

Clutha Development (Clyde Dam) Empowering Act 1982 020
Commenced: 30 Sep 1982

ANALYSIS

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An Act to grant water rights to the Crown in respect of the operation of the Clyde Dam on the Clutha River

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title---This Act may be cited as the Clutha Development (Clyde Dam) Empowering Act 1982.

2. Interpretation---In this Act, unless the context otherwise requires,---

"Authority" means the National Water and Soil Conservation Authority; and includes its employees and agents:

"Minister" means the Minister of Energy; and includes employees and agents of the Minister:

"Regional Water Board" means the Otago Regional Water Board.

3. Water rights granted---(1) Notwithstanding anything in the Water and Soil Conservation Act 1967 or in any other enactment, the following rights are hereby granted to the Minister:

[a] The right for a period of 21 years from the date of commencement of this Act to dam the Clutha River at or about map reference NZMS 1 S133:116538 approximately 1.5 kilometres upstream from Clyde with a concrete dam approximately 64 metres high above the river bed, for the purpose of hydro-electric power generation, subject to the conditions set out in Part I of the Schedule to this Act:

[b] The right for a period of 21 years from the date of commencement of this Act to take up to 850 cubic metres per second of water from the lake formed by the said dam at or about map reference NZMS 1 S133:116538 into the penstock intakes of that dam, for the purpose of hydro-electric power generation, subject to the conditions set out in Part II of the Schedule to this Act:

[c] The right for a period of 21 years from the date of commencement of this Act to discharge from the powerhouse associated with the said dam up to 850 cubic metres per second of water into the Clutha River below that dam at or about map reference NZMS 1 S133:116538, for the purpose of hydro-electric power generation, subject to the conditions set out in Part III of the Schedule to this Act:

[d] The right for a period of 21 years from the date of commencement of this Act to divert water from the lake formed by the said dam at or about map reference NZMS 1 S133:116538 into the spillway of that dam, for the purpose of allowing excess water to pass the dam, subject to the conditions set out in Part IV of the Schedule to this Act:

[e] The right for a period of 21 years from the date of commencement of this Act to discharge water from the spillway of the said dam at or about map reference NZMS 1 S133:116538 into the Clutha River, for the purpose of allowing excess water to pass the dam, subject to the conditions set out in Part V of the Schedule to this Act:

[f] The right for a period of 21 years from the date of commencement of this Act to take up to 1500 cubic metres per second of water from the lake formed by the said dam at or about map reference NZMS 1 S133:116538 into ground level sluices through that dam, for the purpose of allowing water to pass that dam in situations of emergency, subject to the conditions set out in Part VI of the Schedule to this Act:

[g] The right for a period of 21 years from the date of commencement of this Act to discharge from the said ground level sluices up to 1500 cubic metres per second of water into the Clutha River below the said dam at or about map reference NZMS 1 S133:116538, for the purpose of allowing water to pass that dam in situations of emergency, subject to the conditions set out in Part VII of the Schedule to this Act:

[h] The right to divert the whole flow of the Clutha River into a deepened river channel below the powerhouse associated with the said dam at or about map reference NZMS 1 S133:116538, for the purpose of hydro-electric power generation, subject to the conditions set out in Part VIII of the Schedule to this Act:

[i] The right to discharge the whole flow of the Clutha River from the said deepened river channel back into the natural river channel at Alexandra at or about map reference NZMS 1 S143:180450, for the purpose of hydro-electric power generation, subject to the conditions set out in Part IX of the Schedule to this Act.

[2] If any dispute or difference arises relating to the interpretation of any condition set out in the Schedule to this Act, it shall be referred to the Authority for determination, and the Authority's determination shall be final.

[3] Subject to the provisions of this Act, the rights granted by subsection (1) of this section shall have the same force and effect as if they had been granted under the Water and Soil Conservation Act 1967, and the provisions of that Act (other than those relating to appeals), so far as is practicable and with the necessary modifications, shall apply in respect of each of those rights.

[4] Notwithstanding the provisions of sections 24D and 24E of the Water and Soil Conservation Act 1967, where it is intended that action be taken under either of those sections, the right granted by subsection (1) (b) of this section shall first be substantially restricted or suspended before any right to take water from the lake formed by the said dam for irrigation, rural water supplies, or frost fighting is restricted or suspended.

4. Reimbursement of appellants' legal costs and disbursements---(1) In addition to any costs and disbursements awarded by the judgment of the High Court (number M.183/81, Christchurch Registry), given on the 13th day of May 1982, to the appellants who appealed to the High Court pursuant to section 162 of the Town and Country Planning Act 1977, and in addition to any costs and disbursements awarded by the Planning Tribunal to those appellants, the Minister shall pay to those appellants, from the Consolidated Account out of money appropriated by Parliament for the purpose, such further sums as will fully indemnify the appellants for legal costs and disbursements relating to that appeal to the High Court and the related appeal to the Planning Tribunal, actually incurred before the commencement of this Act.

(2) If any dispute arises as to any sum payable pursuant to subsection (1) of this section, the claim shall be referred to the Registrar of the High Court at Christchurch to be taxed and allowed by him pursuant to the Code of Civil Procedure as if subsection (1) of this section were a judgment of the High Court to similar effect.

SCHEDULE

Section 3 (1)

PART I
Section 3 (1) (a)

CONDITIONS

1. The Authority may prescribe the method of management of the right, including the limitation of periods during which the right may be fully exercised if a water shortage or any other abnormal circumstance occurs in the locality.
2. The right may be operated only by the Minister and only for the purpose stated in the right.
3. The right shall not be an authority to obtain access to a source of water or a point of discharge.
4. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
5. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
6. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
7. The maximum operating level of the lake above the dam shall be 194.5 metres above mean sea level, the range of operating lake levels shall not exceed 1 metre, and the flood level for a flow of 3200 cubic metres per second shall not exceed 195.1 metres above mean sea level.
8. Except in emergency situations, the lake shall not be drawn down below the bottom of the operating range without prior notification in writing to the Regional Water Board.
9. The Minister shall reinstate all works necessary to permit existing lawful users of the water affected by the exercise of the right to continue their lawful use to the extent it was happening up to the date of commencement of this Act.
10. Without limiting the generality of condition 9, the Minister shall reinstate all works necessary to permit--
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 (a) The Cromwell Borough Council and the Alexandra Borough Council to continue their lawful use of water under rights granted or authorised under the Water and Soil Conservation Act 1967; and
 (b) The lawful use of water under rights so granted or authorised in respect of the Ripponvale and Pisa irrigation schemes.
11. The Minister shall ensure that all known historic places, within the meaning of the Historic Places Act 1980, that will be lost by inundation are comprehensively recorded to the satisfaction of the Authority after consultation with the New Zealand Historic Places Trust.
12. The Minister shall monitor and record the quality of water in the lake, any climatic changes in the Clyde and Cromwell areas, any weed infestation in the lake, and the fluctuations in lake level. The Minister shall prepare a programme of such monitoring and recording and obtain the Authority's consent before commencing the programme. The programme may from time to time be altered by agreement between the Minister and the Authority.
13. Before filling the lake, the Minister shall clear all trees and scrub which would otherwise foul the upper 7 metres of the lake, and shall also protect the lake shore against erosion as required by the Authority.

14. The Minister shall, in accordance with the general descriptions in the statements presented to the Regional Water Board, and to the extent that the land affected is owned by the Crown---

- (a) Reshape the shallow lake margins around Lowburn so that a 2.5 metre depth of water is generally attained;
- (b) Provide suitable and reasonable public access and facilities for the recreational use of the lake; and
- (c) Undertake a programme of beautification around the lake shore.

15. The Minister shall provide a fish hatchery for the purposes of re-establishing and maintaining fish stocks in the lake above Cromwell and in the river reach below the dam.

16. The Minister shall, before exercising the right, apply for rights to divert water from the lake and to discharge water into the Fraser River, at the highest point that can be reasonably served by a gravity race system, for the purposes of maintaining a minimum flow in the Fraser River of at least 1 cubic metre per second.

PART II

Section 3 (1) (b)

CONDITIONS

1. The Authority may prescribe the method of management of the right, including the limitation of periods during which the right may be fully exercised if a water shortage or any other abnormal circumstance occurs in the locality.
2. The right may be operated only by the Minister and only for the purpose stated in the right.
3. The right shall not be a guarantee that the quantity of water specified will be available.
4. The right shall not be an authority to obtain access to a source of water or a point of discharge.
5. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
6. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
7. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
8. The Minister shall be entitled by the right to take on average the whole of the natural mean flow of the Clutha River, but that average shall be reduced by the Authority by up to 9 cubic metres per second in order to provide water for rights for such purposes as irrigation, rural water supplies, frost fighting, and other uses.
9. The Minister shall monitor and record the rate of flow of water taken pursuant to the right.

PART III

Section 3 (1) (c)

CONDITIONS

1. The right may be operated only by the Minister and only for the purpose stated in the right.
2. The right shall not be an authority to obtain access to a source of water or a point of discharge.

3. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
4. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
5. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
6. The Minister shall, for the protection of public safety, provide adequate notices and other means to warn the public using the river downstream from the dam of fluctuations in river flow and of the extent of those fluctuations.
7. The Minister, to the satisfaction of the Authority, shall provide alternative rowing and other recreational facilities to replace such existing facilities in the Clyde-Alexandra reach of the river as are made impracticable by flow fluctuations or channel works.
8. The Minister shall be responsible for the correction of any river channel erosion in the Clyde-Alexandra reach of the river caused by the flow fluctuations resulting from the exercise of the right.
9. The Minister shall ensure that water at least 1 metre deep and 60 metres wide is maintained at all times in the river channel downstream from the dam.

PART IV Section 3 (1) (d)

CONDITIONS

1. The Authority may prescribe the method of management of the right, including the limitation of periods during which the right may be fully exercised if a water shortage or any other abnormal circumstance occurs in the locality.
2. The right may be operated only by the Minister and only for the purpose stated in the right.
3. The right shall not be an authority to obtain access to a source of water or a point of discharge.
4. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
5. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
6. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
7. The Minister shall ensure that the spillway can at all times pass at least 3200 cubic metres per second of water at a lake level of 195.1 metres above mean sea level.
8. The Minister shall monitor and record the rate of flow of water diverted over the spillway.

PART V

Section 3 (1) (e)

CONDITIONS

1. The right may be operated only by the Minister and only for the purpose stated in the right.
2. The right shall not be an authority to obtain access to a source of water or a point of discharge.
3. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
4. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
5. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
6. The Minister shall be responsible for the correction of any river channel erosion in the Clyde-Alexandra reach of the river resulting from the exercise of the right.

PART VI
Section 3 (1) (f)

CONDITIONS

1. The Authority may prescribe the method of management of the right, including the limitation of periods during which the right may be fully exercised if a water shortage or any other abnormal circumstance occurs in the locality.
2. The right may be operated only by the Minister and only for the purpose stated in the right.
3. The right shall not be a guarantee that the quantity of water specified will be available.
4. The right shall not be an authority to obtain access to a source of water or a point of discharge.
5. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
6. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
7. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
8. The Minister shall ensure that the sluices can pass at least 1500 cubic metres per second of water at a lake level of 170 metres above mean sea level.
9. The Minister shall monitor and record the rate of flow of water taken into the sluices and shall record the circumstances requiring any use of the sluices.
10. The right may be exercised only for emergency situations requiring partial or complete dewatering of the lake, or for the passage of floods, but the sluices may be used for short periods from time to time to ensure their correct operation.

PART VII
Section 3 (1) (g)

CONDITIONS

1. The right may be operated only by the Minister and only for the purpose stated in the right.
2. The right shall not be an authority to obtain access to a source of water or a point of discharge.
3. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
4. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
5. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
6. The Minister shall be responsible for the correction of any river channel erosion in the Clyde-Alexandra reach of the river resulting from the exercise of the right.
7. The right may be exercised only for emergency situations requiring partial or complete dewatering of the lake, or for the passage of floods, but the sluices may be used for short periods from time to time to ensure their correct operation.
8. The Minister shall, if practicable, give prior notice to the Regional Water Board of the intention to exercise the right, and shall in any event provide full details to the Board of any exercise of the right as soon after the event as is possible.

PART VIII
Section 3 (1) (h)

CONDITIONS

1. The right may be operated only by the Minister and only for the purpose stated in the right.
2. The right shall not be an authority to obtain access to a source of water or a point of discharge.
3. The Minister shall keep such records as may reasonably be required by the Authority, and shall, if so requested, supply such information to the Authority.
4. The Minister shall permit access to the Authority at all reasonable times for the purpose of carrying out inspections and measurements.
5. The design and maintenance of any works relating to the right shall be of a standard adequate to meet the conditions of the right.
6. The deepening of the river channel below the dam shall not generally exceed 4 metres, and shall taper off to the level of the existing channel invert at Alexandra.
7. The deepened channel shall have its bed and banks armoured as necessary to prevent channel erosion.
8. The spoil resulting from the channel deepening shall be disposed of in such manner as will not impede the river channel and floodway or prevent the productive use of fertile land.

