanism".²

The Green Party welcomed the report, with the Conservation spokesperson saying "Our rivers have suffered too much from decisions under the Resource Management Act (RMA) which emphasise the 'use' and 'development' aspect of sustainable management and give limited attention to the 'protection' aspect".³

United Future stated that "It is important that people realise that decisions giving the go-ahead to large-scale hydro-electricity schemes are permanent and irreversible. [This] report highlights the inadequacy of the present consenting process and offers a suite of changes that will set the bar higher and give more consideration to the value of wild and scenic rivers".⁴

NZ First supported the call to improve protection of wild and scenic rivers with the Environment spokesperson saying "Protection of these areas should be set in concrete so foreign-owned, privatised power companies cannot exploit them at the expense of our natural heritage."⁵

Environmental groups welcomed and were generally supportive of the report.

The Royal Forest & Bird Protection Society Advocacy Manager said that the report was thorough and tackled the core issues. However, he expressed concern about the option of single concession-consent hearings in the Commissioner's fifth recommendation.⁶

The Chairman of the Environmental Defence Society stated that "*Commissioner Jan Wright's recommendations for a fresh look at strengthening and broadening Water Conservation Orders have our strong support.*"⁷

Fish & Game NZ supported the call to improve the protection of wild and scenic rivers, but the Chief Executive expressed reservations about streamlining the water conservation order process and creating an inventory of rivers for protection.⁸

The Chief Executive of Meridian Energy was critical of the report's 'narrowness', saying: "*Meridian accepts the report exists within a narrow theme but we believe this debate needs to be wider. We have to start to focus on how we can collaborate to rule projects* `in' and still deliver net benefits to the environment. This can be done."⁹



Response to the Commissioner's recommendations

Recommendation 1:

The Minister for the Environment direct her officials (or the Land and Water Forum) to consider how the NPS on Renewable Electricity Generation or the NPS on Freshwater Management can be amended to better recognise the value of wild and scenic rivers.

The purpose of this recommendation is to ensure decisions made under the Resource Management Act adequately recognise the value of protecting wild and scenic rivers as well as hydroelectric development.

In March 2013, the Minister for the Environment and the Minister for Primary Industries released a discussion document on reforming the management of fresh water.¹⁰ This was followed in November 2013 by a further discussion document that contained proposed amendments to the National Policy Statement on Fresh Water Management, known as the NPS-FM.¹¹

In replying to a letter from the Commissioner asking for her response to the recommendations, the Minister for the Environment wrote: "Your recommendation to consider how the National Policy Statement on Freshwater Management can be amended to better recognise the value of wild and scenic rivers is being considered in the context of the [water] reforms."¹²

The relevant proposed amendments are to Objectives A2a and B4 in the NPS-FM. Both refer to the protection of 'outstanding freshwater bodies'.

Unfortunately, another proposed amendment is to the definition of "outstanding freshwater bodies" as follows: " 'Outstanding freshwater bodies' are those water bodies identified by a regional policy statement or regional plan as having with outstanding values, including ecological, landscape, recreational and spiritual values."¹³

Thus, a water body can only be 'outstanding' if it has already been identified as so in a regional council process.

Rather than better recognising the value of wild and scenic rivers, the proposed amendments to the NPS-FM would reduce the protection of such rivers. This serves to make hydroelectricity even more favoured in Resource Management Act decisions.

Recommendation 2:

The Minister for the Environment direct her officials (or the Land and Water Forum) to:

a) investigate which wild and scenic rivers outside conservation land would be good candidates for protection with water conservation orders,

and

b) investigate streamlining the water conservation order process by requiring a decision within nine months of an application and the hearing of applications by the Environmental Protection Authority.

Water conservation orders were developed to protect wild and scenic rivers that do not flow through national parks and are regarded as outstanding from a *national* perspective. But applications for water conservation orders have become rare with a long and very expensive process.

There has been no response to the first part of this recommendation.

The second part of the recommendation has received attention. Improving the process for water conservation orders was one of the reforms proposed in the March 2013 discussion document.¹⁴ However, the nature of the suggested 'improvements' met opposition during consultation, particularly the proposal that new applications for water conservation orders could be stopped or referred to regional councils by the Minister for the Environment.

In her submission on the discussion document, the Commissioner said: "Regional councils should not be put in the position of deciding whether or not particular rivers are nationally outstanding. Indeed, no application for a water conservation order has reportedly ever been supported by a regional council."¹⁵

The proposal for changing the water conservation process, as described in the March 2013 discussion document, has now been put on hold. The water conservation order process is to be reviewed in 2016 alongside the review of the NPS on Freshwater Management.

Recommendation 3:

The Minister of Conservation direct her officials to identify important wild and scenic rivers running through stewardship land and reclassify the land if they consider the rivers need protection.

The Minister of Conservation can allow a hydroelectric scheme to be built on a river flowing through the conservation estate either by granting a concession or, in some cases, by allowing a land exchange. Stewardship land is the only category of land that can be exchanged, but its conservation value remains unassessed. Developers are under the impression that stewardship land has lower conservation value than other categories of conservation land, but this is not necessarily the case.

In August 2013, the Commissioner released a report focused on stewardship land – *Investigating the future of conservation: The case of stewardship land*. As a result, the Minister of Conservation has asked the Department to prepare a report on priorities for reclassifying stewardship land with significant conservation value. The report is due by the end of June 2014.¹⁶ It remains to be seen whether one of the prioritisation criteria will be the need to protect important wild and scenic rivers. However, it is pleasing that progress is being made.

Recommendation 4:

The Minister of Conservation direct her officials to investigate transferring the administration of riverbeds located within conservation land to the Department of Conservation.

The riverbeds of many rivers that flow through the conservation estate are administered by Land Information NZ. The consequence is that these rivers are, in effect, not part of the conservation estate, so their conservation value cannot be considered in land exchanges or the granting of concessions.

It is pleasing to see good progress being made on this recommendation. The Minister of Conservation has had the Department undertake an initial assessment of Crown riverbeds within protected areas that are not part of the protected area. In a letter to the Commissioner, the Minister wrote: *"I am sure you will agree with me that this situation is far from satisfactory, and I am now considering possible options for addressing this issue."*¹⁷

The transfer process has begun for one riverbed. The New Zealand Conservation Authority has requested that ownership of the bed of the Mokihinui River be transferred from Land Information NZ to the Department of Conservation. This transfer is required before the Authority is able to reconsider the request from the West Coast Tai Poutini Conservation Board to investigate national park status for the Mokihinui catchment.¹⁸

Recommendation 5:

The Ministers for the Environment and Conservation seek amendments to legislation so that either:

- a) a commercial operation on conservation land must have approval under the Conservation Act 1986 before resource consents can be sought,
- or
- b) a commercial operation on conservation land that requires resource consent is considered at a single concession–consent hearing, and that the concession and consent decisions are made separately.

There are two separate processes for getting permission to build a dam on the conservation estate – obtaining a concession under the Conservation Act and obtaining consents under the Resource Management Act. These can happen in either order or at the same time. As described in the report, this can lead to confusion and inefficiency, and potentially undermine the role of the Minister of Conservation as guardian of the conservation estate.

In her response to the recommendation, the Minister for the Environment only considered option b), saying that it will be considered in future resource management reforms.¹⁹

In his response to the recommendation, the Minister of Conservation wrote:

"This recommendation was assessed as part of the RMII reform work. The Department and the Ministry for the Environment agreed on a specific approach to deal with the issues relating to the order of approvals, and this will be implemented when a suitable legislative vehicle becomes available. The solution agreed does not exactly match the two options presented in your report. It recognises that there are some circumstances where having the resource consent process occur first is preferable (e.g., where the activity to be approved by the concession is a very minor part of a major development project, and having the necessary concession considered after the development has been through the resource consent process will be more efficient for all parties)."²⁰

How well the agreed approach deals with the problems identified in the report remains to be seen.



Conclusion

The responses from Government Ministers to the recommendations in the report vary considerably.

The proposed amendments to the National Policy Statement on Freshwater Management put greater barriers in the way of protecting wild and scenic rivers, since no water body can be considered 'outstanding' from a national perspective.

Water conservation orders are the main way of protecting wild and scenic rivers that are of national importance. The process of dealing with applications for water conservation orders is to be reviewed in 2016. It is disappointing no attention has been given to identifying which rivers should be protected with water conservation orders.

When it comes to wild and scenic rivers that flow through the conservation estate, the response is very encouraging. Action is being taken on two problematic historic legacies – stewardship land and the administration of riverbeds by Land Information NZ.

It is also pleasing that some progress has been made on resolving the difficulties associated with the two separate processes of applying for resource consents from councils and concessions from the Department of Conservation. However, it is not clear that the proposed changes will increase the protection of wild and scenic rivers.

Overall, the protection of wild and scenic rivers that flow through conservation land is being improved. Outside of the conservation estate the favouring of hydroelectric development over the protection of wild and scenic rivers continues.

Notes

- 1 Hon Kate Wilkinson and Hon Amy Adams, 2012, *Ministers consider PCE report*, press release, 31 May 2012.
- 2 Ruth Dyson, 2012, *Call for improved river protection can't be ignored*, press release, 31 May 2012.
- 3 Eugenie Sage, 2012, *Green Party welcomes PCE call for improved river protection*, 31 May 2012.
- 4 United Future, 2012, *Peter Dunne welcomes PCE rivers report*, press release, 31 May 2012.
- 5 NZ First, 2012, *Stricter controls for power companies*, press release, 31 May 2012.
- 6 Forest & Bird, 2012, *Protection call for non-renewable wild rivers welcomed*, press release, 31 May 2012.
- 7 Environmental Defence Society, 2012, *EDS supports calls by the Parliamentary Commissioner for the Environment to improve wild rivers protection*, press release, 31 May, 2012.
- 8 Fish & Game NZ, 2012, *Rivers need 'National Park' protection status*, press release, 31 May 2012.
- 9 Evans, G., *Hydro development not a win-lose process Meridian*, Energy News, 1 June 2012.
- 10 Ministry for the Environment, March 2013, Freshwater reform 2013 and beyond.
- 11 Ministry for the Environment, November 2013, Proposed amendments to the National Policy Statement for Freshwater Management 2011: A discussion document.
- 12 Letter from Hon Amy Adams, Minister for the Environment, to Parliamentary Commissioner for the Environment, 17 April 2014.
- 13 Ministry for the Environment, November 2013, Proposed amendments to the National Policy Statement for Freshwater Management 2011: A discussion document, p.52.
- 14 Ministry for the Environment, March 2013, *Freshwater reform 2013 and beyond*.
- 15 Parliamentary Commissioner for the Environment, 2013, Freshwater reform 2013 and beyond Submission to the Ministers for the Environment and Primary Industries.
- 16 Letter from Hon Dr Nick Smith, Minister of Conservation, to the Parliamentary Commissioner for the Environment, 9 April 2014.
- 17 Letter from Hon Dr Nick Smith, Minister of Conservation, to the Parliamentary Commissioner for the Environment, 13 February 2014.
- 18 Department of Conservation, DOCDM-1381073, Information for New Zealand Conservation Authority meeting on 9 & 10 April 2014, agenda item 28, "*Mokihinui request for land transfer to enable decision on Section 8 investigation*".
- 19 Letter from Hon Amy Adams, Minister for the Environment, to the Parliamentary Commissioner for the Environment, 17 April 2014.
- 20 Letter from Hon Dr Nick Smith, Minister of Conservation, to the Parliamentary Commissioner for the Environment, 13 February 2014.