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4 July 2018

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

By email: Permissionshokitika@doc.govt.nz

Dear Marie

WESTPOWER: WAITAHA SCHEME – FURTHER MEASURES –
YOUR REF: PAC-11-04-115

I refer to:

- Your letter of 12 June 2018 inviting submitters to comment by **5 pm today**, 4 July 2018, on various measures proposed by Westpower in relation to adverse effects on kayaking and tramping;
- My submission of 14 November 2016; and
- My memo of 19 December 2016 accompanying my oral submission of 7 December 2016.

I have taken an interest in this matter as an independent consultant with expertise in electricity and related legal fields. I am not acting for any party or position.

CONCLUSION

- The measures proposed by Westpower do not remedy, avoid or mitigate the high adverse local effects of the scheme on a conservation area of high natural values.
- Westpower's reasons for the scheme remain weak.
- Therefore it would still be inappropriate to grant concessions for the proposed activities [s.17U(8) of the Act].
- Further, the proposed activities could reasonably be undertaken in another location that is outside the conservation area, or in another conservation area where the potential adverse effects would be significantly less [s.17U(4)(a) of the Act].

"APPROPRIATE" LEGAL TEST FOR DECISION-MAKER

Under the Conservation Act 1987 ('the Act'), the Minister is not required to grant any concession if he or she considers it is inappropriate having regard to various matters, including the applicant's reasons for requesting the concession.

The references in the Act that give rise to this legal standard are as follows:

- Section 17U(8):

  > "Nothing in this Act or any other Act requires the Minister 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 this section" – namely, section 17U

- Section 17U(1)(d) includes:

  > "any information received by the Minister under sections 17S"

- Section 17S(g) includes:

  > "(i) **reasons** for the request; and (ii) sufficient information to satisfy the Minister that, in terms of section 17U, it is both lawful and **appropriate** to grant the lease, licence, or easement (as the case may be)"

In short, the Minister is not required to grant any concession if he or she considers it is inappropriate having regard to various matters, including the applicant's reasons for requesting the concession.

"Appropriate" is not defined in the Act, but most certainly it would be viewed by the courts as:

- Appropriate in the context of the Act's purpose, which is the "preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values...", and

- Appropriate in the context of the overall scheme of Part 3B, which is the part of the Act governing the granting of concessions. It is reasonable to conclude from its overall scheme that Part 3B sets relatively high hurdles for a non-recreation activity to be carried out on conservation land (see **Appendix 1** of this letter for further explanation).

- Further, unlike the Resource Management Act, Part 3B of the Conservation Act does **not** involve balancing the interests of development against conservation.

WESTPOWER'S REASONS

1. NEEDED TO MEET DEMAND GROWTH

Not so

From the start, Westpower's case for the Waitaha scheme has been predicated on –

> "helping to meet some of the Coast's anticipated new demand".

Westpower made this claim in 2007 and 2012 (in announcing its intention to proceed) and 2014 (in its application for concessions).

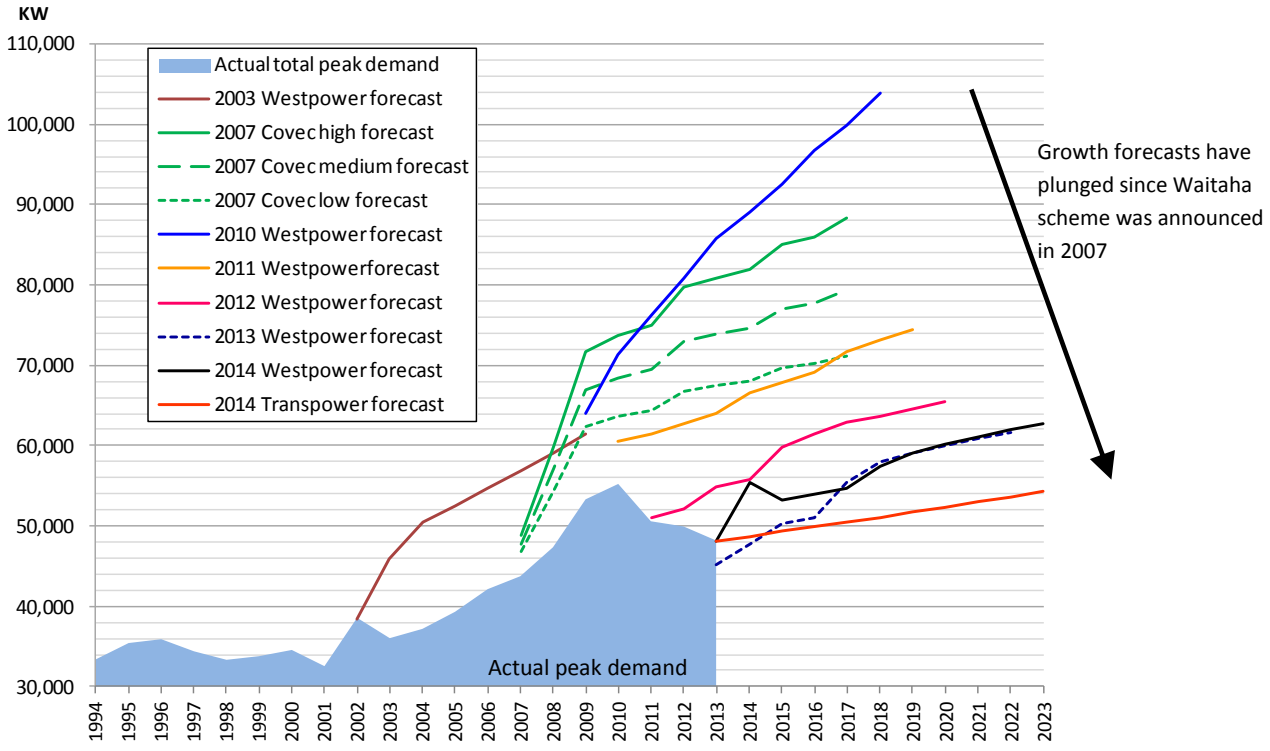
However, the case for new generation to meet new demand on the West Coast in the foreseeable future is demonstrably without foundation.

Westpower's region already has a large supply capacity surplus. In 2011, the Coast's transmission capacity was increased by 100% – this is the equivalent of a very large increase in generation. That upgrade was provided to cover expected major growth in mining and dairy, which has not eventuated.

In fact, peak demand now is lower than it was seven years ago when supply capacity was doubled. It will take decades to use up the surplus capacity.

The Waitaha hydro scheme has been driven by wildly optimistic growth forecasts:

- In 2007, when Westpower announced its intention to proceed (following a scoping study), peak demand was forecast to rise nearly 100% in 10 years.
- Growth in Westpower's 2009 forecast was even higher.
- Westpower's 2014 application for concessions[1] assumed peak demand growth of 60% over 15 years[2], even in the face of year-on-year decreases since 2010-11.



[1] Page 118 of Westpower's 2014 application
[2] From 50 MW in 2012 to 70-80 MW by 2030
[3] page 120 of Westpower's 2014 application

Westpower's 2017 forecast projects growth of just 16% over 10 years, about the same as Transpower's 2014 forecast.

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2. NEEDED FOR RELIABILITY OF ELECTRICITY SUPPLY

Not a strong case

Westpower claims that the scheme is needed to protect against transmission outages and improve reliability[3]. However, Westpower's own corporate reports from 2016 state that the transmission upgrade in 2011 –

> "restored security levels to good electricity industry practice standards"[4].

More generation on the West Coast could increase reliability of supply, however it is not evident that it is required, or that this would be the most cost-effective way of delivering it.

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3. "IF WE CAN, WE SHOULD"

Not sufficient to make it appropriate to accept adverse effects

In December 2016, Westpower put its case for the scheme more plainly to DOC [5]:

> "If we **can** create a surplus of electricity generation on the West Coast...then we **should**" [Westpower's emphasis]

"If we can, we should" is not a sufficient reason to make it appropriate to impose adverse effects on a pristine conservation area.

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4. WAITAHA IS ECONOMIC NOW OR SOON

Unlikely

The wholesale market price of electricity for the coming **three** years is around **$70** a unit

(as shown in the Electricity Authority graph in the **Appendix 2** at the end of this letter).

By contrast, the full cost of power from the Waitaha is probably in the $90 to $100 range[6].

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[3] page 120 of Westpower's 2014 application

[4] Westpower's Asset Management Plan 2016-2026, section 4.4.2, page 68

[5] "Submissions in Reply for Westpower", 8 December 2016 at para 20 – the DOC Hearings Panel

[6] For completeness, I note that the Waitaha's generation-weighted prices are lower on average than average prices at Westpower's grid exit points (which factor in the cost of transmission loses) and, in some years, also lower than average prices at Benmore. This sets a more demanding ceiling on the proposed scheme's unit cost – see my May 2015 Report at sections 11.6.8 and 11.6.9 – pages 165-170

So until wholesale prices rise by about 25% to 40% on average, Westpower's scheme is not likely to be economic.

I am not aware of any serious players in the electricity generation market who expect wholesale prices to rise to $100 a unit by 2020.

Further, much cheaper (and already consented) new generation is available to meet demand growth well before Westpower's scheme would become economic.

When Westpower was scoping its Waitaha scheme – during 2004 to 2011 when mining and dairy were booming – various parties planned and obtained consents for other hydro schemes on the Coast.

Sensibly, those other hydro schemes have been put on hold given low electricity prices and relatively weak demand growth.

Westpower should be put its Waitaha scheme on hold too.

In truth, the Waitaha scheme wouldn't get off the ground now if the underlying shareholder funds were coming from private investors rather than the soft capital of the consumer trust that owns Westpower.

Appendix 2 to this letter briefly sets out some further information on this matter.

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5. LOW CARBON EMISSIONS

Weak to negative effect

Westpower's hydro scheme would make quite a weak contribution to the reduction of carbon emissions because its power output would drop in the winter (because of low river flows), which is when coal generation tends to be high

Other cheaper renewables – like geothermal and wind – are much better at reducing the need for coal- and gas-fired electricity year-round.

Building the Waitaha scheme ahead of cheaper geothermal and wind options would mean we save less carbon than we otherwise would because it is likely to cause those better renewable generators to be deferred.

In short, the Waitaha scheme would have a weak to negative effect in terms of reducing carbon emissions[7].

[7] Refer to Simon Coates, Director, Concept Consulting, for more information on the effects of generation with low winter output

6. NEEDED FOR INVESTOR CONFIDENCE

Not so

Westpower claims[8] that greater security of supply from the Waitaha scheme would provide –

> "potential investors and developers with the confidence to invest in the West Coast region assured that their energy demands can be met in both the medium and long term"

There is no evidence that confidence to invest in the West Coast region would be limited without the Waitaha scheme.

On the contrary, Westpower's own corporate reports state[9] that there is sufficient transmission capacity –

> "to ensure that major new loads can be supplied on an uninterruptible basis, and so electricity supply should not be a constraint to future economic development"

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7. STIMULATE LOCAL ECONOMY

Tenuous and not sufficient to make it appropriate to accept adverse impacts

Given the weakness of its other reasons, Westpower now says[10] that the economic effects of the proposed scheme are the "starting point" for its rationale.

Westpower puts weight on its Brown Copeland report, and the economic stimulus and jobs expected from the scheme[11].

That analysis has not been independently reviewed. By its nature, it is high level and limited by its assumptions.

Any capital injection from building the Waitaha would obviously be short term with very few new jobs and low on-going expenditure by Westpower after the scheme is commissioned.

More importantly, unlike the Resource Management Act, Part 3B of the Conservation Act does not involve balancing the interests of development against conservation.

As the Parliamentary Commissioner for the Environment has highlighted[12]:

> "The role of the Minister of Conservation is very distinct from that of decision-makers in the resource consent process and should not be compromised. The core of the Conservation Act is the preservation of New Zealand's natural heritage. This is very different from the broader considerations in the RMA"

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[8] Page 8 of Westpower's 2014 application
[9] Westpower's 2016 Asset Management Plan at page 67
[10] Submissions in Reply for Westpower, 8 December 2016 at para 7
[11] Submissions in Reply for Westpower, 8 December 2016 at paras 7, 21 and 22
[12] Parliamentary Commissioner for the Environment, "Hydroelectricity or Wild Rivers? Climate Change Versus Natural Heritage", May 2012, at page 66 www.pce.parliament.nz/assets/Uploads/Wild-Riversweb.pdf

8. INCREASE SELF-SUFFICIENCY AND COMMUNITY OWNERSHIP

Not sufficient to make it appropriate to accept adverse effects

This is the recurring crux of Westpower's case for the Waitaha scheme. Westpower claims that its:

> "...return to hydro-development is part of reinvigorating the generating capabilities of the West Coast community, both current and future generations, and is aimed at regaining a level of local self-sufficiency in generation and supply based on a local and renewable hydro resource"[13]

It might sound good to buy locally produced electrons – like buying locally produced food – but it makes as much sense as arguing that Blenheim or Gisborne, or indeed any other part of New Zealand, should be self-sufficient in electricity.

That's why we have a national transmission grid – to provide electricity to consumers around New Zealand with access to lower cost generation that might be miles from where they live.

If it were cheaper on average to generate power locally compared to buying it off the grid, local generation would make sense. But the Waitaha scheme is not likely to be cheaper than power from the grid in the reasonably foreseeable future.

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9. ADVANCE WESTPOWER'S GROWTH OBJECTIVES

Not sufficient to make it appropriate to accept adverse effects

Westpower has made it clear that it wants to grow as a business[14].

Given weak growth in its lines business, Westpower is looking to grow its generation business.[15]

The desire to grow as a business is understandable, but it is not a sufficient reason to make it appropriate to justify imposing adverse effects on a pristine conservation area.

NATURAL VALUES

Both sides agree that the location of the proposed scheme has –

> "near pristine levels of naturalness and that the landscape (at both a district and regional scale) be considered '*conspicuous, eminent, especially because of excellence*'"

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[13] Page 3 of Appendix 22 its Westpower's 2012 application. Also see Westpower's letter to DOC dated 23 September 2015 at page 9 – in relation to meeting more of existing demand from local generation

[14] See for example Westpower's Statement of Corporate Intent 2015-2017

[15] In 2006, Westpower advised that it would "re-enter electricity generation" on the grounds that it had considerable management expertise and experience in hydro generation – see Westpower's application to the Commerce Commission in relation to the Amethyst hydro proposal, August 2006, at para 20

It holds “high intactness, scientific and distinctiveness values” [both quotes from Westpower consultant report]

The Morgan Gorge is particularly special. As the DOC Officer’s Report states:

> “the Morgan Gorge would likely meet the test of an outstanding natural feature within an outstanding natural landscape. It is a dramatic, deeply incised feature that has clearly been shaped through regular high energy river flows. It forms the ‘gateway’ between the upper and lower catchments, and is currently perceived as an unaltered, very highly natural and wild place”.

Image below – The Morgan Gorge

“Few people venture into the wild, untarnished upper reaches of the Waitaha River valley, a place carved by ice and monumental rainfall, and hemmed by glaciers, cirques, high peaks and alpine tarns; a place strewn with house-sized boulders shrugged from mountainsides by tectonic power, and clad in tangled rainforest and scrub.

Fewer still have witnessed the roaring tumult of the Morgan Gorge, where the Waitaha River has fought its way through a narrow slot in the bedrock to form a sensuously sculpted canyon. It’s thought that just nine people have travelled the furious, twisting length of the gorge – a place where the river is utterly in charge” - *The Listener,* 15 Oct 16

ADVERSE EFFECTS

Both sides agree that the scheme would have high adverse effects on natural character, landscape and visual amenity values.

Westpower's consultants, Boffa Miskell, drew the following conclusions on these adverse effects:

- **Scheme's footprint**
  - It would introduce "two nodes of intensified industrialised-style modification occurring within an area retaining very little modification and holding high natural character values" [quote from Westpower consultant report]
  - 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;
  - Other structures would include large tunnel portals, a power station and switchyard;
  - Water flows through the Morgan Gorge would be substantially reduced; and
  - Artificial stop-banks would also align the river margin from the outfall to close to where the exit tunnel portal is located.

- **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"

  "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."

- **Landscape values**

  "The magnitude of permanent landscape effects at this localised intake area (including intake access road) is assessed as being high."

- **Visual amenity values**

  "the magnitude of permanent visual effects at this localised intake area is assessed as being high at near distance views."

- **Construction period**

  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".

- **'Dilution' argument**

  Westpower argues that the severity of these adverse effects drop from high to low if the scheme's footprint is viewed from scale of the total Waitaha catchment (12,760 hectares) and wider West Coast region.

  However, Westpower's dilution arguments are tenuous. A rebuttal is set out in **Appendix 3** of this letter.

  What is not in dispute is that the proposed scheme would have high adverse effects on a local scale.

MINISTER'S DECISION

As outlined above, the Minister is not required to grant any concession if he or she considers it is inappropriate having regard to various matters, including the applicant's reasons for requesting the concession.

It is clear in this case that –

- The location of the proposed scheme is a high value pristine wildness with features of conspicuous excellence.
- The proposed scheme would cause high adverse effects on a local scale.
- Westpower's reasons and related justifications for the scheme are weak. Objective analysis finds that the scheme is:
  - Not needed to meet demand growth
  - Not needed to meet good electricity industry practice standards for security and reliability
  - Not likely to be economic in the reasonably foreseeable future
  - Weak to negative from a climate change perspective, and
  - Not needed to support investor confidence in security of electricity supply.

  Other reasons (or justifications) for the scheme are:

  - To give an injection of economic activity in the region for a few years
  - To give the community some sense of satisfaction that the power they consume is produced locally from sources they own
  - To enable Westpower to become bigger with more strings to its bow beyond its power lines business, and
  - To create an electricity surplus simply because (in Westpower's words) "if we can, we should".

A **key question** for the Minister to decide under the Act is therefore –

> Would it be appropriate under the purpose and scheme of the Act to grant concessions for activities that would cause high adverse local effects to a conservation area of high natural values where the reasons for those activities are weak?

Based on careful analysis, the answer is clearly **no**, it would not be appropriate under the purpose and scheme of the Act.

Yours sincerely

Tony Baldwin

Brief CV

Tony Baldwin is a consultant specialising in corporate advisory, transaction management and public policy.

From 2011 to 2017, Tony served as project manager and strategy adviser for Genesis Energy in relation to the:

- Sale of 49% of the Crown's shares in Genesis Energy
- Acquisition of Nova Energy's LPG business, and
- Acquisition of NZOG's stake in the Kupe oil and gas field.

Over the last 30 years, Tony has worked on a range of electricity industry issues, including transmission investment upgrade processes, security of supply issues, and hedge market development.

Tony trained as a commercial and company lawyer at Chapman Tripp in Wellington.

More details are at www.tonybaldwin.co.nz

APPENDIX 1:
"APPROPRIATE" UNDER THE ACT

"Appropriate" is test used in sections 17S(g) and 17U(8) of the Act.

As noted earlier, "appropriate" is not defined in the Act, but most certainly it would be viewed by the courts as appropriate in the context of:

- the Act's purpose, which is the "preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values...", and

- the overall scheme of Part 3B, which is the part of the Act governing the granting of concessions.

Part 3B sets relatively high hurdles for a non-recreation activity to be carried out on conservation land. This is clearly signalled by the circumstances in which an application must or may be declined (see **box below**).

Further, unlike the Resource Management Act, Part 3B of the Conservation Act does not involve balancing the interests of development against conservation.

Scheme of Part 3B – relatively high thresholds

The Minister must decline an application for a concession:

- If the concession and its granting is inconsistent with the a conservation management strategy or conservation management plan for a conservation area and the strategy or plan provides for the issue of a concession [s.17W(1)];

- If the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held [s.17U(3)]; or

- If the proposed activity could reasonably be undertaken in another location that is outside the conservation area, or in another conservation area where the potential adverse effects would be significantly less [s.17U(4)(a)].

The Minister may decline an application for a concession:

- If information is insufficient or inadequate to assess the effects [s.17U(2)(a)];

- If there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects of activity, structure or facility [s.17U(2)(b)]; or

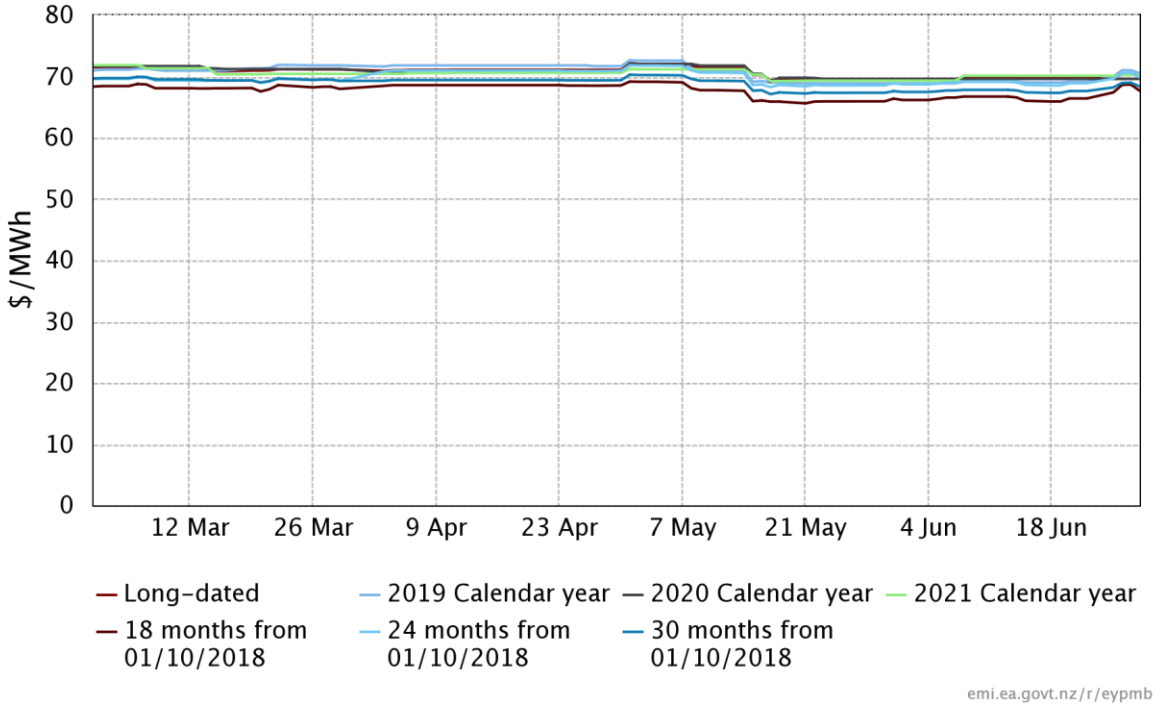
- If the Minister considers that the effects of the activity are such that a review of the strategy or plan is more appropriate, whether or not an application is in accordance with any relevant conservation management strategy or conservation management plan [s.17W(3)].

The Minister is not required to grant any concession it if he or she considers that it is inappropriate in the circumstances of the particular application having regard to various matters [s.17U(8)].

APPENDIX 2:

ECONOMICS OF WAITAHA SCHEME

During the last three months, the wholesale market price of electricity for the coming three years **(to the end of 2021)** is around **$70** a unit.



It has been hovering around the **$75** level for the last **4 years** at least.

(These charts are from the Electricity Authority).

By contrast, the full cost of power from the Waitaha is probably in the **$90 to $100** range[16].

So until wholesale prices rise by about 25% to 40% on average, Westpower's scheme is not likely to be economic.

A consultant for Westpower[17] tried to refute my report by using a wholesale electricity price of **$100** a unit in 2020. With this assumption, he says the Waitaha would be economic.

However, as noted above, the actual wholesale market price for electricity in 2020 is still around **$70** a unit.

To be economic, the Waitaha scheme is also likely need a special rebate payment from Transpower, which is still under review[18].

[16] For completeness, I note that the Waitaha's generation-weighted prices are lower on average than average prices at Westpower's grid exit points (which factor in the cost of transmission loses) and, in some years, also lower than average prices at Benmore. This sets a more demanding ceiling on the proposed scheme's unit cost – see my May 2015 Report at sections 11.6.8 and 11.6.9 – pages 165-170

[17] Report of September 2015 by Hugh Ammunsden for Westpower at page 24

[18] 'ACOT' payments – see section 11.8.5 of my May 2015 report

APPENDIX 3:

WESTPOWER'S "DILUTION" ARGUMENTS

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:[19]

> "...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."[20]

[19] Boffa Miskell report at section 4.2.3 – Appendix 9 of Westpower's Waitaha application
[20] Boffa Miskell,page 72

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."[21]

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*[22]

> "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)[23]

ADVERSE EFFECTS

Both sides agree that the scheme would have high adverse effects on natural character, landscape and visual amenity values.

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."[24] 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.[25] 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.

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[21] Boffa Miskell, section 4.2.2.4

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

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

[24] Boffa Miskell, page 73 and also page 56

[25] Boffa Miskell, page 53

Acting for Westpower, Boffa Miskell has assessed the adverse effects to include the following:[26]

- **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";

  "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."[27]

- "The installation of hydro development structures will be incompatible with the preferred management setting characteristics as described in the DOC CMS."[28]

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.

[26] Boffa Miskell, section 5
[27] Greenaway Report, Appendix 19 of Westpower's Waitaha application, at page 8
[28] Greenaway Report at page 64

'DILUTION' CLAIMS

Boffa Miskell arguments

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:

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."[29]

Greenaway arguments

Acting for Westpower, R Greenaway & Associates[30] 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:

> "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.

[29] Boffa Miskell at page 73
[30] Greenaway report, Appendix 19 of Westpower's Waitaha application

REBUTTAL

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."[31]

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. Theirs is a direct local perspective reflecting their immediate experience and the 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."[32]

   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.

[31] Isthmus report, Appendix 9 of Westpower's Waitaha application
[32] Boffa Miskell, page 73 and also page 56

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?

   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".[33]

   If a conservation area has "high intactness, scientific and distinctiveness values, as recognised in the Westland District Plan to be considered outstanding"[34] and "very high biophysical, perceptual/ experiential and associational values based on the remote-like qualities and near pristine levels of naturalness"[35], 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.

[33] Long title and s.2, Conservation Act 1987
[34] Boffa Miskell,page 72
[35] Boffa Miskell, section 4.2.2.4

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."[36] 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:[37]

> "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 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.

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:[38]

[36] Boffa Miskell,page 72

[37] Extracts from "Hydroelectricity or wild rivers? Climate change versus natural heritage", May 2012, Parliamentary Commissioner for the Environment

[38] Extracts from PCE report referred to in the footnote above

"...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 that may have had more severe effects.

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

   Rebuttal:

   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.[39] 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.

   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.

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

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.

    - 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 relation to alternatives available for kayaking, this is a matter for others with relevant expertise to comment on – for example, Whitewater New Zealand. My understanding is that 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 advanced by Westpower for 'diluting' the high adverse are tenuous and do not provide a sound basis for concluding that it is not inappropriate to grant concessions [s.17U(8) of the Act].

The above analysis 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)].