



Whitewater NZ

rivers.org.nz

C/O 28 Waipara Street
Cracroft
Christchurch 8025

1 May 2015

Marie Long
Director, Planning, Permissions and Land for Director-General
Department of Conservation
P O Box 10420
Wellington 6143

Dear Marie

WESTPOWER: PART 3B APPLICATION RELATING PROPOSED WAITAHA SCHEME

Background

In early February 2015, we provided the Department of Conservation (DOC) with a report *Impacts of the Proposed Waitaha River Westpower Hydro Scheme on White Water and Kayaking Values*, January 2015, Rankin and Orchard.

By letter dated 25 February 2015, we received from you, in response to our Official Information Act request, a copy of Westpower's application of July 2014 for concessions in relation to the proposed scheme.

In reviewing Westpower's application, a range of substantial and critical omissions and other issues became apparent, which obliged Whitewater NZ to undertake further analysis to ensure that the DOC and the Minister are properly informed in considering Westpower's application.

Issues

Particular omissions and other key issues in Westpower's application include:

- An absence of any information or analysis on the financial viability of the proposed scheme;
- Fundamental issues in relation to Westpower's reasons as to why the proposed scheme is needed;
- A failure to properly outline the range of alternative locations at which the overall activity to be authorised could be undertaken;
- Fundamental inaccuracies in the report prepared by R Greenaway & Associates for Westpower, which is Appendix 19 of Westpower's Waitaha application;

- Issues with section 10 of Westpower’s Waitaha application as to whether the proposed scheme complies and is consistent with the Conservation Act 1987, the Conservation General Policy 2005 and the West Coast Conservation Management Strategy 2010-2020; and
- The presumption in Westpower’s application that the Waitaha scheme should be treated as another Amethyst.

Amethyst precedent

Addressing the Amethyst precedent issue first, the presumption in Westpower’s application that the Waitaha scheme should be treated as another Amethyst is a recurring theme in the Waitaha application. For example, Westpower states in its Waitaha application:

“The recently commissioned Amethyst Hydro Scheme provides an excellent example of how Westpower approaches hydro-electric power scheme development in an environmentally sensitive manner... The Amethyst Hydro Scheme has a very small footprint and illustrates how significant advantages can accrue to the local community through small scale run-of-river hydro development. Westpower is committed to quality developments and sound environmental practices and expects to apply the same key success factors to the Waitaha Hydro Scheme” (section 2.2, page 7)

“Westpower have adopted this approach following completion of the Amethyst Hydro Scheme. That Scheme is of similar layout, although it differs in scale, and is also within conservation land. It has been successfully developed taking into account the site specific values and requirements and utilising the methodology outlined above” (section 5.1, page 32).

The clear implication is that the Waitaha scheme should be decided by the Minister with a similar outcome to the Minister’s Amethyst decision. However, as Mr Baldwin notes in his report:

“The Waitaha scheme must be considered on its own merits without making any presumptions or assumptions on the basis of the Amethyst scheme, the Minister’s evaluation of Westpower’s Amethyst application, or the Minister’s decision to grant concessions for the Amethyst scheme.

In short, the Waitaha scheme must to be assessed against the relevant statutory criteria independently of the Amethyst precedent. This approach is required by public law and Part 3B of the Act, in particular, section 17T(3), which provides that the Minister is not required to grant any concession:

‘...if he or she considers that the grant of a concession is inappropriate in the circumstances of **the particular application** having regard to the matters set out in section 17U [s.17T(3)]” [emphasis added]’ “

For the avoidance of doubt, it is important to note that Whitewater NZ is not opposed to all or any hydro developments. Without question, hydro has a positive place in meeting New Zealand’s future energy needs. As a case in point, we did not oppose Westpower’s Amethyst development, which uses a water flow with a long history of hydro generation.

Despite Westpower’s claims to the contrary, the Waitaha scheme is not equivalent to the Amethyst scheme – it is a different scale, in a conservation area with different values, with different adverse effects. Some of these differences are set out in the Table I of the attached paper *Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme*. Unlike the Amethyst River, the Waitaha River has never been used for hydro generation and has quite different conservation values.

Baldwin report

We approached Tony Baldwin, a Wellington-based consultant in the electricity sector, to see if he would be available to undertake a review. Mr Baldwin agreed to do so strictly on the basis that his approach would be independent of any interest group. As noted in his report:

“This report has been prepared from an independent and objective perspective. It has not been prepared to support or critique any particular party or position. The analysis and conclusions reflect the relevant available facts using generally accepted methods of analysis in the electricity industry.”

Based on the analysis in the report, its key conclusions are as follows:

- Westpower’s reasons for the proposed Waitaha scheme are not supported by the evidence or are not relevant under Part 3B of the Act. Individually or together, Westpower’s reasons do not therefore provide sufficient reason to conclude that it would be appropriate in terms of section 17S(2) of the Act to authorise an activity in a conservation area that would impose adverse effects.
- The Waitaha scheme is not likely to be financially viable in the reasonably foreseeable future. It would therefore not seem to be “appropriate” in terms of 17S(2) of the Act to authorise such a business to impose adverse effects in a conservation area.
- There is a wide range of alternative locations within the relevant time-frame at which the activity in question could be reasonably undertaken outside the relevant conservation area. Under section 17U(4)(a) of the Act, the Minister is therefore not allowed to grant concessions for the activity proposed by Westpower in relation to the Waitaha scheme

As outlined in Mr Baldwin’s report, financial viability and reasons as to why the scheme is needed are highly relevant considerations under Part 3B of the Act.

A copy of his report is attached. The Minister is invited to receive it as “a report from any person on any matters raised in relation to the application” for the purposes of section 17S(4)(a); and/or “existing relevant information on the proposed activity” for the purposes of section 17S(4)(b).

Supplemental Rankin paper

In relation to the fourth, fifth and sixth issues referred to above, I have prepared a supplemental paper, *Additional Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme*. It concludes that:

- *Recreation Tourism Assessment of Effects Report* by Rob Greenaway & Associates misrepresents and underestimates various values of the Waitaha River and also the impacts of the proposed hydro scheme on the kayaking and wilderness values; and

- Westpower’s Waitaha application incorrectly concludes that the Waitaha hydro scheme is similar in scope and impacts to the recently completed Amethyst hydro scheme.

The supplemental Rankin paper is also provided to the Minister for the purposes of section 17S(4).

Review of natural values effects assessment

The natural values of the Upper Waitaha Catchment, and the scheme’s adverse effects, are reviewed in the appendix to this letter. There is no question that:

- The Upper Waitaha Catchment, within which the proposed scheme would be located, is an area of outstanding natural values. It is also agreed that it has “high intactness, scientific and distinctiveness values, as recognised in the Westland District Plan to be considered outstanding.”¹
- The scheme would introduce “two nodes of intensified industrialised-style modification occurring within an area retaining very little modification and holding high natural character values.”²
- The scheme would have high adverse effects at a local level on biophysical, perceptual/experiential, associational and recreational values.

Westpower’s consultants assert that rating of the adverse effects can be changed from high to low by applying ‘dilution’ techniques. Their ‘dilution’ arguments are reviewed in the appendix to this letter. We conclude that they are weak and do not provide a robust basis for deciding what is “appropriate” under Part 3B of the Act.

Statutory framework applied to Westpower’s application

In section 2 of his report, Mr Baldwin helpfully outlines the statutory decision-making framework that the Minister is to apply in deciding whether to grant concessions for the proposed Waitaha scheme. The flow diagrams in section 2.11 are particularly useful. Applying it to Westpower’s application:

- **Step 1: Is it complete in terms of section 17S of the Act?** No – Mr Baldwin’s report finds that:

“Westpower’s application is not complete in terms of section 17S of the Act. It does not contain any information on whether the proposed Waitaha scheme is financially viable, and it fails to properly outline the range of alternative locations for the activity in question.”
- **Step 2: Further information sought** – We understand that DOC is seeking further information from Westpower on certain matters. As noted above, the attached report and supplemental paper are provided to the Minister for the purposes of section 17S(4).
- **Step 3: Is the Minister required to decline Westpower’s application?** – Yes. Mr Baldwin’s analysis establishes clearly that the proposed overall activity could reasonably be undertaken in

¹ Boffa Miskell Report, Appendix 9 of Westpower’s Waitaha application, at page 72

² Boffa Miskell, page 73 and also page 56

another location that is outside the conservation area. The Minister is therefore required by section 17U(4)(a) of the Act to decline the application.

In addition, serious questions are raised as to whether the proposed scheme is consistent with the provisions of the Act and the relevant conservation management strategy or conservation management plan [s.17T(2)]. These doubts are raised from various sources. For example:

- Westpower's advisers, R Greenaway & Associates, have observed that "the installation of hydro development structures would be incompatible with the preferred management setting characteristics described in the DOC CMS [West Coast Conservation Management Strategy 2010-2020]."³
- The review in the appendix to this letter also gives rise to serious questions about how the adverse effects could be considered consistent with the provisions of the Act and the relevant conservation management strategy or conservation management plan.
- The Rankin paper attached to this letter outlines particular provisions of the CMS against which it is difficult to reconcile the adverse effects of the scheme and still conclude that the scheme is consistent with the CMS.

Declining the application under section 17T(2) is still available given that the application is not complete.

The review in the appendix to this letter also gives rise to questions about the robustness of the view that the proposed activity is not contrary to the provisions of this Act or the purposes for which the land concerned is held [s.17U(3)].

- **Step 4: Minister's discretion to authorise or decline** – As outlined in section 2.3 of Mr Baldwin's report, the legal threshold for the Minister to authorise an activity in a conservation area is as follows:
 - Westpower's application must (i) be complete, (ii) not be in one of three categories that require it to be declined, (iii) have adequate or reasonable methods for remedying, avoiding or mitigating adverse effects, and (iv) have sufficient information to assess effects.
 - If these elements are in place, the Minister weighs the effects of the proposed activity and other relevant factors (on the one hand) against the conservation values of the relevant conservation area (on the other), making a decision that gives effect to the statutory purpose of the Conservation Act 1987.
 - Westpower is seeking concessions in the form of leases, licences and easements, and therefore the Minister must be satisfied the proposed activities are **both** appropriate and lawful. If it is not, the Minister may not grant the concession.
 - "Appropriate" is a more demanding standard than just lawful. At law, what is appropriate is strongly informed by the Act's statutory purpose.

³ Greenaway Report, Appendix 19 of Westpower's Waitaha application, at page 64

Is the proposed scheme “appropriate” under Part 3B?

As summarised in the appendix to this letter, the proposed scheme’s local adverse effects are high. However, as set out in section 12 of the Baldwin report, Westpower’s reasons for the proposed Waitaha scheme are not supported by the evidence and/or not relevant under Part 3B of the Act. Individually or together, Westpower’s reasons do not therefore provide sufficient reason to conclude that it would be appropriate in terms of section 17S(2) of the Act to authorise an activity in a conservation area that would impose adverse effects.

Based on a desk-top analysis, the Baldwin report also finds that the proposed scheme is not likely to be financially viable in the reasonably foreseeable future. It would therefore not be “appropriate” in terms of 17S(2) of the Act to incur those adverse effects.

To authorise an activity with such effects when it is not needed for many years or likely to be financially viable in the reasonably foreseeable future, and when the other reasons given by Westpower for the scheme are not supported by the evidence or not relevant under Part 3B, would be inconsistent with the Act’s purpose of promoting “the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.”⁴

Further, as noted above, it is also clear that the proposed overall activity could reasonably be undertaken in another location that is outside the conservation area. The Minister is therefore required by section 17U(4)(a) of the Act to decline the application. There are indeed many alternative new generation projects that will contribute to meeting electricity consumption in Westpower’s region.

‘Blind’ approval not permitted

In its application, Westpower seems to concede implicitly that the Waitaha scheme is not required, and is not likely to be financially viable in the reasonably foreseeable future, arguing instead that it is justified because it will “span several generations”:

“While in the short term the increase in demand for electricity has slowed and the forecasts are less optimistic than had previously been the case; this Scheme is a very long term investment which will span several generations” (page 9 of Westpower’s Waitaha application).

On the question of whether the proposed scheme may become financially viable sometime beyond the reasonably foreseeable future, Mr Baldwin concludes that it is not possible for anyone to predict with any confidence if and when it may become economic or needed.

Granting a concession now for an activity that may or may not become needed or financially viable some time beyond the reasonably foreseeable future would not be consistent with the Minister’s role and powers under Part 3B of the Act. It would amount to the Minister saying: “Even though the applicant’s reasons are not sufficient to make it ‘appropriate’ now under section 17S(2), I will authorise the activity on the basis that the reasons might become sufficient sometime in the future.” This would not be consistent with the Act.

⁴ Long title and s.2, Conservation Act 1987

Such an approach would also fail to properly weigh Westpower's other reasons for the proposed activity, which are not supported by the evidence or are not relevant under Part 3B.

Westpower should re-apply if and when it has reasons that are sufficient to make the activity and its adverse effects appropriate under section 17S(2). At that time, the Minister would have to consider all the relevant factors, including whether the activity could reasonably be undertaken at many locations outside the conservation area in question. In the meantime, if electricity demand in New Zealand should grow to a level that requires new generation, it is likely that a range of lower cost options already fully consented will be built (particularly geothermal) in locations that are outside conservation areas. As noted in the Baldwin report, the next lowest cost hydro generation options appear to be at Hawea control gates and the Pukaki canal, both of which are already fully consented.

Conclusion

The activity proposed by Westpower does not satisfy the requirements of Part 3B of the Act. The Minister is therefore required to decline Westpower's application.

We would be pleased to provide any further information you may require.

Yours sincerely



Dr Douglas Alexander Rankin
Conservation Officer
Whitewater NZ

APPENDIX: REVIEW OF NATURAL CHARACTER, LANDSCAPE AND VISUAL AMENITY EFFECTS ASSESSMENT

Natural values

There is no question that the Upper Waitaha Catchment, within which the proposed scheme would be located, is an area of outstanding natural values. This is acknowledged by Westpower and its consultants. Westpower's consultant, Boffa Miskell, concludes that:⁵

"...based on the above assessment and within the context and relevant policies of the District and Regional Plan, it is assessed that the Upper Waitaha Catchment contains very high, near pristine levels of naturalness and that the landscape (at both a district and regional scale) be considered "*conspicuous, eminent, especially because of excellence*". This includes the area around the powerhouse site."

"More specifically, for the requirements of the District (Policy Landscape 4.8), this landscape would be considered significant, as it is considered that it would meet the first collection of criteria within Policy...it retains a very high level of naturalness due to its open and spacious character and its largely unmodified form. The feature of Morgan Gorge clearly demonstrates its formative processes, through the glacial and alluvial eroded valleys and the continued cutting of the river through basement rocks. The presence of the geopreservation site of the Waitaha River Hot Springs adds to the gorge's high biophysical and distinct amenity values. Morgan Gorge itself could also be considered to be an outstanding natural feature within this landscape, due to its exceptional biophysical and perceptual values. The Upper Waitaha Catchment also retains high visual coherence through its very high near pristine levels of naturalness."

"The principal associative values of the Upper and Lower Waitaha Catchments relate to low levels of recreational activities, namely tramping, white-water kayaking and hunting, predominantly in the Upper Waitaha Catchment. It is understood that no other human land use activities have occurred in the Upper Waitaha Catchment, including settlement or mining."

Boffa Miskell further summarised the natural values of the Upper Waitaha Catchment as follows:

"It is considered that they hold high intactness, scientific and distinctiveness values, as recognised in the Westland District Plan to be considered outstanding."⁶

And also by way of summary –

"Very high biophysical, perceptual/ experiential and associational values based on the remote-like qualities and near pristine levels of naturalness. Exceptional features, such as Morgan Gorge positively contribute to the broader landscape values of the Upper Waitaha Catchment."⁷

⁵ Boffa Miskell report at section 4.2.3 – Appendix 9 of Westpower's Waitaha application

⁶ Boffa Miskell, page 72

⁷ Boffa Miskell, section 4.2.2.4

Leading authorities on New Zealand river areas in New Zealand concur, including Graham Charles and Andrew England:

“The Waitaha River – its physical assets - its headwaters, valley sides, flora and fauna, water and geology - and its meta-physical values of wilderness, challenge, beauty, drama and landscape - represents a ‘world-class’ resource, not only as a top class kayaking destination but as a truly wild and scenic icon for all the world to appreciate. Appreciation can be found not only physically by visiting the place but by simply knowing that places as truly wild and untouched as the Waitaha Valley still exist for future generations” – **Graham Charles**, 5, January, 2015, author of *New Zealand Whitewater*⁸

“The valley sides wrap around Kiwi Flat on all sides with only a slot for the Waitaha River to exit from. This is the Morgan Gorge which is one of the most spectacular gorges – perhaps the most spectacular – on the West Coast. It has high, vertical sides which are close together and are fluted vertically in sharp arêtes instead of the usual gentle waves of gorge wall profiles. The upstream end of Morgan Gorge has large boulders at river level but the gorge narrows further as you progress downstream, to a point where it opens out slightly and cascades over a steep rocky slip next to a huge boulder or eroded bedrock shape” – **England, A.** (2011)⁹

Adverse effects

It is also accepted by Westpower and its consultants that the proposed scheme would have a range of adverse effects.

The scheme would introduce “two nodes of intensified industrialised-style modification occurring within an area retaining very little modification and holding high natural character values.”¹⁰ For example, the weir structure would be 4-5 m in height above the river bed and 4 m in width, secured by rock anchors at either end.¹¹ Other structures would include large tunnel portals, a power station and switchyard.

The scheme would also substantially reduce the minimum flow of the river from the top of the Morgan Gorge to the point at which the diverted water is returned to its natural flow 2.6km down river. Among other things, artificial stop-banks would also align the river margin from the outfall to close to where the exit tunnel portal is located.

Acting for Westpower, Boffa Miskell has assessed the adverse effects to include the following:¹²

- **In relation to natural character values –**

“With the additional physical elements present of the intake and weir structure, this effect [of local flow reduction] is amplified to a **high** magnitude of natural character effects at this localised Intake Area”;

⁸ *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, January 2015, Rankin and Orchard

⁹ *An assessment of the whitewater recreational values of West Coast rivers – whitewater kayaking*. Land Environment and People Research Paper No. 2. Lincoln University.

¹⁰ Boffa Miskell, page 73 and also page 56

¹¹ Boffa Miskell, page 53

¹² Boffa Miskell, section 5

“The stop-bank will also artificially modify the river bank. As a result, it is considered that the magnitude of permanent natural character effects at this localised powerhouse area is assessed as being high.”

- **In relation to landscape values** – “the magnitude of permanent landscape effects at this localised intake area (including intake access road) is assessed as being **high**.”
- **In relation to visual amenity values** – “the magnitude of permanent visual effects at this localised intake area is assessed as being **high** at near distance views.”
- **During the construction period** – “There will be a localised change of landscape character, from semi-remote and semi-natural, to industrial during construction, which would be at least 3 to 4 years.”

Others may assess other adverse effects from the proposed scheme. However, for the purposes of this note, the assessment of Westpower’s consultants is used as the base.

Acting for Westpower, R Greenaway & Associates reached the following key conclusions:

- The net effect of the scheme on **recreation values** would “remain '**high**'... in the Kiwi Flat area and from the top of Morgan Gorge to Douglas Creek. This is due to the introduction of development structures into a predominantly unmodified (besides for recreation) backcountry-remote recreation setting, and flow effects along the abstraction reach.”¹³
- “The installation of hydro development structures will be incompatible with the preferred management setting characteristics as described in the DOC CMS.”¹⁴

In relation to **kayaking values**, we conclude that the adverse effects would be **very high**, as outlined in the Rankin and Orchard Report (2015) and the Rankin paper (2015) attached. We also observe that the Greenaway Report contains several fundamental errors in relation to kayaking values.

Claimed dilution of effects

Boffa Miskell dilution

Acting for Westpower, Boffa Miskell claims that the rating of the adverse effects summarised above can be diluted from ‘high’ to ‘low’ when viewed in a much larger geographical scale. Boffa Miskell’s main arguments are that:

¹³ Greenaway Report, Appendix 19 of Westpower’s Waitaha application, at page 8

¹⁴ Greenaway Report at page 64

1. The scheme would have small footprint relative to the whole Waitaha Catchment –

“The Scheme comprises a permanent total footprint of 3.69 hectares [within the Upper Waitaha Catchment 12,761 ha] and directly affects approximately 2.6 km of the Waitaha River’s 40km river length” [Boffa Miskell]

2. The broader landscape can “absorb a degree of modification” –

“It is due to this scale of the landscape within which the Scheme is set, in combination with its small footprint, that the effects on the biophysical, associational and sensory values that make this landscape special will not be sufficiently eroded. A landscape can absorb a degree of modification and still be an outstanding natural landscape and/or feature.” [Boffa Miskell]

3. The Upper Waitaha Catchment has already been modified by tracks, huts and a swingbridge, and therefore further modification with the power scheme structures would not be out of place –

“the Upper Waitaha Catchment cannot be regarded as ‘truly’ remote or holding wilderness qualities due to the existing modifications and recreational use of the tracks, huts and swingbridge.” [Boffa Miskell]

“Furthermore, a gold mining permit has been granted for a stretch of the Waitaha River between the top of Kiwi Flat and Macgregor Creek” [Boffa Miskell]

4. There are numerous other river catchments with similar outstanding nature values and therefore modifying the Waitaha would not cause undue loss. This is a central argument in Boffa Miskell’s approach and recurs in its report, including:

- “However, when considering the Upper Waitaha Catchment at a broader scale it is considered that the catchment would be just as memorable as other comparable upper reaches.” (page 43)
- “it is likely that other catchments within the District or Region holding the same or similar attributes would also be considered to be outstanding” (page 45)
- “whilst the features of the Upper Waitaha Catchment hold very high biophysical, associative and sensory landscape values, they are not unique when considered within the broader West Coast context.” (page 45)
- “in the broader context of the West Coast Region, where approximately 84% of the land is managed by the Department of Conservation, there are numerous other river catchments holding similar features such as gorges, hot springs and glaciers and therefore the catchment is not considered unique.” (page 48)
- “Collectively, these values are not unique to the area from a wider district/ region perspective, as other valley catchments hold similar values” (page 72)

5. The river is not particularly special as it does not have a water conservation order –

“The river is also not subject to a Water Conservation Order” [Boffa Miskell]

6. The land does not have special legal status, except it is “stewardship land”, therefore it must be must more open to modification –

“The Scheme is not being proposed in a national park or World Heritage Area, such as Fiordland and South Westland, nor a designated Wilderness Area.” Another example: “The area is not actively managed by the Department of Conservation, so pests are present”. And another example: “It is in Stewardship Land, which is the most generic category of land in the conservation estate. (Part 5 of the Conservation Act states that Stewardship areas shall be managed so that its natural and historic resources are protected”) [Boffa Miskell]

7. The adverse effects of the scheme are not as bad as they would have been if the larger scheme (Option A) had been pursued –

“The Scheme has avoided potentially more significant effects such as the damming of the river, creation of a lake or placing the structures elsewhere in the Upper Catchment.” [Boffa Miskell]

8. Hydro schemes are common –

“Hydro schemes, notably run-of-river types are common in New Zealand, with six in the West Coast Region.” [Boffa Miskell]

9. Follow Amethyst precedent –

“The Amethyst project located within the adjacent Wanganui Catchment to the south typifies how a small Scheme can be well designed and integrated into a relatively remote setting.” [Boffa Miskell]

10. The scheme would be “in keeping with a tradition on the West Coast” –

“the Scheme will have an industrial appearance in a relatively remote setting, however, it will be in keeping with a tradition on the West Coast of such small scales works juxtaposed against a wild landscape.” [Boffa Miskell]

Together, these ‘dilution’ arguments are used by Boffa Miskell to conclude that overall the scheme is “appropriate with respect to natural character, landscape and visual amenity despite the fact that at more local levels the natural character, landscape and visual amenity effects are assessed as being moderate to high.”¹⁵

Greenaway dilution

11. Acting for Westpower, R Greenaway & Associates¹⁶ seek to use the same dilution technique in relation to adverse effects on recreation values, particularly kayaking values. Effects that would otherwise be viewed as of a high magnitude are rated as low on the putative grounds that the scheme would adversely affect a small number of recreational users and that there are plenty of alternatives to the Waitaha River and Morgan Gorge. For example, Greenaway asserts:

¹⁵ Boffa Miskell at page 73

¹⁶ Greenaway report, Appendix 19 of Westpower’s Waitaha application

“A low level of recreational use occurs within the study area”

“Fewer than 10 individuals might kayak the upper Waitaha Gorge (above Moonbeam Hut) and/or Morgan Gorge in any one year, although these sections might not be run at all for long periods, and there is a very limited pool of suitably skilled kayakers”

“At the regional level, the effect of the Scheme on West Coast recreation and tourism generally will be very slight due to the high number of alternatives available for all activities affected by the Scheme and the relatively low level of use of the Kiwi Flat area.”

“However, the net effect on the West Coast kayaking scene is likely to be minor, considering the number of kayaking alternatives, the ability to retain the kayaking opportunity in the Morgan Gorge, and the relative low level of use of the Waitaha River, and far lower level of use of Morgan Gorge (although this is a natural feature of such extreme kayaking settings).”

“Level of effect: Low. There are numerous alternative backcountry-remote and white water settings. This assessment recognises that the Waitaha Valley has some local characteristics, such as poor access through lower valley, and all white water settings on the Coast have unique characteristics.”

The validity of these dilution arguments is addressed below.

Validity of claimed dilution

In his peer review of the Boffa Miskell report, Gavin Lister of Isthmus states:

“I do not wholly agree with the ‘dilution’ analysis in this case. The intake site is at a strategic location that people are likely to pass either entering or leaving the upper Waitaha Catchment. As a result the effects cannot be wholly compartmentalised. Similarly, I do not consider the existence of tracks, huts and lack of animal control make much difference to the significance of effects. Rather, in my view, whether the landscape effects are acceptable and the Scheme appropriate would entail consideration of the landscape matters as a whole.”¹⁷

The validity of the claimed grounds for dilution come into even stronger doubt when considered under the framework of Part 3B of the Conservation Act 1987 and countervailing evidence. Taking each point in turn –

1. **Boffa Miskell ‘dilution’ argument: The scheme would have small footprint relative to the Waitaha Catchment as a whole (around 4 hectares out of a 12,760 hectare catchment) and therefore the adverse effects can be re-rated as low –**

Rebuttal:

This argument is rather specious. The relative size of any development footprint can easily be dwarfed by making the frame in which it is viewed massively large. However, this is not a frame of reference used by ordinary people encountering a structure in a near-wilderness environment. There is a direct local perspective reflecting their immediate experience and the

¹⁷ Isthmus report, Appendix 9 of Westpower’s Waitaha application

context that they were expecting to experience in their journey. Ordinary outdoor users would not abstract their frame of reference to take in a 12,760 hectare context.

While it is only a three to four hour tramp into Kiwi Flats, the hike alongside the Morgan Gorge completely demarcates leaving the road end of the semi-rural valley and entering into “near-pristine levels of naturalness”. As Boffa Miskell express it (at page 43):

“The passage from the settled plains to the remote back country emphasises the role of the gorge as an ‘entrance feature’ into the upper reaches. Although the walk into Kiwi Flat is reasonably short (approximately 3-4 hours), it nonetheless highlights the remote characteristics of this part of the catchment.”

To arrive at the top of the Morgan Gorge and find “intensified industrialised-style modification” would be an anathema to any concept of preserving “an area retaining very little modification and holding high natural character values.”¹⁸

It would also fundamentally change an outdoor user’s perception of the wider area, particularly given that the scheme would be at more accessible end of the Waitaha Catchment. It would shape a user’s interpretation of the wider place they were entering, giving it a clear sense of industrial modification.

This approach is consistent with the Landscape Institute and Institute of Environmental Management and Assessment (2013) Guidelines for Landscape and Visual Impact Assessment (Version 3), which call for an understanding of the sensitivity of the landscape and viewing audience.

2. ***Boffa Miskell ‘dilution’ argument: On the basis of the scheme’s small footprint relative to the size of the whole catchment, the broader landscape can “absorb a degree of modification” – “the biophysical, associational and sensory values that make this landscape special will not be sufficiently eroded”***

Rebuttal:

As noted above, the relative size of any development footprint can easily be dwarfed by making the frame in which it is viewed massively large. However, this is not a frame of reference used by ordinary people encountering a structure in a near-wilderness environment. Ordinary outdoor users would not abstract their frame of reference to take in a 12,760 hectare context.

Boffa Miskell’s view that the special values of Upper Waitaha Catchment will not be “sufficiently eroded” does not align with the sensitivity of users to the outstanding quality of the area. Other people of experienced and balanced judgement would reasonably have a contrary view.

Most West Coast river catchments are vast. There are many varieties of development activities that would look very small measured as a proportion of a complete river catchment. So when is a footprint too large in that frame of reference? Why not a number of small footprint developments in several different large scale catchments? A small footprint development in how many catchments is too many? What principle applies? What is the basis of such a judgement?

¹⁸ Boffa Miskell, page 73 and also page 56

Enlarging the frame of reference by such an enormous degree does not provide a meaningful scale for assessing effects or the capacity of an area to “absorb” industrial modifications. In short, it is arbitrary, artificial and more subjective than normal. It is not a robust basis for deciding what is appropriate in a conservation area.

3. ***Boffa Miskell ‘dilution’ argument: The Upper Waitaha Catchment has already been modified by tracks, huts and a swingbridge, and therefore further modification with the power scheme structures would not be out of place***

Rebuttal:

To equate an “intensified industrialised-style modification” with a rough tramping track, a back-country hut and a swing-bridge is disingenuous. The first is an entirely different type of modification from the rest, with entirely different impacts on biophysical, associational and sensory values. A basic track, hut and swing-bridge are normal features of a back-country experience on conservation land; a 4-5 cubic metre concrete structure across a wild river secured by rock anchors, large tunnel portals, a power station and switchyard, are not.

Boffa Miskell also asserts that a gold mining permit granted for a stretch of the Waitaha River between the top of Kiwi Flat and Macgregor Creek amounts to an existing modification. However, as Boffa Miskell notes in another part of its report, the permit has not been used. Apart from tramping, hunting and kayaking, no other human land use activities have occurred in the Upper Waitaha Catchment, including settlement or mining.

4. ***‘Dilution’ argument by Boffa Miskell and Greenaway: There are numerous other river catchments with similar outstanding natural values and therefore modifying the Waitaha would not cause undue loss.***

Rebuttal:

As noted above, this reasoning is rather central to their conclusion that the proposed scheme is acceptable. In rebuttal, there are several points to note:

- First, no analysis or evidence is given by Boffa Miskell or Greenaway to support their assertion that there numerous other catchments with accessible features like the Morgan Gorge.
- Second, how many unmodified West Coast rivers is sufficient? How many other similar unmodified rivers are required to make it acceptable to impose material adverse effects on one with outstanding natural values?
- Third, viewed as a whole, New Zealand’s high value conservation estate is characterised by numerous examples of similar features. If Westpower’s reasoning were to apply in general, it would lead to a conclusion that small footprint industrial modifications should be allowed on a more wide spread basis because the features of a particular area to be modified are more than likely to be found in numerous other places. This reasoning (and its implications) by Westpower and its advisers is contrary to the purpose of the Conservation Act 1987, which is to promote:

“the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations”.¹⁹

¹⁹ Long title and s.2, Conservation Act 1987

If a conservation area has “high intactness, scientific and distinctiveness values, as recognised in the Westland District Plan to be considered outstanding”²⁰ and “very high biophysical, perceptual/ experiential and associational values based on the remote-like qualities and near pristine levels of naturalness”²¹, and a proposed activity in that area would have the adverse effects summarised above, it is not consistent with the purpose of the Act to reason that those effects should be allowed because there are “numerous other” areas with similar values, particularly when the proposed activity is not needed and there are many alternative locations where it could be undertaken outside the conservation estate.

- Fourth, comments in relation to kayaking alternatives are outlined in point 12 below.

5. ***Boffa Miskell ‘dilution’ argument: The river is not particularly special as it does not have a water conservation order***

Rebuttal:

That the Waitaha River does not have a water conservation order is not surprising. Nor does it indicate or otherwise imply that the river does not have outstanding wild, scenic, ecological, recreational, cultural, spiritual, and/or scientific values. As noted above, the Upper Waitaha Catchment has “high intactness, scientific and distinctiveness values, as recognised in the Westland District Plan to be considered outstanding.”²² It also has “very high biophysical, perceptual/ experiential and associational values based on the remote-like qualities and near pristine levels of naturalness. Exceptional features, such as Morgan Gorge positively contribute to the broader landscape values of the Upper Waitaha Catchment.”

As noted by the Parliamentary Commissioner for the Environment:²³

“There are currently 13 water conservation orders on New Zealand rivers and stretches of rivers, and two on lakes”

“[Since 1991 under the RMA], there have been only four applications for water conservation orders, and just two – one on the braided Rangitata River in Canterbury and the other on the Oreti River in Southland – have been approved.”

Most of the applications for water conservation orders have been made by Fish and Game – “The result is that wild and scenic rivers have not been systematically protected. Instead there has been an inevitable focus on protecting those wild and scenic rivers valued for recreational fishing.”

Of the 13 rivers in New Zealand with water conservation orders (‘WCOs’), only two are on the West Coast – the Buller and Grey Rivers. This most certainly does not imply that none of the other West Coast rivers lack special values deserving of WCO protection. Therefore, no significance can be given to the absence of a WCO on the Waitaha River for the purpose of deciding Westpower’s application.

²⁰ Boffa Miskell, page 72

²¹ Boffa Miskell, section 4.2.2.4

²² Boffa Miskell, page 72

²³ Extracts from “Hydroelectricity or wild rivers? Climate change versus natural heritage”, May 2012, Parliamentary Commissioner for the Environment

6. *Boffa Miskell 'dilution' argument: The land does not have special legal status, except it is "stewardship land", therefore it must be must more open to modification*

Rebuttal:

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. As noted by the Parliamentary Commission for the Environment:²⁴

"...about one third of conservation land has never been systematically assessed and classified. This 'stewardship land' makes up nearly 10 percent of New Zealand's land area. It is widely assumed that stewardship land is of low conservation value.

"A former Minister of Conservation described this land as having been left in a 'statutory holding pen – until it could be assessed and, if merited, given more precise statutory protection'. This assessment has not occurred and stewardship land still makes up about a third of the conservation estate."

The Waitaha proposal is not one where the activity would take place in an area of low to no conservation value that happens to be designated as a conservation area. The high conservation values of the Upper Waitaha Catchment are summarised above. Therefore no significance can be given to the "stewardship" status of the Upper Waitaha Catchment River for the purpose of deciding Westpower's application.

7. *Boffa Miskell 'dilution' argument: The adverse effects of the scheme are not a bad as they would have been if the larger scheme (Option A) had been pursued –*

This is perverse and irrelevant logic. It does not reduce or 'dilute' an adverse effect by saying "it could have been a great deal worse". The effects of the proposed scheme (Option B) are to be evaluated and weighed against conservation values and the Act's objectives, not by comparing them to an alternative scheme for which concessions have not been sought and that may have had more severe effects.

8. *Boffa Miskell 'dilution' argument: Hydro schemes are common*

Rebuttal:

There are several points to note:

- First, this is misleading. Boffa Miskell refers to seven hydro schemes on the West Coast and suggests this makes hydro common. On the contrary, it is relatively unusual for a river to have a run-of-river hydro scheme. Around 136 potential hydro generation sites on West Coast rivers have been identified.²⁵ To have six schemes in place does not make them common.

9. *Boffa Miskell 'dilution' argument: Follow Amethyst precedent*

Rebuttal:

As noted above, the Waitaha scheme must to be assessed against the relevant statutory criteria independently of the Amethyst precedent.

²⁴ Extracts from PCE report referred to in the footnote above

²⁵ "Renewable Energy Assessment – West Coast Region", August 2008, Sinclair Knight Mertz, section A5, pages 54-57

Despite Westpower's claims to the contrary, the Waitaha scheme is not equivalent to the Amethyst scheme – it is a different scale, in a conservation area with different values, with different adverse effects. Some of these differences are set out in the Table I of the attached paper *Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme*. Unlike the Amethyst River, the Waitaha River has never been used for hydro generation, and has quite different conservation values.

10. *Boffa Miskell 'dilution' argument*: **The scheme would be “in keeping with a tradition on the West Coast of such small scales works juxtaposed against a wild landscape.”**

Rebuttal:

There are two key points to note. First, given the rarity of hydro schemes on West Coast rivers, there is no “tradition” of “intensified industrial modifications” being juxtaposed against wild river landscapes. It is also inconsistent with user's expectations and experience of a high value natural area. Second, the Conservation Act 1987 relates to “conservation” as legally defined, not an undefined notion of “tradition”.

11. *Greenaway 'dilution' argument*: **Scheme's effect on recreational values would be “very slight” due to a low level of recreational use**

Rebuttal:

There are several points to note:

- First, conservation values are not determined by the number and frequency of people visiting. Its intactness, scientific and distinctiveness values, and its biophysical, perceptual/experiential and associational values are not measured by visitor numbers.
- Second, the current recreational use of the Upper Waitaha Catchment does not indicate how and the degree to which it will be used by visitors in the future. Types of recreational activity and numbers participating change over time. So many recreational activities that are popular now were not even conceived of 10 years ago. Further, the scope and levels achieved in many existing activities have reached standards unheard of 10 years ago. Boundaries previously viewed as extreme are now viewed as relatively unexceptional. Horizons of what is possible are being constantly extended by new technology and new skills.

This is particularly relevant to kayaking the Morgan Gorge. As outlined in our report and accompanying paper, kayaking the Morgan Gorge is like climbing Mt Cook for an aspiring climber. For many years, the climb was achieved by only a handful of people. As skills and technology improved, it became achievable for more people. Climbing Mt Cook is now a rite of passage for any New Zealand mountain climber.

Just as it would be entirely incongruous to have something like a snow plough machine or chair-lift on an upper glacier of Mt Cook, so it would be entirely incongruous to have a hydro structure in the Upper Waitaha Catchment.

- Third, the Act's statutory purpose includes “safeguarding the options of future generations.” The Upper Waitaha's conservation value is not limited by the way current generations enjoy it.

12. *Greenaway 'dilution' argument: Scheme's effect on recreational values would be "very slight" due a high number of alternatives available*

Rebuttal:

The rebuttal under point 4 above applies here as well.

In addition, as outlined in the Rankin & Orchard Report of January 2015 and in the accompanying Rankin paper:

- There are no alternatives to the Morgan Gorge
- There are few alternatives to the Waitaha Gorge run, a lower reach of which will also be affected by the scheme in the same way that the Morgan Gorge will be
- There are no alternative rivers in New Zealand with such outstanding kayaking and wilderness and scenic values offering such a combination of hard kayaking runs for expert kayakers.

Conclusion

The arguments for 'diluting' the high adverse effects advanced by Boffa Miskell and Greenaway & Associates are weak and do not provide a robust basis for deciding what is "appropriate" under Part 3B of the Act.

The review above gives rise to serious questions about how the adverse effects outlined above could be considered consistent with the provisions of the Act and the relevant conservation management strategy or conservation management plan (s.17T(2)). The above review also gives rise to questions about the robustness of the view that the proposed activity is not contrary to the provisions of this Act or the purposes for which the land concerned is held; if it is, then the application must be declined [s.17U(3)].