



Whitewater NZ

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CONSERVATION ACT 1987 SECTION 17Q

SUBMISSION/OBJECTION ON/TO AN INTENTION TO GRANT CONCESSIONS

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SUBMITTER:
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SUMMARY:

Whitewater NZ opposes and objects to the Minister of Conservation's intention to grant a concession to Westpower Ltd to construct and operate a hydro scheme on the Waitaha River.

Background

The applicant wishes to obtain a concession to construct, maintain and operate a run-of-the-river hydro scheme at the Morgan Gorge on the Waitaha River on Department of Conservation (DOC) stewardship land. Westpower propose to abstract water via a highly visible weir across the river and tunnel entrance located in the rock face on the true right bank at the start of the Morgan Gorge. This structure and an adjacent access tunnel portal will be significant industrial intrusions into an otherwise pristine landscape and environment. The scheme proposes to take much of the flow of the river (up to 23 cumecs, river median flow (50% of the time) is 19 cumecs) and leave a residual

flow of 3.5 cumecs in the Morgan Gorge at all times – higher and flood flows will still travel down the Morgan Gorge when the proposed Westpower take is exceeded. The water is returned to the river about 2.5 km downstream of the intake via a powerhouse on the true right bank of the river.

Current Values

The Morgan Gorge on the Waitaha River, and the Upper Waitaha River including the Waitaha and Windhover Gorges and catchment to the main divide constitute an outstanding wild and scenic river, with outstanding natural beauty, scenery and wilderness values, and outstanding kayaking values for the most expert of kayakers¹. The Morgan Gorge is an outstanding natural feature and the river from below the Morgan Gorge to the headwaters is an outstanding natural landscape. The Morgan Gorge and the upper Waitaha River runs represent the pinnacle of white water runs for the most skilled of expert kayakers from New Zealand and overseas. Therefore, like their exemplars of other outstanding beginner, intermediate, advanced and expert white water runs throughout the country, some of which are protected by Water Conservation Orders, this river warrants the same statutory recognition and protection.

Impacts

The proposed Westpower hydro scheme will have a number of significant impacts on the values of the Morgan Gorge, the river above, and a section of the river below the Morgan Gorge, that are currently used by back country recreation users. These values and likely impacts on them have been known for some time and discussed with the applicant ever since in the mid 2000's Westpower first mooted the hydro scheme².

The loss of the natural flows down the Morgan Gorge, and the 1.5 km reach below the gorge, will result in direct impacts on these important resources for kayakers on the Waitaha River, unless suitable natural flows are made available to kayakers whenever they want them. In addition the scheme will result in impacts on any parties attempting the upper Waitaha runs. In respect of impacts on the upper river runs, the scheme would completely alter the dynamic of a river trip down an 'intact' and currently undeveloped wild and scenic river, and remove the opportunity for kayakers to descend the river free from the encumbrances of dealing with industrial infrastructure.

The loss of the water flow will have significant adverse effects on values associated with the presence of white water. This affects both natural character and natural feature values at the scales of (all of) landscape, river reach, and white water features. Further adverse effects on natural character and natural feature values not directly related to white water would arise from construction of built infrastructure associated with the scheme including the proposed entrance weir, river intake diversion, intake galleries, access tunnel portal, signage, sediment flushing pipe, and powerhouse structures and power lines into the Waitaha valley and Morgan Gorge environment. Matters of national significance for New Zealand environmental management appear to be directly and severely affected, primarily due to the site chosen for the proposed infrastructure and river engineering, with no effective mitigation proposed (or indeed possible) to address these

¹ D A Rankin and S Orchard, Impacts of the proposed Waitaha River Westpower hydro scheme on white water and kayaking values. Report prepared for Whitewater NZ, January 2015

² Booth, K, Waitaha River Recreation Assessment, Prepared for Westpower by Lindis Consulting, September 2008.

matters.

The proposed activities will severely reduce the wild and scenic qualities of the river at multiple scales including that of the 'whole river' scale which is a relevant consideration. The New Zealand public, including future generations who are yet to know of the value and beauty of the river, and especially that of the Morgan Gorge, would lose one of their wild and scenic rivers, a topic on which the Parliamentary Commissioner for the Environment has expressed specific concerns (Wright, 2012³).

Need

A clear compelling case for the need for the Westpower proposal has not been established. Currently there is no need for the extra generation capacity; New Zealand is awash with surplus power. This is a key reason why a number of other likely more profitable consented power schemes have not been progressed in recent times and the investigations of many other proposed schemes cancelled; currently they are simply not needed.

Conservation Act 1987

The Conservation Act requires negative environmental impacts of water takes to be avoided, remedied or mitigated. The impacts cannot be remedied or mitigated and therefore should be avoided. In other words the concession should be declined. More importantly the building of the proposed scheme on DOC stewardship land would be incompatible with the reason for which this land is held.

Conclusions

The reasons for opposing and objecting to the granting of the concession include the following:

- (a) The application is incomplete in that it contains errors in its assessment of effects on kayaking and recreation values and omits key data properly outlining the impact of the proposal on white water kayaking and natural values;
- (b) The proposed scheme will have a significant adverse effect on the outstanding kayaking values in the river. Such issues are not properly addressed or are glossed over in the application and the DOC Officer's report, and mitigation offered is unworkable and inappropriate or lacking;
- (c) The granting of this concession without appropriate consent conditions will effectively stop current users use of the resource, not just in the Morgan Gorge but elsewhere in the catchment;
- (d) The granting of the concession would be contrary to a number of objectives and policies of Regional and District Plans and the DOC West Coast Conservation Management Strategy;

³ J Wright, Hydroelectricity or wild rivers: Climate change versus natural heritage, Parliamentary Commissioner for the Environment, May 2012; and a recent update of this report: J Wright, Update Report, Hydroelectricity or wild rivers: Climate change versus natural heritage, Parliamentary Commissioner for the Environment, June 2014.

- (e) The proposal is incompatible with the outstanding natural feature and outstanding natural landscape status of the stewardship land involved and aspects of the RMA;
- (f) The proposal is incompatible with the purpose of the Conservation Act, and especially with respect to the purpose of DOC stewardship land;
- (g) The proposal is not needed for the power it will generate, nor would it provide for greater reliability of power supply and distribution for the West Coast; and
- (h) The decision in principle to grant the concession ignores the precedent and decision in the Fiordland monorail case⁴, where the Minister of Conservation reversed the DOC recommendation to grant a concession. In that case the Minister declined the application for a concession for five primary reasons, all of which are applicable in a similar or related manner to the DOC decision to grant a concession to the current Westpower proposal.

Further detail elaborating on these points is contained in the body of the submission.

For these reasons we request that the granting of the concession be reversed and the Westpower hydro proposal on DOC land be declined.

CONCESSION APPLICANT DETAILS:

Applicant's name: Westpower Limited

Proposal: Waitaha Hydro Scheme

Details of application:

The applicant wishes to obtain a concession to construct, maintain and operate a run-of-the-river hydro scheme at the Morgan Gorge on the Waitaha River on Department of Conservation (DOC) stewardship land. Westpower propose to abstract water via a highly visible weir across the river and tunnel entrance located in the rock face on the true right bank at the start of the Morgan Gorge. This structure and an adjacent access tunnel portal will be significant industrial intrusions into an otherwise pristine landscape and environment. The scheme proposes to take much of the flow of the river (up to 23 cumecs, river median flow (50% of the time) is 19 cumecs) and leave a residual flow of 3.5 cumecs in the Morgan Gorge at all times – higher and flood flows will still travel down the Morgan Gorge when the proposed Westpower take is exceeded. The water is returned to the river about 2.5 km downstream of the intake via a powerhouse on the true right bank of the river.

Location of application:

The reach of the Waitaha River that is of particular concern to Whitewater NZ with respect to the current requested concession is from the powerhouse site upstream to the headwaters of the

⁴ Hon Dr Nick Smith, decision letter to Infinity Investment Group Holdings Ltd re Riverstone Holdings applications for consent for a monorail, Office of Hon Dr Nick Smith, Parliament Buildings, 29 May 2014 (<http://www.doc.govt.nz/Documents/about-doc/news/issues/decision-letter-fiordland-link-monorail.pdf>); also see <https://www.beehive.govt.nz/sites/all/files/1.QandA-Decision-on-the-Fiordland%20ink-monorail.pdf>

Waitaha River, and including the Morgan Gorge.

SUBMISSION/OBJECTION:

Whitewater NZ opposes and objects to the Minister of Conservation's intention to grant a concession to Westpower Ltd to construct and operate a hydro scheme on the Waitaha River.

Whitewater NZ requests that the intention to grant be reversed and that the concession not be granted.

We wish to be heard in support of this submission.

Introduction

This is a submission by Whitewater NZ Incorporated (Whitewater NZ).

Whitewater NZ represents more than 1,000 kayak and canoe club members, a number of whom also raft and river bug, and individual members from around New Zealand. The national body helps to look after the interests of paddlers with respect to access, safety, and river conservation among other matters.

Whitewater NZ was originally formed in the mid 1950's as the New Zealand Canoeing Association (NZCA). In the late 1990's the NZCA was split up into a number of different bodies representing different facets of the sport, including the New Zealand Recreational Canoeing Association (NZRCA), which represented the interests of white water kayakers and the river conservation interests of kayakers and canoeists in New Zealand. The NZRCA became Whitewater NZ in the mid 2000's. Whitewater NZ is affiliated to the New Zealand Canoe Federation, which is in turn affiliated to the International Canoe Federation (ICF).

The NZCA, NZRCA and Whitewater NZ have represented kayakers at many hearings over the years affecting white water river resources throughout the country including:

- Water Conservation Orders on the Motu, Rangitikei, Mohaka, Motueka, Kawarau, Buller, Rangitata, Nevis, Hurunui Rivers and others
- submissions on many policy statements, water legislation initiatives, water consents and renewals, Department of Conservation Plans and Council and Regional Plans throughout New Zealand

The Morgan Gorge on the Waitaha River, and the Upper Waitaha River including the Waitaha and Windhover Gorges and catchment to the main divide constitute an outstanding wild and scenic river, with outstanding natural beauty, scenery and wilderness values, and outstanding kayaking values for the most expert of kayakers⁵. The Morgan Gorge and the upper Waitaha River runs represent the pinnacle of white water runs for the most skilled of expert kayakers. Therefore, like their exemplars

⁵ D A Rankin and S Orchard, Impacts of the proposed Waitaha River Westpower hydro scheme on white water and kayaking values. Report prepared for Whitewater NZ, January 2015

of other outstanding beginner, intermediate, advanced and expert white water runs throughout the country, some of which are protected by Water Conservation Orders, this river warrants the same statutory recognition and protection.

The proposed Westpower hydro scheme will have a number of significant impacts on the values of the Morgan Gorge, the river above, and a section of the river below the Morgan Gorge, that are currently used by back country recreation users. These values and likely impacts on them have been known for some time and discussed with the applicant ever since in the mid 2000's Westpower first mooted the hydro scheme⁶.

Request Declining the Granting of the Concession

Whitewater NZ request that the Minister of Conservation's intent to grant a concession to Westpower Ltd to construct and operate a hydro scheme on the Waitaha River be reversed and that the concession not be granted as the proposed development:

- is incompatible with the outstanding natural feature and outstanding natural landscape status of the stewardship land involved
- is incompatible with the purpose of the Conservation Act, and especially with respect to DOC stewardship land
- is not needed for the power it will generate, nor would it provide for greater reliability of power distribution for the West Coast
- is contrary to various Objectives and Policies in Regional and District Plans and the West Coast Conservation Management Strategy
- will prevent current recreational users from accessing the Morgan Gorge and a river reach below, which is an outstanding recreation resource, and
- will severely impinge and intrude on the wilderness, recreational and landscape values of an outstanding wild and scenic West Coast river
- is contrary to precedents set in the decision to decline the Fiordland Link monorail proposal concession.

REASONS FOR THIS SUBMISSION/OBJECTION:

The reasons for opposing and objecting to the granting of the concession include the following:

- (i) The application is incomplete in that it contains errors in its assessment of effects on kayaking and recreation values and omits key data properly outlining the impact of the proposal on white water kayaking and natural values;
- (j) The proposed scheme will have a significant adverse effect on the

⁶ Booth, K, Waitaha River Recreation Assessment, Prepared for Westpower by Lindis Consulting, September 2008.

outstanding kayaking values in the river. Such issues are not properly addressed or are glossed over in the application and the DOC Officer's report, and mitigation offered is unworkable and inappropriate or lacking;

- (k) The granting of this concession without appropriate consent conditions will effectively stop current users use of the resource, not just in the Morgan Gorge but elsewhere in the catchment;
- (l) The granting of the concession would be contrary to a number of objectives and policies of Regional and District Plans and the DOC West Coast Conservation Management Strategy;
- (m) The proposal is incompatible with the outstanding natural feature and outstanding natural landscape status of the stewardship land involved and aspects of the RMA;
- (n) The proposal is incompatible with the purpose of the Conservation Act, and especially with respect to the purpose of DOC stewardship land;
- (o) The proposal is not needed for the power it will generate, nor would it provide for greater reliability of power supply and distribution for the West Coast; and
- (p) The decision in principle to grant the concession ignores the precedent and decision in the Fiordland monorail case⁷, where the Minister of Conservation reversed the DOC recommendation to grant a concession. In that case the Minister declined the application for a concession for five primary reasons, all of which are applicable in a similar or related manner to the DOC decision to grant a concession to the current Westpower proposal.

Structure of this submission

This submission provides a background to the current proposal and then an analysis of the impact of the proposal on existing kayaking and other relevant values.

After a brief summary of the background to the proposal, a summary of kayaking use and values on the Waitaha River, along with flow requirements is presented. This is followed by a discussion of the analysis of the impacts of the proposal on white water and kayaking values. This includes our own analysis of the impacts, and a review and discussion of the analysis provided by the applicant and corrections needed. A brief analysis of similarities with the Amethyst Hydro Scheme, a review of natural character, landscape and visual amenity effects assessment, and various relevant Policy and CMS documents relevant to the application are also presented.

An analysis and discussion of the notified concession officer's report is then presented. This is followed by a brief discussion of a report commissioned by Whitewater NZ on the proposed scheme power need, viability and alternative locations and produced by an electricity sector expert. The statutory framework applied to Westpower's application is laid out. The relevance of the Resource

⁷ Hon Dr Nick Smith, decision letter to Infinity Investment Group Holdings Ltd re Riverstone Holdings applications for consent for a monorail, Office of Hon Dr Nick Smith, Parliament Buildings, 29 May 2014 (<http://www.doc.govt.nz/Documents/about-doc/news/issues/decision-letter-fiordland-link-monorail.pdf>); also see <https://www.beehive.govt.nz/sites/all/files/1.QandA-Decision-on-the-Fiordland%20ink-monorail.pdf>

Management Act to the current concession application is then discussed, and is followed by a section on the Fiordland Link Monorail case precedent and matters related to the Westpower application.

Background

After the successful completion and commissioning of the high-head Amethyst hydro power scheme on the West Coast, Westpower has continued to look for further hydro development opportunities on the West Coast. Westpower settled on a proposal to develop a run-of-the-river hydro scheme on the Morgan Gorge on the Waitaha River (Figures 1 & 2), and has applied for a concession to build the scheme on DOC stewardship land.

Westpower is a power reticulation utility based in Greymouth, which has only recently embarked on developing power generation capability. Electricity reforms in New Zealand over ten years ago saw the breakup of many of the power generation and distribution (line) companies, such as Westpower, into businesses that were either generation or line companies, but not both⁸. Recently, these restrictions have been relaxed and Westpower has successfully completed construction of a small scale 6 MW high-head hydro scheme on the Amethyst Creek, a tributary of the Wanganui River, close to Harihari.

A number of West Coast kayakers, Whitewater NZ, and kayakers from around the country, were incensed to hear of the Waitaha proposal when it was first mooted in the mid 2000's, because of the well-known outstanding wilderness values and kayaking runs (the Waitaha Gorge and the river section below the Morgan Gorge) on the river.

Westpower was informed of these very high values but claimed that the resource would still be available with the scheme in place and that the impacts would be minimal. Thus some kayakers felt that such a scheme might be a *falt accompli* and very hard to argue a case to prevent the development.

Westpower renewed consultation with Whitewater NZ in 2014. Two Whitewater NZ executive members made a visit to see the scheme site on 13 February 2014 and to discuss our view on the scheme, and later to share and hear our views on some draft reports Westpower had prepared to support their proposal. Whitewater NZ, supported by local kayakers, asked for key hydrological data so we could assess the impacts of the scheme.



⁸ Westpower, for example, became a power distribution (lines) company only, and the generation capacity that it owned at the time on the Arnold River was passed over to a new business, Trust Power.

The impact assessment and analysis was done, including the confirmation of the flow range needed to descend the Morgan Gorge, and the results of our analysis shared with and confirmed by Westpower. From further conversations with Westpower we were also able to ascertain that if the scheme went ahead kayakers would no longer be able to use the Morgan Gorge, and would lose access to a 1.5 km reach of Class IV-III-II whitewater below the Morgan Gorge, and which is a valued denouement to the Waitaha Gorge run (and used by itself).

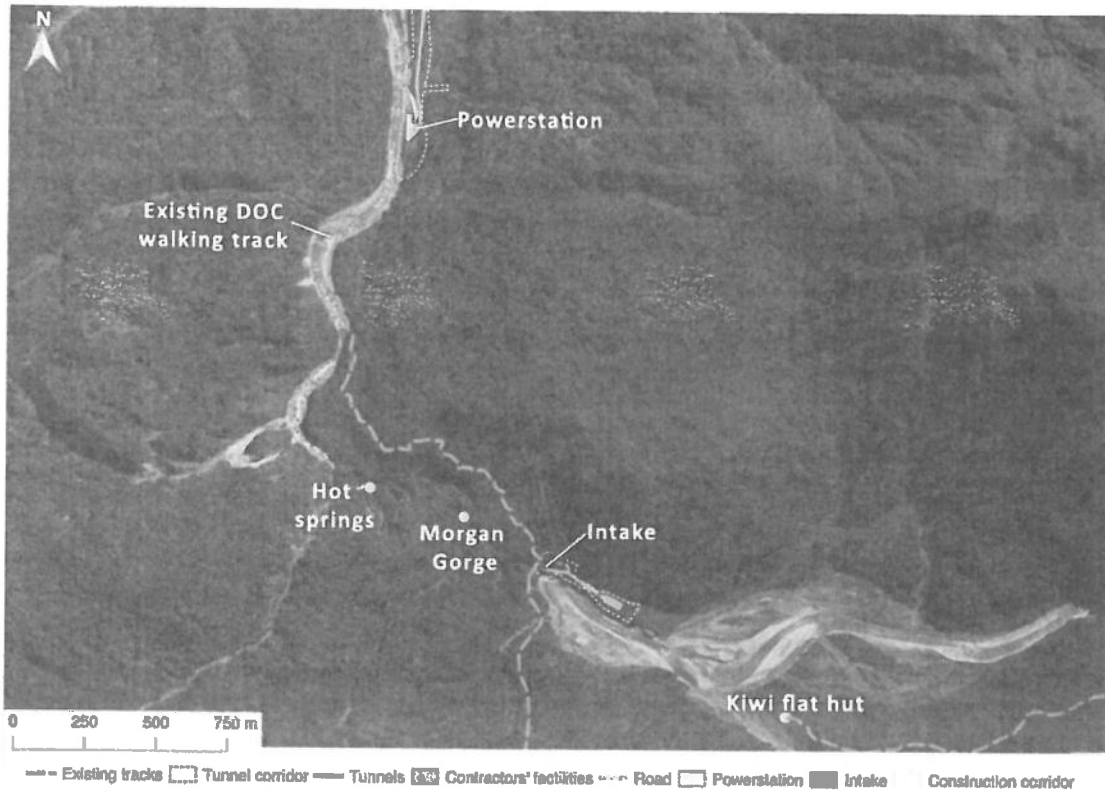


Figure 1. Aerial overview of proposed Westpower Morgan Gorge run-of-the-river hydro scheme. The intake is at the bottom of Kiwi Flat and diverts water into a settling area underground in a cavern/tunnel. Water can be diverted from the settling area to flush settled sediment down a separate tunnel back into the Morgan Gorge or can be diverted into a penstock that takes water down to the powerhouse. The Morgan Gorge and river reach down to the powerhouse (2.5 km) will only contain a residual flow of 3.5 cumecs.

Although many kayakers were very concerned about discussing possible mitigation for loss of kayaking values if was the scheme to go ahead, Whitewater NZ did talk to Westpower in good faith to explore what might be possible. This included discussion of possible no-take days, where Westpower would not take any water when the flows were right for kayakers to make a descent of the Morgan Gorge. However, if this were to work appropriately for kayakers, kayakers emphasised that the system and protocol to do this would need to be extremely flexible and accessible at very short notice and enough days would have to be made available and possibly allowing for even more in the future. This is needed because of the necessary coincidence of a number of key matters (flow, skilled team composition, weather, helicopter access) that have to be properly aligned often at short notice for a group of kayakers to attempt a descent and needs might change in the future.

Whitewater NZ also discussed the possibility of Westpower being able to provide 'controlled flows'

down the Morgan Gorge, where for example a flow in a range suitable for kayaking could be provided whilst some residual flow could still be used by Westpower for power generation. However, Westpower stated that this would not be feasible or acceptable from their point of view. Westpower felt that the risk to them from an outage and subsequent additional flow down the Morgan Gorge resulting in a kayaking incident or tragedy from flow changes would not be something that they would like to entertain.

Whitewater NZ also indicated to Westpower that much of the documentation in its reports on kayaking and other values in the catchment prepared to support their application was not correct or was misleading or understated the true values.

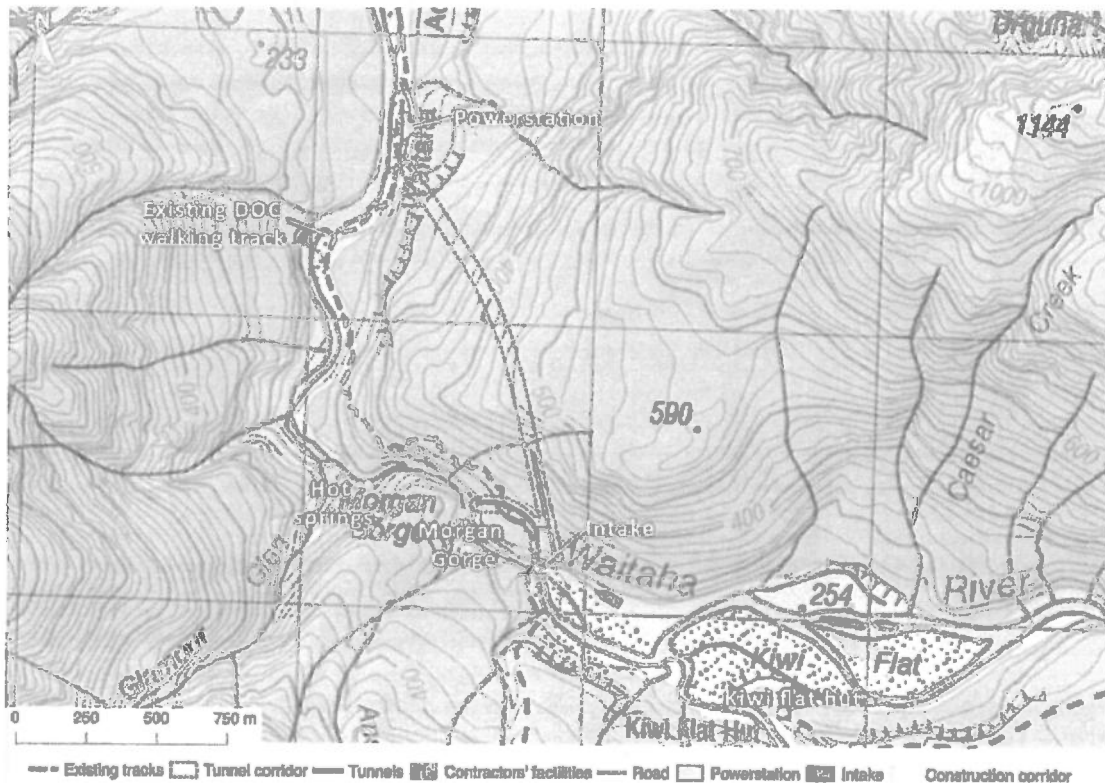


Figure 2. Overview of the proposed Westpower Morgan Gorge run-of-the-river hydro scheme and points of interest overlaid on a topographic map. As before the Intake is at the bottom of Kiwi Flat and diverts water into a settling area underground in a cavern/tunnel via the left tunnel portal. Water can be diverted from the settling area to flush settled sediment down a separate tunnel back into the Morgan Gorge high up a rock wall (the curved left hand tunnel) or can be diverted into a penstock in the right hand tunnel that takes water down to the powerhouse. The right tunnel portal (up to 5 metres by 5 metres) and tunnel will provide machinery access to the underground areas and the penstock intake in the tunnel going down to the powerhouse. The Morgan Gorge and river reach down to the powerhouse (2.5 km) will only contain a residual flow of 3.5 cumecs. The Class V Morgan Gorge kayaking reach is about 1.0 km long from the intake down to the Glamour Glen confluence. Below the Glamour Glen confluence the river is Class IV for about 0.5 km, then becoming Class III+ to III for about another 0.5 km, and then Class II down to the powerhouse.

Westpower then submitted its concession application to DOC.

The applicant wishes to obtain a concession to construct, maintain and operate a run-of-the-river hydro scheme at the Morgan Gorge on the Waitaha River on Department of Conservation (DOC) stewardship land. Westpower propose to abstract water via a highly visible weir across the river and tunnel entrance located in the rock face on the true right bank at the start of the Morgan Gorge. This structure and an adjacent access tunnel portal will be significant industrial intrusions into an otherwise pristine landscape and environment. The scheme proposes to take much of the flow of the river (up to 23 cumecs, river median flow (50% of the time) is 19 cumecs) and leave a residual flow of 3.5 cumecs in the Morgan Gorge at all times – higher and flood flows will still travel down the Morgan Gorge when the proposed Westpower take is exceeded. The water is returned to the river about 2.5 km downstream of the intake via a powerhouse on the true right bank of the river.

Whitewater NZ obtained a copy of the application under the OIA and found, much to its chagrin, that none of our concerns about the inaccuracies in various draft reports supplied for consultation had been updated, changed or fixed before submission to DOC, even though this data had been shared with the applicant. Whitewater NZ contacted DOC expressing concerns that incorrect data on kayaking values in particular were being used to inform the concession application process⁹ (Appendix I). Whitewater NZ met with DOC staff in November 2014 and discussed these concerns. Independently a report on the kayaking values of the Waitaha River and impacts of the proposed scheme (much of the information contained within had already been shared with Westpower) was prepared for Whitewater NZ¹⁰, and was then forwarded to DOC.

Whitewater NZ then approached an independent electricity sector consultant to write an independent report on the need for and viability of the proposed scheme. In May 2015, this report¹¹, an additional supplemental report from Whitewater NZ outlining inaccuracies and omissions in the application and supporting material concerning kayaking values, a covering letter¹² including a discussion of the statutory framework for making a decision, and an appendix to that letter reviewing the natural character, landscape and visual amenity effects assessments commissioned by the applicant, were forwarded to DOC with an invitation to receive the material for the purposes of section 17S(4) of the Conservation Act. DOC accepted the 'Baldwin' report but not the remainder of the material. We further wrote to DOC pointing out that DOC should consider all the material under section 17S(4) of the Act, as it was all germane to their considerations and required under the Act. DOC did not reply further to us but it appears as though some of this additional material has since been accepted.

DOC completed their Notified Concessions Officer's Report to their decision maker Michael Slater, Director, Operations, Western South Island on 4 August 2016, and released their intention to grant a concession in early September 2016.

⁹ See letter to DOC Appendix I.

¹⁰ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

¹¹ T Baldwin, *Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations*, Wellington, May 2015.

¹² D A Rankin, letter to Marie Long, Director, Planning, Permissions and Land for Director-General, DOC, re substantial and critical omissions concerning Westpower: Part 3B application relating to the proposed Waitaha scheme, and reports contained therein (including D A Rankin, *Additional Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme*, Whitewater NZ, 1 May 2015, 20pp; T Baldwin, *Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations*, Wellington, May 2015), Whitewater NZ, Christchurch, 1 May 2015, 19pp.

Data from Westpower and Data Analysis

Data in this submission have been compiled from various published sources, and grey literature, and these are referenced where possible. In addition, we have documented and drawn upon information from interviews and correspondence with:

- expert kayakers who have run the river or inspected the river, and
- kayakers with knowledge on assessment techniques for evaluating the impacts of flow losses on kayaking values.

Hydrological data from Westpower (Doyle, 2013)¹³ has also been used in the analysis of the impacts. Calculations have been performed using Excel and analysis was carried out using methods published previously (Rankin *et al.*, 2014). This submission also draws on information in documents that have been prepared for Westpower and DOC as part of investigation or consultation processes where appropriate, and in some cases these documents are included as Appendices.

Kayaking Resources and Values of the Waitaha River¹⁴

Kayaking white water features and technical difficulty values

The nature of the geomorphology and surrounding landscape in the kayaking reaches of the Waitaha River, coupled with a glacier fed water source, produces an outstanding array of white water features for kayakers. There are several kayaking reaches or runs, and the white water features differ within each of these, resulting in kayaking runs of different character and degrees of difficulty or challenge.

The Upper River contains steep hard Class V (see Appendix II for a definition of Class or technical difficulty or challenge) alpine kayaking below Ivory Lake to the Upper Waitaha Hut, with tight low volume kayaking through a series of continuous drops down through large boulders (Appendix III). It is followed by the Class V+VI Windhover Gorge, with large waterfalls and extreme gradient (Appendix III). Both of these runs normally require flows after rain to be navigable (Figures 3 & 4).

The classic middle Waitaha Gorge Class IV to V white water reach is from Moonbeam Hut down to Kiwi Flat (England, 2011)¹⁵. Below Kiwi Flat is the gnarly Class V Morgan Gorge, which delineates the back country from the front country (Appendix III). This section of the river is often portaged by those running the Waitaha Gorge. The difficulty of the lower part of the Morgan Gorge run slowly eases after the Class V section, as the river gradient lessens, and progressively produces a Class IV-III-II kayaking run as the river flows down to the river valley floor to emerge onto the coastal plains. The combination of these varied hard kayaking runs makes this an outstanding river for kayakers.

¹³ Doyle, M (2013). The Hydrology of the Waitaha Catchment (Draft provided for consultation only), A report for Electronet Services, Martin Doyle, Consultant Hydrologist, September 2013.

¹⁴ This section is taken from various sections and references of the following report: D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015. Interested readers are referred to this report for more detail on the values of the river.

¹⁵ England, A (2011). An assessment of the whitewater recreational values of West Coast rivers – whitewater kayaking, Land Environment and People Research Paper No. 2, Lincoln University, Canterbury, January 2011.

Figure 3. Location of points of interest (POI), features, and the proposed hydro scheme in the Waitaha Catchment.

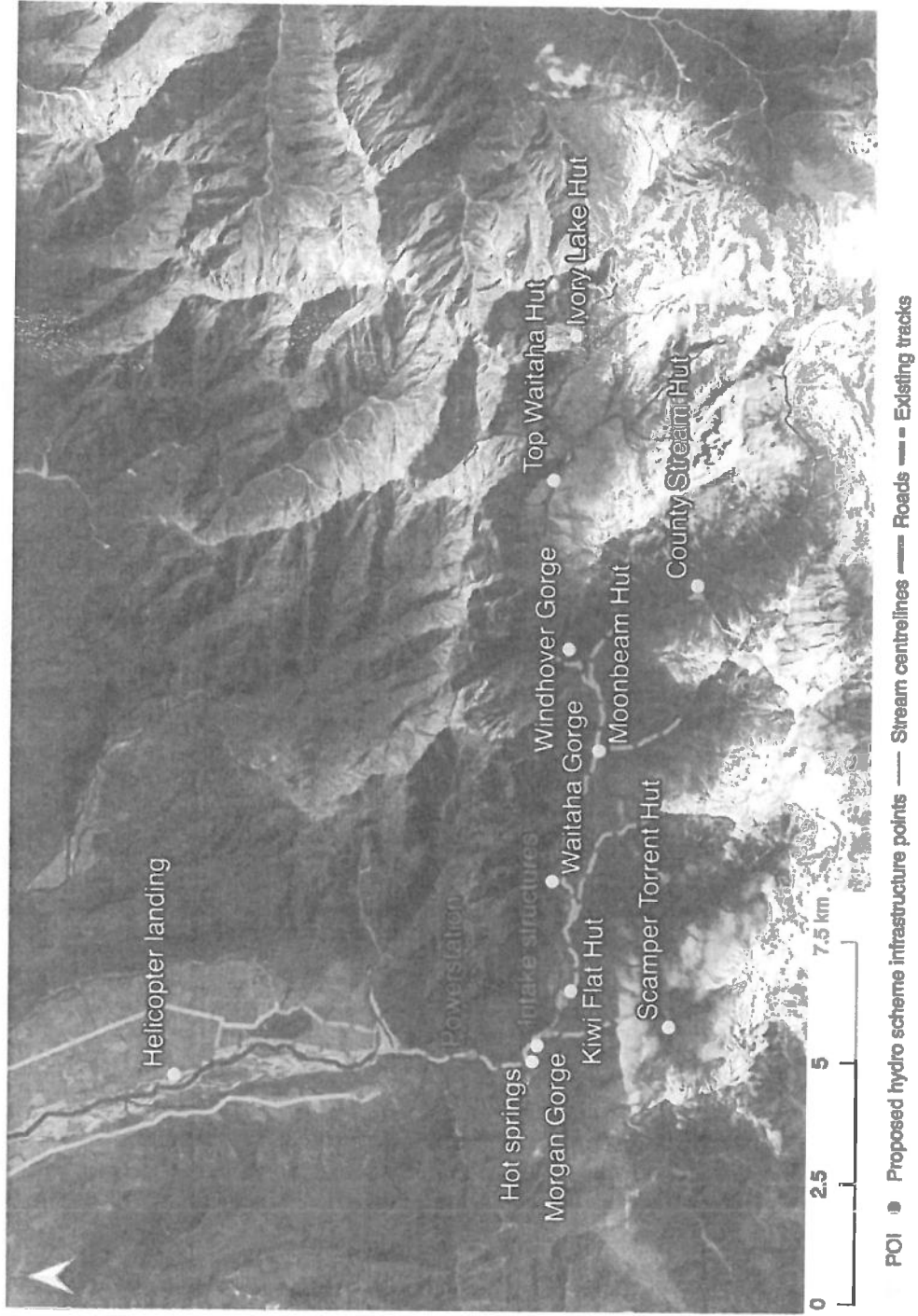
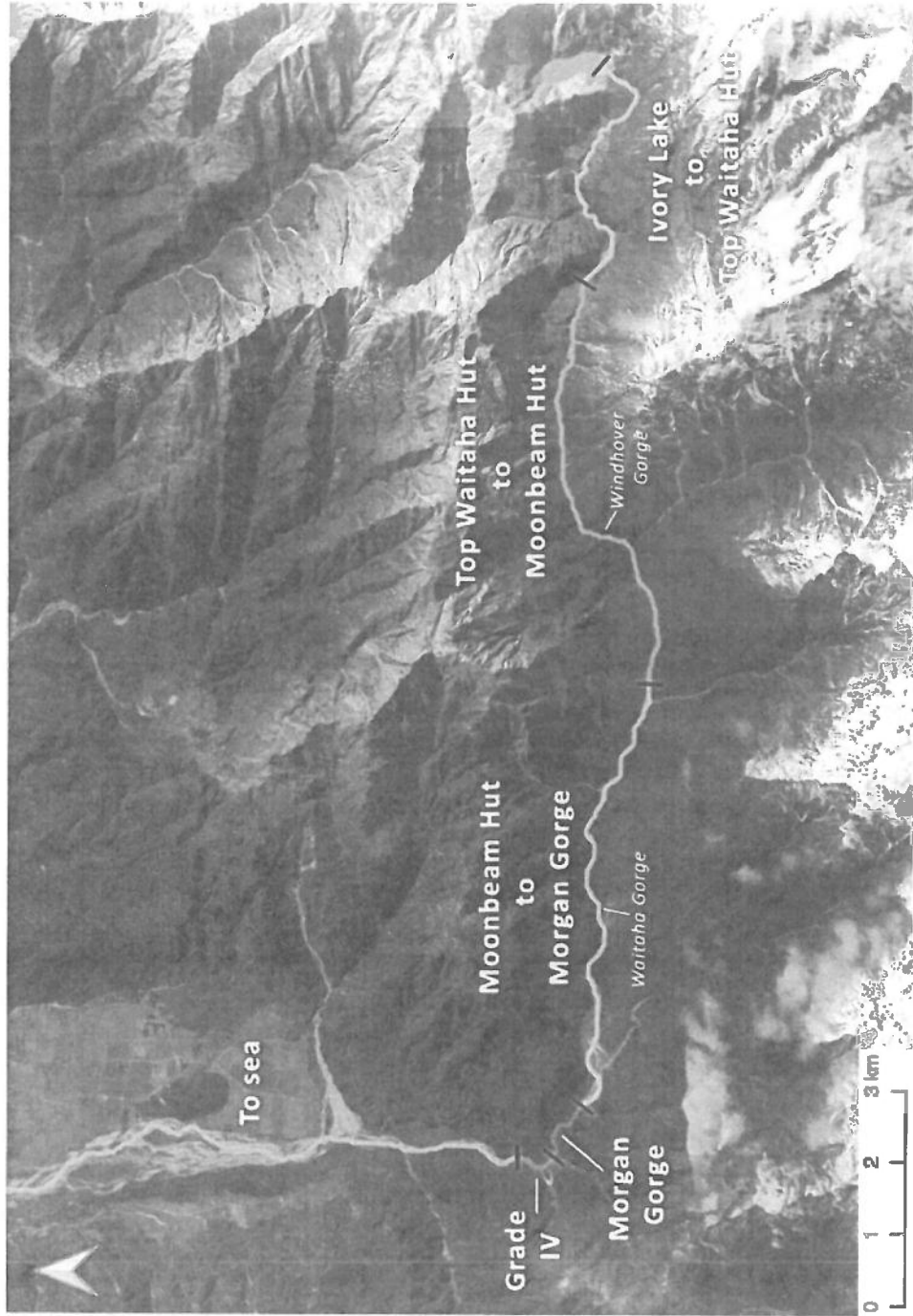
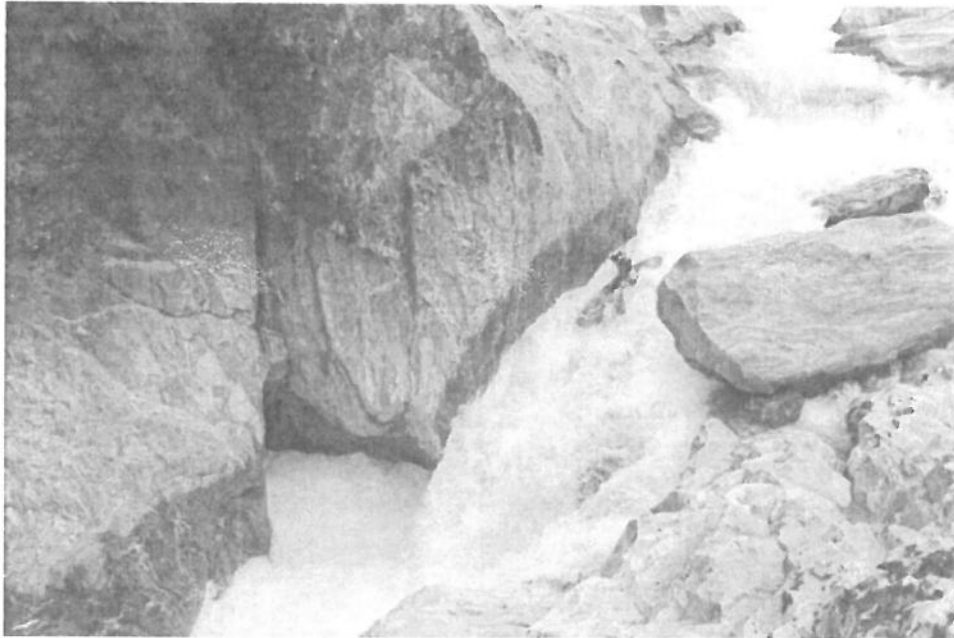


Figure 4. The different kayaking runs on the Waitaha River. The top of the Class (Grade) IV reach below the Morgan Gorge is where kayakers portaging the Morgan Gorge normally re-enter the river, and then continue on down through the Class III+ to III and then Class II white water down to the road (track) end or helicopter landing site where they started from.



The Windhover Gorge run contains a number of large waterfalls of extreme difficulty representing the upper end of technical difficulty available in New Zealand, and indeed worldwide. The middle Waitaha Gorge run contains slightly easier white water again, and with different types of features (such as the 'cave' rapid and other drops and some easier gorge sections), but is still challenging and is regarded as a 'classic run'.



Matt Coles running the first part of the top drop in the Windhover Gorge (Photo: Zak Shaw Photography)

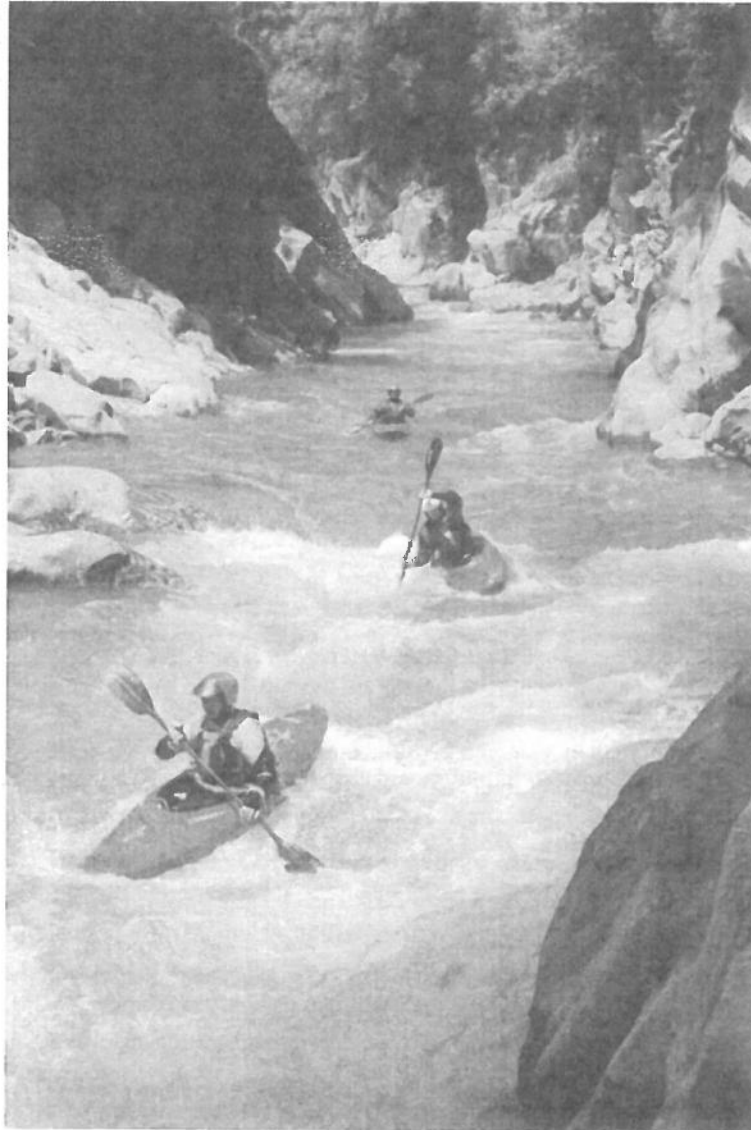
The Morgan Gorge section includes a unique and confined bedrock gorge containing continuous rapids and drops of a different character than the other sections. The technical difficulty of the white water on the different runs is such that most of the river above and just below the Morgan Gorge is only suitable for expert kayakers (on a scale of beginner, intermediate, advanced and expert (Rankin *et al.*, 2014)¹⁶). Kayakers need exceptional skills and mental and physical prowess to run most of the sections. Kayaking parties will descend the river, often portaging some sections or individual rapids, depending on their skills and conditions. For example, most parties running the middle Waitaha Gorge run will portage the Morgan Gorge. They will then re-enter the river at a point below the most difficult rapids (at the Class IV section; Figure 4), where they are comfortable handling the intensity of the white water again, in order to complete the run down to the get out.

Scarcity and status values

The West Coast of the South Island has a number of rivers that provide outstanding kayaking and rafting white water and amenity values over a range of Classes of difficulty (England, 2011). Other

¹⁶ Rankin, D A, Earnshaw, N, Fox, I M G and Botterill, T (2014). Kayaking on Canterbury Rivers: reaches, values and flow requirements, Environment Canterbury Technical Report No. R14/31, Environment Canterbury, February 2014.

than the Waitaha River only one other river offers such a range and variety of extremely challenging white water for the most expert of kayakers, namely the Hokitika River, and some of its tributaries such as the Mungo and Whitcombe Rivers. However, a number of the Waitaha runs are more challenging still, thus resulting in its pinnacle status. There is no other resource offering the same mix and level of extremely challenging white water that can substitute for the Waitaha River. Thus, its loss would be a travesty for the New Zealand and international white water kayaking community.



Legendary kayaker Mick Hopkinson (foreground) in an easier small gorge feature on the middle Waitaha Gorge run. (Photo: Zak Shaw Photography)

The New Zealand white water kayaking resource is regarded as being world-class (England, 2011);

Charles, 2013¹⁷) and as the Waitaha River contains some of New Zealand's most technically challenging runs, the river is outstanding both nationally and internationally. At the present time the Morgan and Windhover Gorges are regarded by many as *the* most challenging and technically difficult pieces of white water in New Zealand; the 'Mount Cook' of all New Zealand white water kayaking runs¹⁸.



Cooper Lambra, Mikey Abbott, and Kevin England kayaking the entrance to the Morgan Gorge (Photo: Dave Kwant)

The Upper River, Windhover Gorge, and the Morgan Gorge have only been run by a few parties, such as their extreme technical difficulty. The Morgan Gorge was first fully kayaked by Keith Riley, Paul Currant and Trent Garnham in 2010. The Upper Waitaha was first run by Zak Shaw, Keith Riley, Justin Venable, Paul Currant and Will Martin in January 2013. The Windhover Gorge was first run by Shannon Mast and Justin Venable (and parts of it by Matt Coles) in January 2013 (see Appendix IV in D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.).

"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

¹⁷ Charles, G (2013). *New Zealand Whitewater 5 – 180 Great Kayaking Runs*, Graham Charles, Hokitika, New Zealand.

¹⁸ This term was coined in a Press release from the Tai Poutini Polytechnic when announcing the first descent of the Upper Waitaha below Ivory Lake (Greenaway, 2014; also see <http://www.stuff.co.nz/the-press/news/8257254/Where-no-kayak-has-gone-before>). On that occasion the Windhover Gorge was portaged but since then this even more technically difficult section has been run, as has the Morgan Gorge (Charles, 2013). Kayaking these extreme white water sections of the Waitaha River, is the equivalent of expert mountaineers climbing the most challenging routes in the country, such as the Caroline Face of Mount Cook. Using the mountaineering analogy, such routes are iconic features that are without comparison in terms of both current and historical status, and the contribution they make to the overall resource.

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”.

Comment received from Graham Charles, author of *New Zealand Whitewater* and *New Zealand Whitewater 5*, January, 2015 (reproduced with permission)

Usage value

Usage of the kayaking runs on the Waitaha River is low compared to many other valued kayaking runs throughout the West Coast and throughout the country. However, the reason for this is the technical difficulty of the runs, the fact that they are only the domain of expert kayakers and their difficulty to access. Most kayakers cannot and will not ever paddle these difficult runs. Most of the runs also require helicopter access. Thus, usage levels are a poor indicator of value because of the extreme nature of the river. Iconic rivers such as the Waitaha River are a draw card for travelling kayakers and overseas visitors, and have considerable promotional value for New Zealand for that reason, including being featured in films and other media. For example, the first descent of the Waitaha Gorge was by an all women kayaking team in 1999, including international kayakers, and filmed by the well-known kayaking movie makers Driftwood Productions (Charles, 1999¹⁹).

Wilderness and scenic value for kayaking



Mikey Abbott kayaking through part of the water sculpted and smoothed Morgan Gorge (Photo: Dave Kwant)

The combination of varied in river features and pristine surrounding landscape on the one river makes the Waitaha River an outstanding wild and scenic New Zealand river for kayakers. Much of

¹⁹ Charles, G (1999). *New Zealand Whitewater— 120 Great Kayaking Runs*, Craig Potton Publishing, Nelson, New Zealand.

the riverine landscape is dominated by water worn schist rock wall gorges, steep bush clad valley walls and large and in many cases massive schist boulders in the river bed. It is very challenging country to move through either by kayak or on foot, as is sometimes required when some rapids need to be portaged.

The value of the river has been confirmed by several experts who have all conferred that the Waitaha River is one of the best and most technically difficult white water kayaking rivers and wild and scenic rivers in New Zealand (see Charles, 2013; England, 2011; plus recent expert statements in Appendix III).

White water values

White water values relate to several environment policy and planning objectives including, *inter alia*, the status of white water as a natural feature, and as a component of natural character. Both are matters of national importance under RMA sections 6(a) and 6(b) respectively.

Section 6(a) specifically requires preservation of the natural character of rivers and their margins, and the protection of them from inappropriate subdivision, use, and development. Section 6(b) requires the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development. Identification of impacts on these matters is very important to the effective implementation of these policies. In case by case decision making this relies in part on the adequacy and accuracy of information available at the time.

Quantification of white water values requires consideration at a number of relevant scales. These include the landscape scale, river reach scale, and individual feature scale within any particular reach.

Landscape scale

The Waitaha River is an example of a 'wild and scenic' river. Although there is no precise definition for this term (Wright, 2012²⁰) it is commonly used to refer to free-flowing rivers in relatively unmodified catchments. The Waitaha River is a spectacular example of a free-flowing river from source to sea, passing through unmodified and largely pristine natural landscapes. Different reaches of the river have different landscape and riverscape settings, varying from the alpine character of the Upper River above the Windhover Gorge, to the very high gradient Windhover Gorge with large waterfalls and steep sided bush clad valley walls, to the enclosed constricted water worn fluted bedrock structures in the Morgan Gorge.

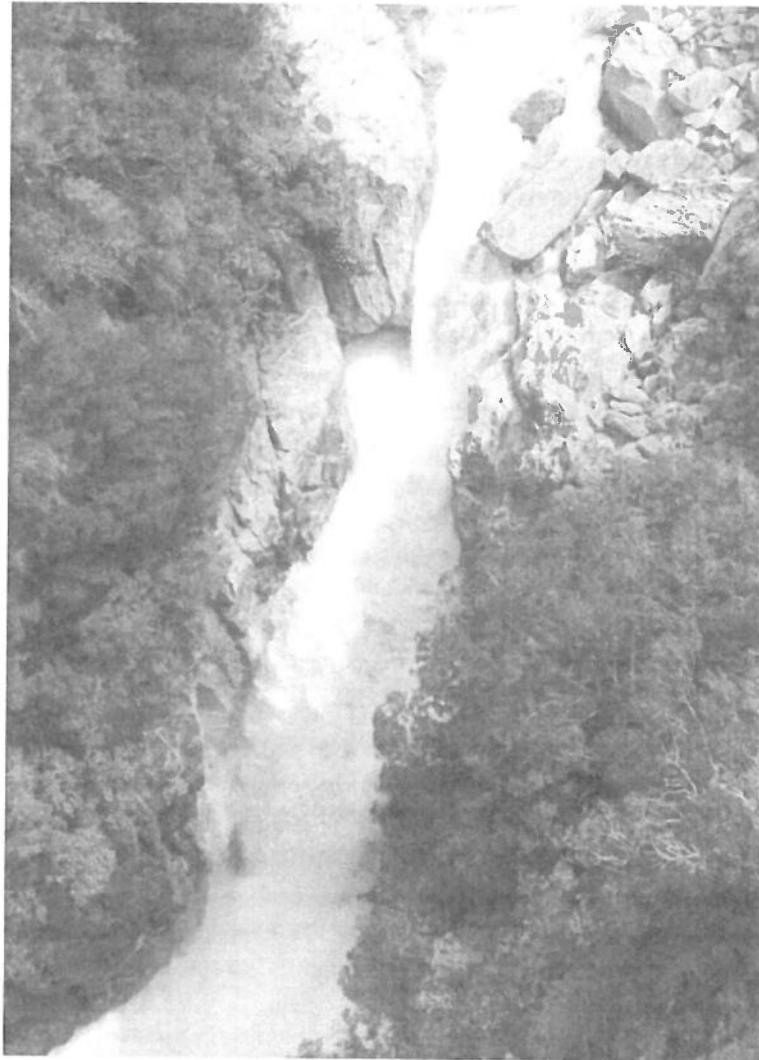
In part due to the history of hydroelectricity development in New Zealand, the need to protect New Zealand's wild and scenic rivers has long been recognised. However a strategic approach has yet to be taken and there are few barriers to development proposals on wild and scenic rivers (Wright, 2012). As a result the recognition of wild and scenic values is crucial for the protection of these rivers in the case by case decision making regime that prevails.

"In a world increasingly losing wilderness, wild and scenic rivers are an important part of the clean green country tourists come here to experience".

²⁰ Wright, J C (2012). Hydroelectricity or wild rivers - Climate change versus natural heritage, Parliamentary Commissioner for the Environment, Wellington, May 2012.

Jan Wright, 2012, Parliamentary Commissioner for the Environment

'Wild and scenic' qualities are also relevant to impacts on natural character and natural feature values. For example these qualities are specifically identified as components of both natural character and natural feature assessment in recent policy development (e.g., Department of Conservation, 2010b²¹) and research (e.g., Froude, 2011²²).



A section of the upper Waitaha showing wild and scenic nature (Photo: Zak Shaw Photography)

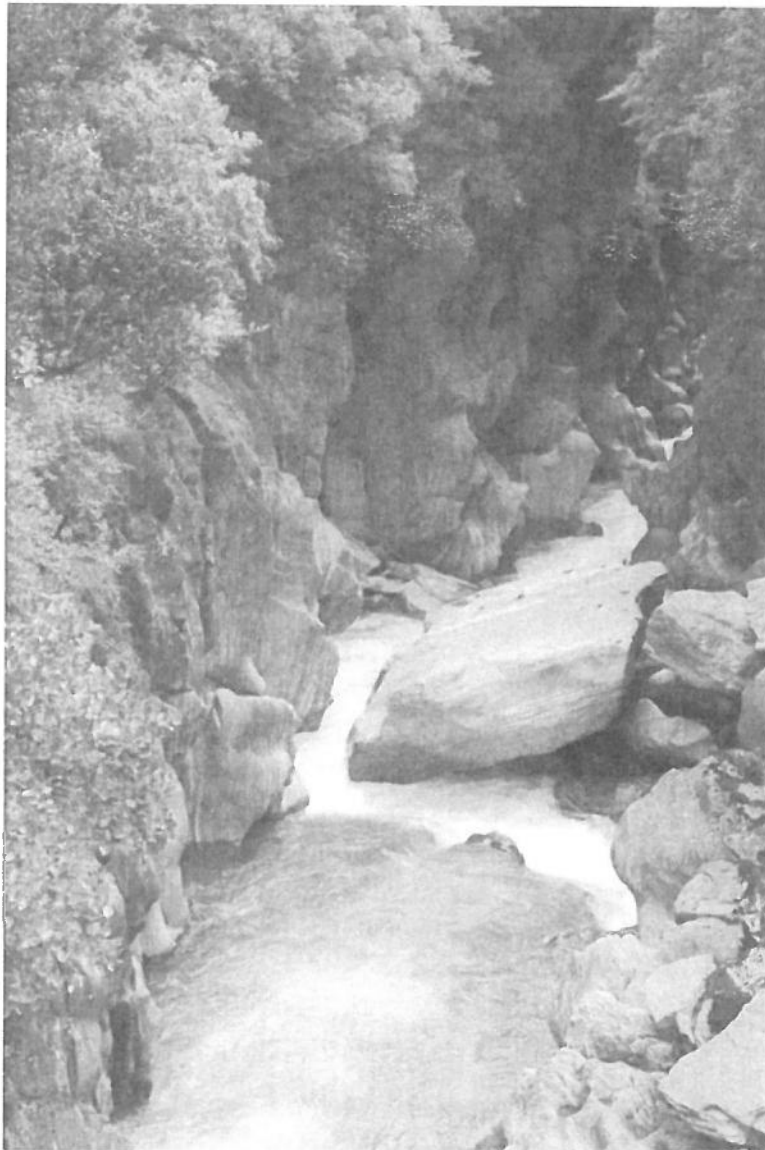
River reach scale

Any contemporary test (e.g., Froude, 2011) identifies the affected reaches as having very high

²¹ Department of Conservation (2010b). *New Zealand Coastal Policy Statement 2010*. Wellington: Department of Conservation. 29pp.

²² Froude, V A (2011). Quantitative methodology for measuring natural character in New Zealand's coastal environments. <http://researchcommons.waikato.ac.nz/handle/10289/5919>. PhD Thesis. University of Waikato, Hamilton. 372 pp.

natural character. Although outstanding wilderness and scenery qualities from both the land and river course perspective are a component, many attributes of this environment contribute to its natural character values including the existing degree (i.e., absence) of human modification and intactness of hydrological, geomorphological, and ecological attributes. The natural character values present relate to both the river and its margin and thus RMA section 6(a) matters are directly relevant.



Just below the entrance into the Morgan Gorge, Waitaha River. This gorge is considered an outstanding natural feature in its own right, separating the back-country from the front-country. (Photo: Zak Shaw Photography)

The Morgan Gorge is also a strong candidate for an outstanding natural feature in its own right, with its captivating, sculpted, water-smoothed, and beautifully lined and coloured schist rock walls

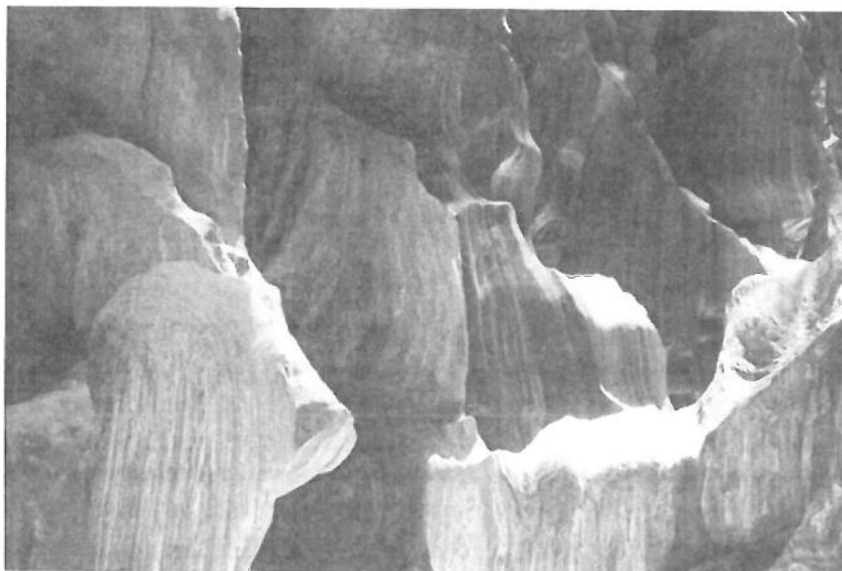
towering above the river in places. In other places enormous schist boulders lie scattered in the enclosed gorge. The presence of the pale blue, or crystal clear glacial water, depending on the flow, descending into the gorge, and then churned into noisy powerful white water in the rapids in the deep tight bedrock gorge, produce a strong feeling of an untouched, inaccessible, primal, and remote part of the natural environment. Towering above the rock walls above the river is dense green podocarp rainforest. These attributes appear to meet the test for 'outstanding' status, which for example is defined by both Oxford and Merriam-Webster Dictionaries as "exceptionally good" or "easy to notice/clearly noticeable".

The status applies in this case to the natural feature of a gorge. It could apply to other features such as rapids, bedrock, and white water hydraulics. It is considered likely that specific white water features within the affected reach would also meet 'outstanding' status. As with the gorge as a whole an important aspect of white water features is that each are unique and cannot be re-created.

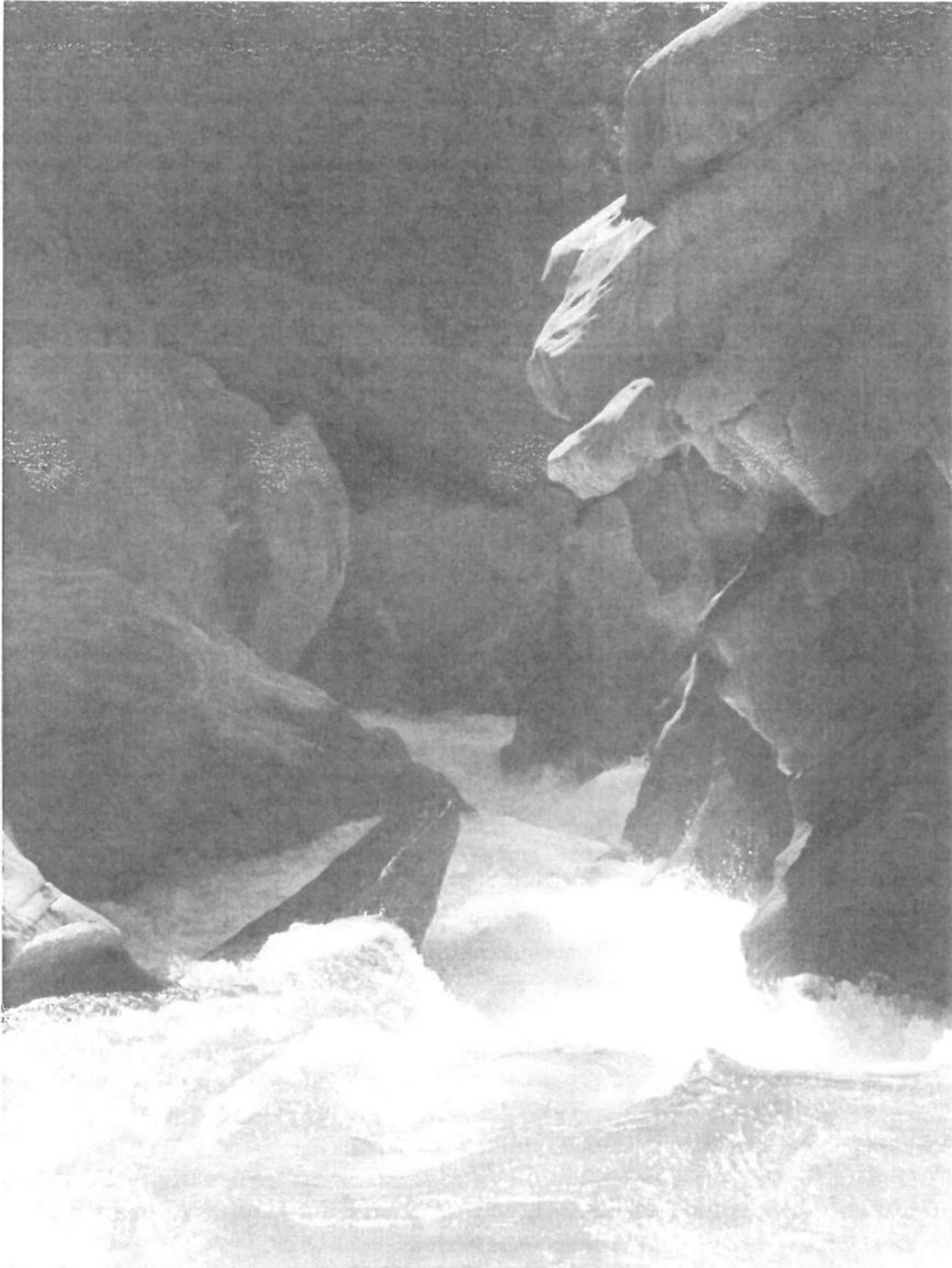
White water features scale

White water values are defined by a complex mixture of the number and quality of the white water hydraulic features formed by the interaction of river flow with bed features down a particular reach. Valued hydraulic features include standing and breaking waves, boils, holes or stoppers, eddies and drops or waterfalls. Water quality and appearance, and bed and rock structure and appearance are also relevant.

The white water produced in the Morgan Gorge is very committing and 'pushy' (powerful) because of the very constricted nature and gradient of the river channel in the bedrock down through which the water flows. There are distinct white water rapids with 'calmer' spots in between. Due to both flow properties and bedrock structure the rapids contain a wide variety of hydraulic features, including breaking waves, boils, holes, slides, drops and eddies, some of which are large and characteristic.



Fluted sculpted water-smoothed schist rock features in the Morgan Gorge (Photo: Zak Shaw Photography)



A section of white water in the wild and scenic Morgan Gorge, Waitaha River (Photo: Kevin England)

Given the high gradient, high difficulty status for kayaking, and limited anecdotal evidence concerning the white water features in the Morgan Gorge it is considered that an assessment of natural feature values is likely to be relevant for a comprehensive impact assessment in this case. However, within the scope of preparing this submission it was not possible to compile an inventory

of the white water resource at individual feature scale to further consider these matters. Further research would be needed to adequately document these features and consider the significance of impacts on them.

Impacts of the Westpower Scheme on White Water and Kayaking Values²³

Impacts on flow availability in the Morgan Gorge and elsewhere

Flow availability is a key component for retention of a white water kayaking resource and white water values. Without sufficient flow, together with gradient and bed features, white water does not exist. Conversely, too much flow, in some situations, can create immensely powerful and dangerous and hazardous white water, or see the loss of white water resources as they are 'drowned' under excessively high flows (Rankin *et al.*, 2014). However, for reaches of very hard high-gradient kayaking such as the Morgan Gorge or Windhover Gorge, a key factor in being able to consider descents is the flows at which they can be negotiated safely, where the white water hydraulic features present have feasible 'lines' or passages through them and which are not lethal. At this level of difficulty flow is a critical variable for affording a kayaking resource.

Flow related effects of the Westpower proposal involve the Morgan Gorge and the 1.5 km run from just below the most difficult rapids on the Morgan Gorge to the proposed powerhouse. The start of the 1.5 km run is where kayakers portaging the Morgan Gorge from the upper river runs currently re-enter the river, to resume travel down to the current exit point, below the proposed powerhouse site.

The loss of the natural flows down the Morgan Gorge, and the 1.5 km reach below the gorge, will result in direct impacts on these important resources for kayakers on the Waitaha River, unless suitable natural flows are made available to kayakers whenever they want them. In addition the scheme will result in impacts on any parties attempting the upper Waitaha runs. In respect of impacts on the upper river runs, the scheme would completely alter the dynamic of a river trip down an 'intact' and currently undeveloped wild and scenic river, and remove the opportunity for kayakers to descend the river free from the encumbrances of dealing with industrial infrastructure.

Flows required by kayakers

The flows required by kayakers wanting to run the Morgan Gorge are estimated to be between 17.5 and 22.5 cumecs (Rankin, 2014a²⁴; see Appendix V in D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015). The flows required by kayakers wanting to run the lower 1.5 km Class IV-III-II run, after the Class V Morgan Gorge run, and which is an integral part of the Waitaha Gorge run, are estimated to be 10-50 cumecs. These flows have not been correctly identified in the Westpower application and consultants report.

²³ This section is taken from various sections and references of the following report: D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

²⁴ Rankin, D A (2014a). Impact of Westpower Waitaha hydro scheme proposal on river flow availability down Morgan Gorge: a document prepared by Whitewater NZ for discussions with Westpower re the impacts of their proposed hydro scheme, Whitewater NZ, February 2014.

Availability of suitable kayaking flows before and with scheme installed

Preliminary analysis of the Impact of the proposed hydro scheme on the Morgan Gorge and the availability of flows suitable for kayakers has indicated that there would be a significant reduction in the availability of flows suitable for kayakers (Rankin, 2014a; also see Table 1). This analysis was carried out using methods published previously (Rankin *et al.*, 2014) and using hydrology data from the catchment provided by Westpower (Doyle, 2013)²⁵. Available flow days were determined by calculating the number of days flows were in the suitable 17.5 to 22.5 cumec kayaking flow band at Kiwi Flat (at the entrance to the Morgan Gorge), both under natural conditions and when the proposed scheme was running (modified flow).

Table 1. Mean and median flows (cumecs) and numbers of suitable days available (with flows in the 17.5 to 22.5 cumec flow band) for kayaking the Morgan Gorge before (natural flow) and after installation (modified flow) of the proposed Westpower power scheme

Data set	Natural flow			Modified flow			Days lost	
	Mean	Median	No. days	Mean	Median	No. days	No.	Percentage (%)
Full year on average, 2006-12 ^a	32.7	19.0	59.1	17.4	3.5	8.9	50.2	85
September – May kayaking season, on average, 2006-12 ^a	37.5	21.9	51.9	20.2	3.5	8.8	43.1	83
December – February peak kayaking season, on average, 2006-12 ^a	46.0	26.7	17.5	26.6	3.7	4.5	13.0	74
September – May kayaking season, wet, 1995-96 ^b	51.8	30.9	50	31.3	7.9	7	43	86
September – May kayaking season, dry, 1976-77 ^b	29.2	18.1	35	14.1	3.5	7	28	80

^a Approximate as full data not available for 2006 or 2012.

^b From synthetic data (Doyle, 2013).

On average, the number of days where flows (natural flow) were suitable for kayaking the Morgan Gorge over the September to May kayaking season, based on data from the 2006-2012 years, was 51.9. This number would be reduced to 8.8 days, an 83% reduction, if the scheme was installed (modified flow; Table 1). However, until recently it was not certain whether any of the 8.8 days remaining after the scheme was installed, where the residual flows were between 17.5 and 22.5 cumecs, would be suitable for kayakers to use. In the report by Westpower's recreation consultant (Greenaway, 2014²⁶), it was assumed that this would be the case for residual flows, but this is not necessarily so²⁷. Recently it has been concluded that these flow days will not be suitable or

²⁵ Westpower has confirmed the veracity of the calculations conducted by Whitewater NZ and presented in Table 1.

²⁶ Greenaway, R (& Associates) (2014). Westpower Waitaha Hydro Scheme Investigations – Recreation and Tourism Assessment of Effects (Draft for consultation only), Prepared for Westpower Ltd by Rob Greenaway & Associates, February 2014.

²⁷ In the report by Greenaway (2014) it is important to note that, in the analysis of the impact of flow changes as a result of the proposed scheme, the flow requirements for kayakers down the Morgan Gorge (and the

essentially available for kayakers at all.

Possibility of access to 'controlled' flows suitable for kayaking – not possible

In addition to quantifying the loss of available flows in and below the Morgan Gorge as a result of installing the proposed scheme, the possibility of kayakers getting access to additional flows suitable for kayaking the Morgan Gorge through specific flow management arrangements with Westpower was also investigated. For example, it might be possible for the scheme to be managed by Westpower to take variable amounts of water on high flow days and produce controlled flows suitable for kayakers down the Morgan Gorge, whilst still generating some power (Rankin, 2014a).

Figure 5 depicts such a scenario where the Westpower take is managed to yield a controlled and suitable flow for kayaking of 20 cumecs, on a day where the natural flow (daily mean of about 42 cumecs) is too high for safe kayaking. By Westpower reducing the flow take for power generation from 23 to 10 cumecs during the day, an extended period could be produced where flows in the gorge were maintained at 20 cumecs, within the range required and at a flow considered suitable for kayaking. For example, in the current case if flow was controlled as proposed kayakers would have been able to attempt the run from 8 am onwards.

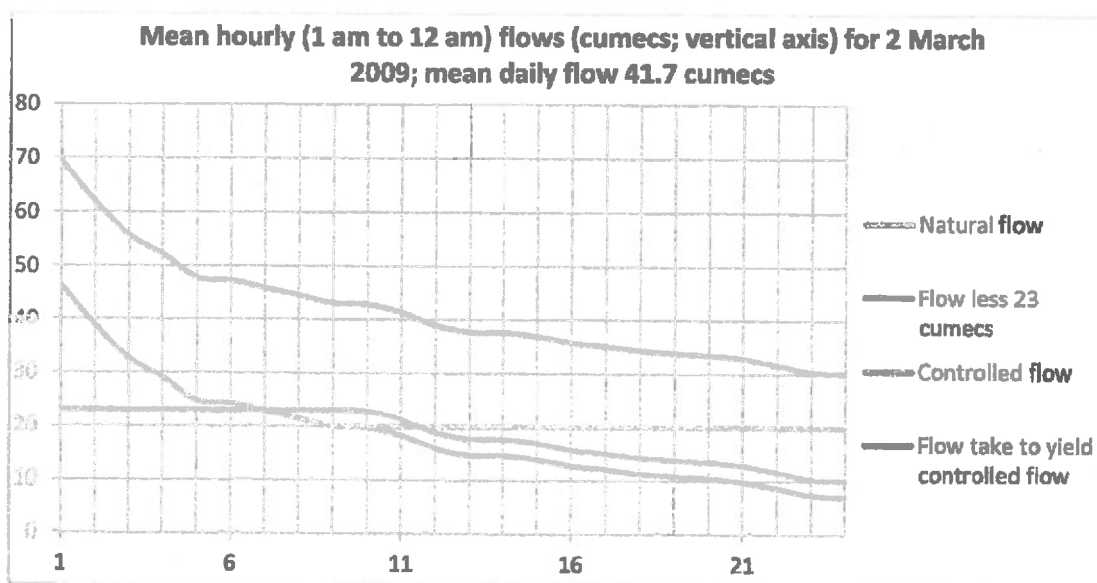


Figure 5. Modelling of possible controlled flows in the Morgan Gorge producing flows suitable for kayaking on days where the natural flows are too high

However, Westpower has confirmed²⁸ that they are not prepared to operate their power scheme in such a manner. They are concerned about liability should something happen to their infrastructure, which means controlled flows might not be able to be maintained throughout a day when a kayaking party was in the Morgan Gorge. It is understandable that Westpower would be particularly

1.5km reach below the Gorge) have not been correctly identified and so the analysis offered is invalid and therefore irrelevant.

²⁸ Rob Caldwell, CEO Westpower, personal communication, meeting with Westpower at Christchurch, 13th May 2014.

concerned if this happened and a kayaking party had an incident caused by changing flows.

Are modified flows between 17.5 to 22.5 cumecs useable for kayakers?

Westpower and their consultant, and DOC as is discussed later, have assumed that residual average daily flows in the Morgan Gorge in the flow range 17.5 to 22.5 cumecs will allow kayakers to safely descend the Morgan Gorge with the scheme in place. However, after further analysis of the flow data, consideration of river flow patterns, and weather patterns likely during such events, it is apparent that the days where the residual flows were suggested as being 'suitable' for kayaking in Table 1 will not be useable at all. Therefore, none of the 8.8 days calculated on average as being 'suitable' with the scheme installed (reduced from 51.9 days; Table 1) over the September to May kayaking season would actually be suitable.

In other words, if the proposed Westpower hydro scheme goes ahead, none of the predicted 'suitable' days would be realistically available to kayakers. As a result, the scheme represents a 100% loss of the resource to kayakers.

Why is this? Firstly, the proposed minimum residual flow of 3.5 cumecs effectively excludes kayakers from the resource. It's too low. Secondly, days when the river is flowing high enough for Westpower to take 23 cumecs and leave a residual flow in the 17.5 to 22.5 cumec flow range suitable for kayaking are likely to be in periods close to or during rain events. In such circumstances the river is likely to be falling or rising relatively quickly. Without Westpower being prepared to manage takes to prevent natural rapid changes in flows (i.e., management to 'smooth' the rate of change in flows) in the Morgan Gorge there are unacceptable risks for kayakers attempting a run as the safe flow windows will be too narrow and flows will be rising or falling too quickly or steeply within those windows. This applies to both situations where the flows are rising from rain or falling after rain.



Inside the daunting Morgan Gorge. Note a kayaker standing on the large rock, dwarfed by the scale of the gorge (Photo: Dave Kwant)

This can be seen by examining the data in Figure 5. For 2 March 2009, where the mean daily flow was 41.7 cumecs, mean hourly flows would range from 69.4 to 30.0 cumecs. With a take of 23 cumecs by the scheme this would mean the daily mean flow would be reduced to 18.7 cumecs (and so ostensibly suitable for kayaking), although mean hourly flows would range from 46.4 to 7.0 cumecs. There would only be a four hour flow window from 8.00 am to 11.00 am where mean hourly flows would be in the range 21.5 to 18.3 cumecs suitable for kayaking. In this flow window flows would be steadily dropping from the upper to the lower boundaries defining the flow range suitable for kayaking. Contrast this with flows on 14 March 2009, where the mean natural daily flow was 20.4 cumecs and mean hourly flows over the day ranged from 21.5 to 19.8 cumecs, providing relatively stable flows in daylight hours suitable for kayaking the Morgan Gorge. Therefore, with the scheme in place it is considered that none of the modified flow days theoretically suitable for kayaking the Morgan Gorge (Table 1) would offer enough certainty over the existence of safe conditions to enable a party to plan and execute a trip.

Impacts on kayaker values

Clearly the scheme, if implemented, will impact negatively on the Class V-V+ white water in the Morgan Gorge and the 1.5 km Class V-IV-III-II white water run below. A residual flow of 3.5 cumecs does not provide or retain the white water kayaking resource. This flow is far too low to permit navigation of either section. The loss of such a resource also impacts on the scarcity and status values of the runs; they are now known as some of the most challenging in the country, and something for younger developing expert kayakers to aspire to as they refine their skills and take on new challenges.

The building of the proposed scheme in a pristine wilderness and outstanding wild and scenic environment, from a kayaker's and likely other users perspective, will irrevocably lessen the overall 'pristine and intact' wilderness value of the whole river valley system, and impact on the values of the other runs.

For kayakers wanting to run the Morgan Gorge, or even portaging around it, many of the scheme features would be very much 'in your face' and detract totally from the free flowing river and wilderness values that exist at present. They would be a reminder of industrial intrusion into another one of New Zealand's magical wild places.

Although the scheme will not directly impact on the flows in and on kayakers doing some of the other runs in the Catchment (it will affect those in part of the Waitaha Gorge run), it will affect their appreciation of the resource in the strong sense that the river is no longer intact and wild and free and in its completely natural state. All kayakers would have to come past the Morgan Gorge entrance as they made their descent down the river and would be confronted by industrial structures totally out of context with the natural environment. It will also prevent kayakers from making uninterrupted trips down the river, or linking runs down the river, where they might have to get permission or notify a power company that they wanted water for a run should they want to also descend the Morgan Gorge, or run the final 1.5 km of the Morgan Gorge run, should they portage the Morgan Gorge. It would also prevent kayakers from achieving the pinnacle of a full catchment run on the Waitaha River; an achievement which would be lost forever if the river is not sufficiently protected in its natural state.

Those kayakers who will never be able to run the Morgan Gorge or other reaches on the Waitaha River, but who nevertheless appreciate the values of the river for their fellow paddlers who have the ability and desire to attempt the runs, are also impacted in a sense because they will know that a valued outstanding gorge and magical wild place has been lost to human intrusion and power company development. It is important to recognise that the wildness/wild place values are not only held in high regard by those who "use" the place, they are also held in high regard by those that don't use the resource but who know about them, and appreciate them for knowing they are there.

The value of knowing that there is a wild place like Morgan's Gorge is equally as valid as those that get in there and "use" it. Just because a place is not highly used does not make the impact less or the area of less value. In many ways it is the opposite, the sheer challenge and difficulty of access increases the value of it as a wild place or its wilderness values and normally ensures it will remain less used and can remain more "untouched".

The construction of the weir as proposed at the entrance to the Morgan Gorge will also create a hazardous industrial structure likely to be lethal to kayakers. Industrial weirs that have water flowing over them and that are safe for kayakers to negotiate are complex and difficult to design. Thus, safe access around the weir and for re-entry into the river for kayakers wanting to run the Morgan Gorge would be needed if the scheme were to go ahead.

Impacts on white water, natural character and natural feature values

The loss of the water flow will have significant adverse effects on values associated with the presence of white water. This affects both natural character and natural feature values at the scales of (all of) landscape, river reach, and white water features. Further adverse effects on natural character and natural feature values not directly related to white water would arise from construction of built infrastructure associated with the scheme including the proposed entrance weir, river intake diversion, intake galleries, access tunnel portal, signage, sediment flushing pipe, and powerhouse structures and power lines into the Waitaha valley and Morgan Gorge environment. Matters of national significance for New Zealand environmental management appear to be directly and severely affected, primarily due to the site chosen for the proposed infrastructure and river engineering, with no effective mitigation proposed (or indeed possible) to address these matters.

The proposed activities will severely reduce the wild and scenic qualities of the river at multiple scales including that of the 'whole river' scale which is a relevant consideration. The New Zealand public, including future generations who are yet to know of the value and beauty of the river, and especially that of the Morgan Gorge, would lose one of their wild and scenic rivers, a topic on which the Parliamentary Commissioner for the Environment has expressed specific concerns (Wright, 2012).

Positive impacts

Part of the justification for the proposed scheme has been to ensure reliability of electricity supply to the West Coast. However, in recent severe wind storms on the West Coast interruption of supply did not occur through generation failure but through local transmission line infrastructure failures. Presumably failure of the national power grid will be very unlikely, and that, together with

transmission infrastructure would be the real backstop that can provide reliability of supply to the West Coast, rather than the construction of the Westpower scheme on the Morgan Gorge. Presumably the Westpower scheme may offer an income source to Westpower and other functions to the West Coast power network, but in our opinion would come at an unacceptable cost. Therefore better alternatives should be explored.

Alternative options exist for provision of additional power for the West Coast. Examples might include schemes such as the already consented but as yet undeveloped²⁹ 46MW Arnold B hydro scheme on the Arnold River. The river and landscape for that scheme have already been modified by forestry, gold mining, and farming and by a hydro scheme already present on the river. However, it is important that site specific impacts are adequately considered in any future hydroelectricity proposals.



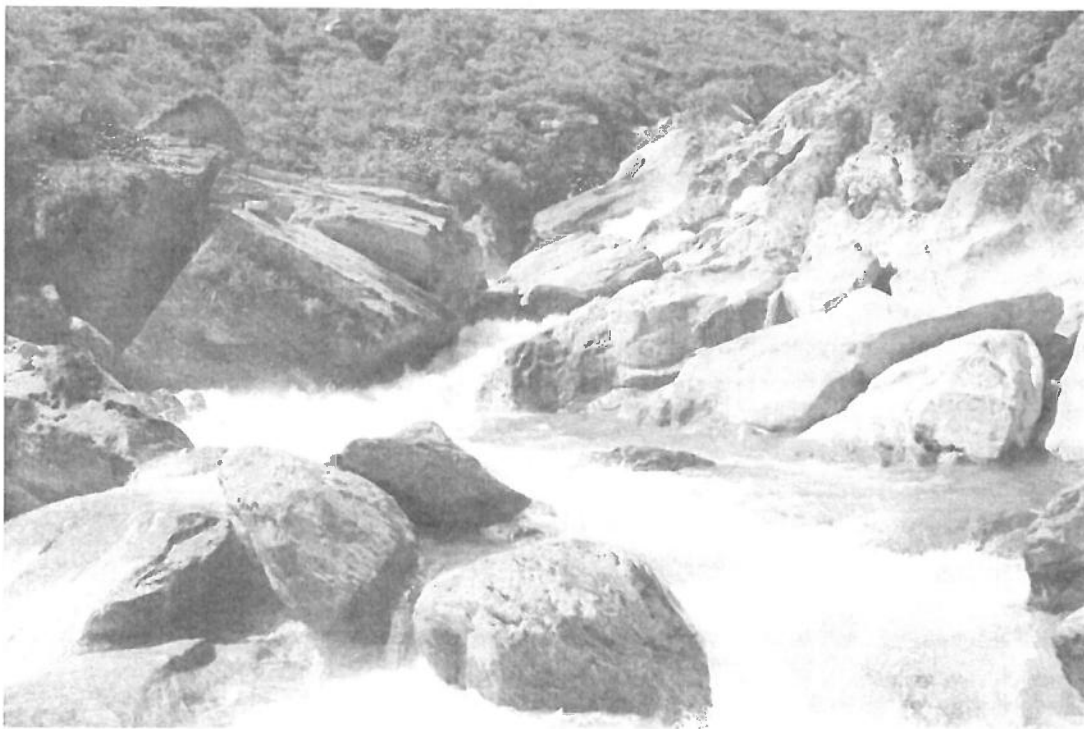
Cooper Lamba, Mikey Abbott, and Kevin England kayaking under the swing bridge above the entrance to the Morgan Gorge. The weir for the proposed hydro scheme will be just upriver of this spot and intrude significantly into this natural wild environment (Photo: Dave Kwant)

Even smaller schemes have the potential to result in significant impacts, for example on important smaller rivers or sections of rivers of particular value. Alternatives such as further development of rivers that already have significant hydroelectricity development or modification on them, such as the Clutha River, or micro-hydro power schemes, such as the high-head Amethyst scheme developed by Westpower near Harihari, may offer opportunities for hydroelectricity projects of lower impact.

Limitations and Critique of the Westpower Application and Supporting Documentation

²⁹ As we understand it this scheme remains undeveloped because there is not sufficient power demand on the West Coast or throughout the country to justify its construction.

Westpower's concession application identifies two key areas where the proposed hydro scheme will have a significant impact on values within the Waitaha River Catchment. This is particularly so within the Morgan Gorge, which the hydro scheme proposes to dewater. These are recreation values, and especially high Class kayaking values³⁰, and wilderness and natural feature values³¹. The proposed scheme will impact on many of the conservation values enunciated in the DOC West Coast Conservation Management Strategy³² (CMS) (including natural feature, landscape and recreation values) and appears to be at odds with many of the objectives and policies in the CMS, although Westpower claims otherwise throughout its application.



**The wild unmodified character of the Upper Waitaha
(Photo: Zak Shaw Photography)**

This following section provides a critique of aspects of key documents and material, which the application relies heavily on, but which by reason of omission or error fail to correctly represent some of the important key values of the Catchment. Thus the conclusions drawn on the true impacts of the proposed scheme are severely underestimated. The key documents and areas discussed are:

³⁰ R Greenaway and Associates, 2014. *Westpower Waitaha Hydro Investigations: Recreation and Tourism Assessment of Effects*. Report prepared by R Greenaway and Associates for Westpower Ltd.

³¹ Boffa Miskell Limited, 2014. *Waitaha Hydro Scheme: Natural Character, Landscape and Visual Amenity Effects*. Report prepared by Boffa Miskell Limited for Westpower Ltd.

³² Department of Conservation, 2010. *West Coast Conservation Management Strategy Volume 1: 2010-2020*. Department of Conservation *Te Papa Atawhai* West Coast *Tai Poutini* Conservancy, Hokitika.

- the Recreation Report prepared by Greenaway and Associates³³ and particularly in its analysis of and impacts of the scheme on kayaking values, including wilderness values;
- reference to the success of a recently completed Westpower micro-hydro power scheme on the Amethyst River as a possible justification for the proposed Waitaha hydro scheme;
- a review of Natural Character, Landscape and Visual Amenity Effects Assessment; and
- reference to the appropriateness of the various policies and objectives of the CMS to the development of the proposed scheme on DOC land.

This critique is not extensive as time has not permitted a full detailed analysis of all the issues or the material provided. Rather, it highlights some key inaccuracies and misconceptions that are significant enough to raise concerns about the veracity of aspects of the application as it stands and whether the concession should be permitted.

This material was previously provided to DOC so that they and the Minister were properly informed for their assessment of Westpower's concession application³⁴ but the covering letter and reports (even though one of them was accepted) appear to have been ignored and have not been referred to in their analysis of the proposal.

Greenaway & Associates Recreation Report

The Recreation Report provided to support the Concession Application is a document that attempts to provide an analysis of recreation values in the Waitaha River. Conclusions from this report are drawn on to support various aspects of the concession application, and particularly those pertaining to the overall impact of the scheme on the kayaking values of the river in the West Coast and New Zealand context. The report is drawn on extensively to justify the scheme on the basis that the resource will still be available for kayaking once installed [which is false] and that the Waitaha River is only one of many rivers of the same nature on the West Coast, and so the loss of one reach will be of little consequence, which is also false.

Value of the Waitaha River to kayakers based on the literature assessment

General

In a number of places the Recreation Report implies that based on an assessment of some literature the Waitaha River, and especially the Morgan Gorge, is not of value to kayakers. In other parts of the report the clear value of the resource to kayakers is enunciated. This contradiction creates confusion as to what is the true situation and what is the true value of the white water resources in the Waitaha River.

Assessment of any literature has to be kept in context, should be qualified where necessary and not be used inappropriately. Assessment of kayaking literature needs to be done by qualified kayaking

³³ R Greenaway and Associates, 2014. *Westpower Waitaha Hydro Investigations: Recreation and Tourism Assessment of Effects*. Report prepared by R Greenaway and Associates for Westpower Ltd.

³⁴ D A Rankin, letter to Marie Long, Director, Planning, Permissions and Land for Director-General, DOC, re substantial and critical omissions concerning Westpower: Part 3B application relating to the proposed Waitaha scheme, and reports contained therein (including D A Rankin, Additional Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme, Whitewater NZ, 1 May 2015, 20pp; T Baldwin, Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations, Wellington, May 2015), Whitewater NZ, Christchurch, 1 May 2015, 19pp.

experts otherwise incorrect analyses or conclusions may be drawn. There is interpretation applied to some of the literature in the Recreation Report that is questionable given issues with some of the reported data and analysis applied.

Much of the Recreation Report contains sections that are exactly the same as the earlier report of Booth (2008) that was prepared for Westpower³⁵, but there are some significant changes, omissions and additions. The important wilderness values of the Waitaha River, which are a key component of the kayaking value of the resource, are not mentioned in the Recreation Report in the same way as in the report by Booth (2008), and nor is the status of the Waitaha River, representing 'the pinnacle' of the West Coast kayaking rivers. Issues around these changes are addressed below.

Relevance of some older literature

In the Recreation Report some of the earlier kayaking literature referred to is out of date³⁶ and prior to when different reaches of the Waitaha River were first run. Therefore the kayaking value placed on such resources at that earlier time is quite different to the values held for these resources today (e.g., section 4.6, page 34 where recreational values on the Waitaha River were not considered to warrant protection compared with other rivers in New Zealand). This issue is in part recognised in the Recreation Report. In section 4.9.2 (page 35) of the Recreation Report the national status and importance of the runs in the Waitaha River are identified and discussed based on the kayaking guide books of Graham Charles³⁷. However, on page 68 it is finally concluded the changes to recreation opportunities and setting characteristics by the scheme in the Waitaha valley are regionally low across all activities. It is stated that there are numerous alternative back country-remote and white water settings.

There are now recognised national and international kayaking values of a number of runs in the Waitaha River, including the Morgan Gorge. As the descents of some of these runs are recent (including the Windhover Gorge, which has now also recently been run for the first time), it is necessary to reassess earlier literature in the light of these developments³⁸. It is certain that the relative values of rivers will have changed given the status and high values in and placed on these runs. This is properly reflected in the conclusions around the relative values of the Waitaha Gorge

³⁵ Booth, K (2008), *Waitaha River Recreation Assessment*, report prepared for Westpower by Lindis Consulting, 15 September 2008.

³⁶ Such as: Egarr, G D, and Egarr, J H (1981), *New Zealand Recreational River Survey. Part I. Methods and Conclusions*. Water and Soil Miscellaneous Publication 13, 1981; *New Zealand Recreational River Survey. Part II. North Island Rivers*. Water and Soil Miscellaneous Publication 14, 1981; *New Zealand Recreational River Survey. Part III. South Island Rivers*. Water and Soil Miscellaneous Publication 15, 1981; and Egarr, G (1995), *New Zealand's South Island Rivers: A Guide for Canoeists, Kayakers and Rafters*. Nikau Press, Nelson. At the time of writing the seminal 1981 New Zealand wide river survey, reaches in the Waitaha River such as the Morgan Gorge and above were considered un kayakable. The same was equally true of many other river reaches around New Zealand, especially those of a more technically difficult nature. As kayaking as a sport and the technical skills of kayakers have advanced so too has the range of rivers that are run, and many river reaches that were considered un kayakable in 1981 and in 1995 are now routinely run by expert kayakers.

³⁷ Charles, G (2006), *New Zealand Whitewater, 125 Great Kayaking Runs*. 4th edition, Craig Potton Publishing, Nelson.; Charles, G (2013), *New Zealand Whitewater 5, 180 Great Kayaking Runs*. 5th edition, published by Graham Charles, Hokitika.

³⁸ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

run compared with some other key West Coast runs in some other literature³⁹. This is not the impression left by the Recreation Report, where such status and importance are finally ignored. The final conclusions reached in the Recreation Report on page 58 are made with no supporting evidence or analysis.

Certainly as far as kayakers are concerned, the kayaking values of the hard white water runs on the Waitaha River place that river along with the Hokitika River (and her tributaries) as the top two outstanding hard white water kayaking and wild and scenic rivers on the West Coast⁴⁰. This places both rivers in the category of contenders for Water Conservation Orders for their nationally outstanding values. In addition, there are more challenging runs on the Waitaha River than there are on the Hokitika River. This elevates the status of this component on the Waitaha and these runs are not substitutable by other high Class runs.

The analysis of most kayaking literature on the Waitaha River in the Recreation Report, where it refers to the river other than in the front country, is largely speaking about the Waitaha Gorge run. This analysis needs to be updated so that the full spectrum of kayaking runs on the Waitaha River and their full value can be properly considered and appreciated when deciding whether development in the Waitaha river system should be permitted or not. To rely on literature that is only referring to the values of just one run gives a misleading impression of the full values of the resource.

The implication that there are other Class V runs available on the West Coast that are suitable substitutes for the loss of the Morgan Gorge and the impacts on the other runs in the river, is incorrect. As is expanded on later, this notion ignores the fact that the Waitaha River has a number of high Class quality runs on it in pristine wilderness, and that all the runs will be affected in some way by the proposed hydro scheme. Thus, in Whitewater NZ's view, the Recreation Report understates the changes to the regional recreation opportunities in the Waitaha Valley by the Scheme as it ignores the national and international importance of all the runs in the Waitaha River. It also assumes that other Class V runs elsewhere on the West Coast offer suitable substitutes for the Morgan Gorge and other runs, when they don't.

Relevance of Tourism Consultants Report

In section 4.8, page 34, where reference is made to a Tourism Consultants Report⁴¹, the kayaking and

³⁹ England, A (2011), *An assessment of the whitewater recreational values of West Coast rivers - whitewater kayaking*. Land Environment and People Research Paper No. 2, Lincoln University, Canterbury, 252 pages, January 2011. In this extensive assessment of the kayaking values of various West Coast river reaches and a survey of users, the Waitaha Gorge run was ranked 8th for overall importance out of 60 runs and was in the group of 16 rivers with runs of the highest overall importance (with a ranking of 4.5 to 5.0) including runs on the Karamea, Arahura, Styx, Kokatahi, Hokitika, Whitcombe, Kakapotahi, Perth, Waipara and Cascade Rivers. Note that this report is referring only to the assessment of the Waitaha Gorge run, and does not include assessment of the Morgan Gorge, Windhover Gorge or Upper Waitaha runs.

⁴⁰ Mick Hopkinson, personal communication (2014). This view has been expressed in the past by Mick Hopkinson to Rob Greenaway, the author of the Recreation report, in Mick Hopkinson's capacity as an expert kayaker, kayaking teacher and mentor, who has kayaked around the world and many of the outstanding Class IV and V kayaking runs on the West Coast, and who is expressing the views of many other kayakers from throughout New Zealand. However, this is not mentioned in the Recreation report.

⁴¹ Tourism Resource Consultants (2007), *Tourism development and Enterprise Opportunities on the West Coast associated with Track and Water Resources*. Prepared for Development West Coast by Tourism Resource Consultants, Wellington.

trout fishing values of the Waitaha River are noted in a general sense. However, the international reputation and scarcity of high Class kayaking resources such as those offered by the Waitaha appear to have not been considered in possible tourism development opportunities at that time.

The literature referred to in the Recreation Report, would not necessarily recognise the value of kayaking resources because such recognition depends on the knowledge, scope and thoroughness of the assessments conducted by the author. This does not mean highly significant kayaking values do not exist; it simply means that within the normal scope of tourism activities, such values and opportunities may be not considered as they are not mainstream and carried out by the majority of tourists. However, for specialist tourists, visiting overseas kayakers and outdoors people, such resources are often of extreme importance and are highly sought after, especially in the international context of dwindling outstanding natural resources of this type. Such river resources constitute a valuable resource for the future.

Other literature

Other literature (Galloway⁴²) analysed and referred to in the Recreation Report (section 4.2, pages 26-29) should not be used and analysed to the extent it has been.

The river use study does not identify the reaches of any of the rivers being referred to (this matter is not recognised or stated by the Recreation report author(s)). Thus the conclusions reached about the relative values of the Waitaha River (at that time presumably the Morgan Gorge run) compared with other rivers throughout New Zealand are questionable, even though it was ranked in the top 10 rivers in the country in that study.

Results from the Rivers Values Assessment System (RIVAS) study

In section 4.4 (pages 30-33) of the Recreation Report the results of the River Values Assessment System (RIVAS) study applied to the West Coast rivers are reported. The reach of the Waitaha River that was included in this assessment was the Waitaha Gorge run (assuming a portage around the Morgan Gorge and re-entry below). It ranked very highly. The Recreation Report then analyses various river grade (Class) and use parameters for the West Coast rivers and draws final conclusions about the utility of RIVAS, including it being 'a significant resource for identifying the scale of alternative kayaking options on the West Coast and the level of resource substitutability'.

The RIVAS methodology has evolved over time as the method is used and applied and is essentially a methodology in development⁴³. It has received some criticism for its utility and integrity⁴⁴. The multi-

⁴² Galloway, S P (2008), *New Zealand Recreational River Use Study: Specialization, Motivation and Site Preference*. School of Physical Education, University of Otago, Dunedin, New Zealand.

⁴³ R Greenaway, personal communication (when discussing methods for evaluating kayaking values during expert witness caucusing for the Hurunui Water Project Waitohi Irrigation and Hydro Scheme resource consents Hearing, Christchurch, 2014).

⁴⁴ Rankin, D A, Earnshaw, N, Fox, I M G, and Botterill, T, *Kayaking on Canterbury Rivers: reaches, values, and flow requirements*. Report No. R14/31, Environment Canterbury, February 2014; The method uses an expert kayaker panel assessment and a multi-criteria analysis approach to determine an overall score for river reaches by summing scores for a range of attributes and then ranking scores from highest to lowest and ascribing high, medium or low values. Some reservations have been expressed about its utility (Booth, K, Bellamy, S, England, A, Hales, W, Kelly, B, Mahoney, M, Reed, C and Sevicke-Jones, G (2012), *Whitewater Kayaking in Hawke's Bay: An Application of the River Values Assessment System (RiVAS)*. Land Environment and People Research Paper No. 12 HBRC Plan No: 4373, Lincoln University, Canterbury.; Hughey, K F D (2012), *RiVAS and RiVAS+: Insights*

criteria method produces total scores for rivers by summing up scores for a number of individual parameters or attributes determined by an expert panel (of kayakers in the case of a kayaking study) and assumes that the total scores will represent the relative value of a river.

The method has not been validated and checked to confirm that total scores do reflect and represent overall river values. Some RIVAS assessment criteria have changed with time and the method does not say how the scores are to be classified into high, medium or low values or as of national, regional or local significance or importance. One of the lead authors of the methodology has since arbitrarily assigned national, regional and local significance to kayaking data from the three RIVAS kayaking surveys completed to date without consultation with kayakers⁴⁵, in spite of kayakers involved in the RIVAS studies warning that this would be inappropriate for a variety of reasons (for example, RIVAS provides no mechanism for comparing scores or results from one region to another).

Notwithstanding these issues the data generated by such a study does give a considered estimate of a number of parameters associated with determining river kayaking values within regions, based on the expert knowledge of the expert panel. It also appears that there is often a reasonable correlation between the values ascribed to many rivers by kayakers and those determined by RIVAS, but there are some incorrect assessments made by RIVAS. Some lower Class rivers are not valued as highly by RIVAS, and therefore might be considered to be only of lower significance, when they are widely used by kayakers from different regions and have significantly higher values⁴⁶.

The Waitaha Gorge run was given a high score under RIVAS, with a total score of 19 which ranked it a 2nd equal along with eight other reaches of valued West Coast rivers, out of 28 runs arbitrarily assessed as having a high value. This data is not presented in the Recreation Report but can be gleaned from the data presented in Appendix 4 of that report. The reason the river did not receive the highest score of 20, and join the top 6 highest scoring and ranked rivers, was that the estimated user numbers at the time of the survey (50) were less than 100 and therefore attracted a score of 2, whereas the scores for the other six top first equal rivers were all 3 (>100 users/year).

The Recreation Reports states 'RIVAS provides the most completed description and analysis of white water settings on the West Coast'. Whitewater NZ would contend that RIVAS lacks the richness of the subjective assessments and physical descriptions on West Coast river runs provided by England's

and lessons from 5 years' experience with the River Values Assessment System. Paper presented at the 2012 New Zealand Agricultural & Resource Economics Society (Inc.) Conference, Nelson.), as the method does not define how rivers are to be categorised as having high, medium or low scores or kayaking values, or as having national, regional or local kayaking values (Hughey, K F D (2012)) or how to compare results between regional councils. Nevertheless, the method provides an indication of white water kayaking values on rivers within regional council jurisdictions, and may have some utility for monitoring and reporting purposes (Hughey, K F D and Booth, K L (2012), Monitoring the state of New Zealand rivers: How the River Values Assessment System can help. *New Zealand Journal of Marine and Freshwater Research*, 46, 545-556).

⁴⁵ Hughey, K F D (2012), *RIVAS and RIVAS+: Insights and lessons from 5 years' experience with the River Values Assessment System.* Paper presented at the 2012 New Zealand Agricultural & Resource Economics Society (Inc.) Conference, Nelson.

⁴⁶ The reason for this is that lower Class rivers are often in areas where the scenic and wilderness attributes do not score as highly as many higher Class rivers in more remote locations. In addition, the white water features do not score as highly. RIVAS also does not score rivers for some other key attributes, such as offering multi-day journeys. Consequently, some rivers will score much lower or be identified as less valuable when using the RIVAS methodology.

(2011) West Coast rivers report⁴⁷, the knowledge of kayakers that use these resources, and the kayaking guidebooks of Graham Charles. Also the RIVAS study lacks the richness of the data produced by the West Coast kayakers' survey (including international participants) carried out by England (2011; 265 river user respondents versus the six or so expert kayakers on the expert panel in the West Coast RIVAS study). England's kayaking survey ranked the Waitaha Gorge run (as for the RIVAS study this was the run being referred to in the survey although the Recreation report is not clear on this matter (page 30)) as 8th for overall importance out of 60 West Coast rivers, 5th for both white water challenge and wilderness feeling, and 10th for scenery from the river, all high ratings.

RIVAS only provides a snapshot of kayakers' use of different river runs in time, at the time the survey was done. For example, Booth (2008) earlier reported a higher annual usage number of about 100 kayaker visits/annum⁴⁸) and is also only referring to the Waitaha Gorge run, and not the values associated with the Morgan Gorge run or any other runs on the Waitaha Catchment.

Whitewater NZ does not agree that RIVAS provides any information about the level of resource substitutability other than indicating at a superficial level possible runs of a similar Class that might provide an alternative resource. The high kayaking values already identified for the Waitaha River in the report for Whitewater NZ⁴⁹, mean that most of the other river runs of Class V are not suitable alternatives for the Waitaha River runs, including the run down the Morgan Gorge (hence the views expressed by the kayaking community on the overall value of the Waitaha River).

Kayaking flow needs in the Morgan Gorge

The flows needed for kayaking the Morgan Gorge are not correctly identified in the Recreation Report (pages 62 and 70) and so the analysis provided in the report on such matters is incorrect. The conclusion that with the run-of-the-river hydro scheme installed, '*the Morgan Gorge will still be available for kayakers to use, albeit for a reduced time as a result of the proposed takes by the scheme*', is also totally incorrect.

Analysis of flow data and flow needs of kayakers who use the Morgan Gorge as it is outlined in a report prepared for Whitewater NZ⁵⁰ and discussed earlier (the analysis was subsequently checked and agreed to by Westpower at a meeting in Christchurch in 2014), show that flows suitable for running the Morgan Gorge will all be totally lost if the scheme proceeds, unless controlled ceases to abstraction (no-take flow days) are provided as part of the Scheme. In other words, although there will be a reduced number of days when the mean residual daily flow down the Morgan Gorge when the scheme is operating would suggest that there will be flows suitable for kayakers to use, none of the flows on those days will in fact be suitable for kayakers for a variety of reasons. This matter is not recognised nor understood in the Recreation Report.

Although this matter has been understood by Westpower, it has not been corrected or properly

⁴⁷ England, A (2011), *An assessment of the whitewater recreational values of West Coast rivers - whitewater kayaking*. Land Environment and People Research Paper No. 2, Lincoln University, Canterbury, January 2011.

⁴⁸ Booth, K (2008), *Waitaha River Recreation Assessment*, report prepared for Westpower by Lindis Consulting, 15 September 2008.

⁴⁹ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

⁵⁰ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

enunciated in the Recreation Report or concession application, and is totally misleading for anyone analysing the application if taken at face value. This is also a very important point. In addition, this has a flow-on effect into other areas of the Recreation Report which need changing, such as the significance assessment of kayaking values, which is also discussed later, and the final conclusions.

Significance of setting to recreation

The Recreation Report presents a recreation assessment in section 6 (pages 52-57) based on use values, resource attributes, experiences and substitute resources, and then quantifies the significance of the recreational values at an international, national, regional and local level. The report does not contain important relevant data needed to correctly assess the value of the Waitaha River. It does appear to recognise the internationally and nationally significant white water and kayaking resources in the Waitaha River but it uses undefined and out of context words such as 'low' use and perhaps seeks to degrade these recognised outstanding values as a consequence.

Virtually all of the data in the Recreation Report, which examines the significance of the setting to kayaking, refers to that generated around the Waitaha Gorge run. As a result a key element and assessment is omitted from the Recreation Report. A full analysis of the significance of all of the kayaking runs of the Waitaha River is needed, because the proposed development will impinge on them all, in one way or another.

In particular, the river is recognised by kayakers as having one of the greatest concentrations of high Class runs in a pristine West Coast wilderness setting in New Zealand, with some outstanding natural features (the Morgan and other gorges). This elevates the status of the importance of the river to above other rivers or runs where perhaps only one high Class kayaking run is present, where the wilderness and wild and scenic values may not be as high, where the white water and water quality may not be as good, where flow reliability may not be as good, and where the natural environment and river features (e.g., gorges, bed, and bank features) may not be as spectacular.

The Waitaha Gorge run by itself represents a 'pinnacle' of white water achievement for many expert kayakers, and the even more difficult and highly valued runs in the upper, Windhover and Morgan Gorges add significantly to this value. Without a thorough and complete evaluation the values of the river may not be properly recognised and placed in context when considering the impacts of the proposed Scheme.

In the Recreation Report the use of the Waitaha River (an estimated 100 users/annum in Booth (2008) and 50 in Booth *et al.* (2010)⁵¹; the RiVAS study) is often referred to as low (e.g., page 55), but this term is never quantified nor qualified. This perhaps gives the reader a misleading impression of the use and therefore the value (use is associated with value but is not necessarily the key determinant of value) of the Waitaha River.

In the Recreation Report some analysis is presented on the use of the 24 Class V runs on the West Coast reported in the RiVAS study. Suggestions are also made that there are many Class V runs on

⁵¹ Booth, K, England, A, Rankin, D, Unwin, M, Charles, G, England, K, Riley, K and Ritchie, D (2010a), Part A: Whitewater kayaking in the West Coast Region: Application of the River Values Assessment System (RiVAS). In: Hughey, K F D, Baker, M-A (eds) (2010). The River Values Assessment System: Volume 1: Overview of the method, guidelines for use and application to recreational values. LEaP Report No. 24A, Lincoln University, Pp. 95-117.

the West Coast that will offer a substitute for the runs on the Waitaha River (section 6.4, pages 54 and 55). However, no analysis of data is provided in the Recreation report to support this hypothesis. The hypothesis is wrong for a variety of reasons. In order to assess the use data, information about the relative values of these runs/rivers also needs to be considered. This can be done if we accept that the RIVAS scores do represent the relative values of the runs. When this is considered a different picture emerges from that perhaps suggested by the 'low' use in the Recreation report.

The key reason for the lower use of the Class V runs on the West Coast (2-150 users/year) compared to other Class II to Class IV runs with greater usage (100 to 800 users/annum) is due to the constraint that the high Class runs can only be attempted and safely run by expert paddlers, and that they make up a smaller number of the kayaking population.

Value and use data for the most used Class V West Coast runs are summarised in Appendix IV. The Perth run from Scone Hut has the second equal highest river value or score of 19 as the Waitaha Gorge; the rest all have lower overall values ranging between 15 and 18 (other runs have similar or lower overall values still). The Perth run also has the second highest number of estimated user days (80) compared with the Waitaha Gorge (50). In contrast, the lesser valued Upper Kakapotahi (river value of 17) has an estimated 150 users/annum. The remainder of the runs have less use; 15 out of the 24 runs have an estimated 20 users/annum or less. It is instructive to look at the reasons for these differences in river values and user numbers as they provide insight into the incorrect suggestion in the Recreation report that there are many Class V runs on the West Coast that offer a substitute for the Waitaha.

The Upper Kakapotahi River is the most widely used Class V run because it is readily accessible from the road. Most of the other high use Class V runs can only be accessed by helicopter and in some cases by foot, with consequently greater expense in terms of money or time. The Upper Kakapotahi can normally only be run after rain and in a tight flow window, which means that it is not always accessible because of flow constraints. Thus, the run has a lower overall value than any of the other high use runs as it suffers from poor flow reliability and is not as scenic and wild as the other runs. In contrast the Perth and Waitaha Gorge runs have high flow reliability and high wild and scenic values and therefore higher overall values.

All the runs in Appendix IV, with the exception of Falls Creek, are used by national and international paddlers when they are accessible, which means they rate highly in terms of their value. The Falls Creek run, although it has the same number of users/annum as the Waitaha Gorge, has an overall lower value (15) due to the much less reliable flow (it can only be run soon after rain) which means it can only essentially be utilised by local and sometimes other paddlers in the right spot at the right time.

The preceding data clearly illustrate the point that many of the Class V runs on the West Coast will not necessarily offer a substitute for the Waitaha Gorge run as they are more often compromised by flow availability (such restrictions are alluded to in the Recreation report, and which also include other restrictions such as narrow flow windows) and do not offer the same wilderness or wild and scenic kayaking experience. The only potential equivalent substitute would be the Perth from Scone Hut, but that reach does not have an equivalent to the Morgan Gorge part way through the run, and the Perth does not have other outstanding harder runs in the Catchment. The Waitaha does.

Thus, as summarised in Booth (2008) 'the Waitaha's contribution extends beyond the region – the opportunity is valued internationally, representing "the pinnacle" of the West Coast kayaking opportunity, which represents the best collection of whitewater rivers in New Zealand'. In other words, the Waitaha River stands out in this set. The possible implication in the Recreation Report that the Waitaha River has 'low' use (section 6.5.1, page 55) is misleading, as relative to many other Class V runs it actually has high use. This reflects its value and the opportunities it offers expert kayakers.

The Recreation Report (section 6.5) also suggests that the Waitaha is but 'one part of a 'whole' or region wide set of destinations.'. This perhaps implies there are many substitutes when there are not and in the final analysis suggests that there are plenty of other options should the Waitaha River be developed (Table 7, section 7.5).

The preceding analysis suggests that the overall conclusions of the Recreation report are not valid. Certainly it is Whitewater NZ's view that the Waitaha River, with its quality wilderness settings, natural features and quality high Class kayaking runs, is one of the most valued jewels in the crown of the outstanding West Coast rivers; the other is the Hokitika and its tributaries.

There are other omissions of relevant matters in the analysis in this section. One of the key elements missing in the assessment of the recreation setting for users is that of the outstanding wilderness values, which are key to all users in the Waitaha, and one of the primary reasons they visit the river. This is discussed further below.

Errors in fact and assessment of impacts

In section 7.3.3 the Recreation Report states (page 62) that 'the river below the Morgan Gorge is largely Grade 2 experience through a boulder garden in the upper reaches...'. It is implied that impacts through loss of flow on this run (which is part of the Waitaha Gorge run after portaging or running the Morgan Gorge, or is a separate run accessed by walking up river from the road end) would be ameliorated by small contributions from side streams bolstering flow and/or ceases to abstraction by the hydro scheme.

The reach below the Morgan Gorge can be Class (Grade) V depending on where the river is accessed, and then reduces to Class IV, III and finally II as the gradient lessens as the river is descended. It is not Class II (or Grade 2). This reach is part of the Waitaha Gorge run and is highly valued in its own right, and will be affected by the hydro scheme. The flow contributions from side streams when running the Waitaha River below the Morgan Gorge will not provide sufficient increased flow to make the dewatered section below the Morgan Gorge kayakable; It is misleading to suggest that it will.

The gradation in Class and difficulty in the white water and rapids below the Morgan Gorge as the river is descended is one reason why the river is accessed even by experienced kayakers on foot from the road end to make this short run. It offers the opportunity for kayakers to access the river at different points commensurate with their ability and the degree of challenge they would like to experience and run. It also offers them a chance to test themselves on more difficult white water piece by piece - a classic technique where 'creek' boaters learn the art of making steep creek descents by running one rapid, then another above it, and so on, until the whole difficult and steep run can be linked together.

There are no ceases to abstraction recommended as compulsory mitigation in the Recreation Report so it is misleading to mention them as a means to mitigate the loss of flow from the run from the bottom of the Morgan Gorge to the power house.

Assessment of recreational effects

In section 7 the potential effects of the Scheme are discussed. Statutory planning provisions, avoiding and minimising effects, recreational effects assessment, mitigation and a summary are presented.

In the Recreation Report the recreational assessment concludes that the impact of the Scheme on the recreational setting of the Morgan Gorge for kayaking will be high on a scale of nil, to low, moderate, high, or significant.

However, in the light of the total loss of flow accessibility to the Morgan Gorge and with no guaranteed access to natural flows with the Scheme installed, the effect of the Scheme will be 'significant' (the highest impacted category) and not 'high' as stated in the Recreation Report, according to the criteria outlined in section 7.3. The 'significant' category would possibly also apply with regards to the residual effect, even if ceases to abstraction were provided as mitigation. Access to the resource would be severely constrained, unless kayakers could access flows whenever they wanted to use the resource. A similar assessment would also be applicable to the run below the Morgan Gorge, which is a part of the Waitaha Gorge run.

In addition, using the definitions in 7.3, the levels of effects presented in section 7.5 in Table 7 for different river sections also need to be increased (also see further discussion below). For example, when kayaking the Waitaha Gorge run, the river journey is normally completed by rejoining the river as soon as one is comfortable after portaging the Morgan Gorge. With flow being constrained below the Morgan Gorge down to the powerhouse, this means that the effect will be 'significant' on the Waitaha Gorge run, because normally an additional 1.5 km of previously runnable good white water will have to be portaged. The ability to kayak this reach of river will be severely constrained. Kayakers want to kayak white water, not walk down beside dewatered river beds.

The summary of Scheme effects and mitigation recommended

The summary of Scheme effects and mitigation recommended are presented in Table 1 (and Table 7 (section 7); it is the same as Table 1). However, it is not clear what mitigation is to be provided and whether residual effects assume the recommended mitigation is undertaken and at what level. While the Recreation Report asserts that the only essential kayaking mitigation required is the construction of a safe weir and re-entry point back into the river to run the Morgan Gorge, this claimed mitigation is not listed in the Tables.

The summary of Scheme effects and mitigation recommended in Table 1 (and Table 7) is confusing because of the absence of key data and clarity over what mitigation, if any, is to be provided if the scheme were to go ahead. The effects on kayakers are not fully listed and the levels of effects, as discussed above, are also underestimated.

For example, the effects on trampers and hunters at Kiwi Flat and in the Upper Valley (on the remote natural characteristics and the perception of control of the river), and on visitors to the hot springs (on the soundscape and natural character with low flows) also apply to kayakers, but to significantly

higher degrees. This occurs as a result of kayakers being in-stream users who are more attuned to natural river environments, and how they will readily recognize that the proposed low residual flows are exceptionally unnatural, in contrast to those that do not use rivers for in-stream recreation.

A more complete list of the effects and level of effects of the Scheme on kayakers is provided in Appendix V. Given the uncertainty about the degree (if any) of mitigation proposed for the Scheme the levels of residual effects remain uncertain.

Outstanding wilderness, scenic and natural feature qualities of the river and the Morgan Gorge

Little reference is made in the Recreation report to the outstanding wilderness and scenic natural feature qualities of the river and the Morgan Gorge itself and the role they play in the outstanding white water and kayaking features this river offers. The Recreation report does not mention the importance of such values and wild and scenic natural river environments to New Zealanders and the world.

In the original recreation report by Booth (2008) reference was made to the importance of wilderness values to all activities (section 6.1.5, page 26 in Booth (2008)) but in the Recreation report this reference is absent and such values appear to be significantly downplayed and expressed in less direct terms such as 'backcountry-remote landscape', 'natural character', or 'visual amenity values'. The Parliamentary Commissioner for the Environment⁵² has recently discussed the importance of intact wild and scenic rivers for New Zealanders and New Zealand for tourism and other activities, and the inevitable conflict with hydro development should such special places be developed. She says we need to do better and protect more of these resources, not develop them.

This serious omission supports the Westpower case, but weakens the Recreation report with respect to properly representing kayakers and other catchment users' values and interests and raises questions about the report's impartiality.

'Removable' nature of the control and generation structures planned for the Scheme

Throughout the Recreation Report there are references to the 'removable' nature of the control and generation structures planned for the Scheme.

Comments about the 'removable' nature of the control and generation structures planned for the Scheme are totally misleading. They are irrelevant to the assessment of impacts of the scheme on kayakers and most other parties if the scheme proceeds. In reality, removal is highly unlikely if the scheme is built.

Conclusion that the loss of the Morgan Gorge will constitute a low effect on the kayaking setting on the West Coast

The final conclusion of the Recreation Report is that the loss of the Morgan Gorge through installation of the Scheme will only constitute a low or minor effect on the kayaking setting on the West Coast, considering the number of kayaking alternatives and the ability to retain the kayaking opportunity in the Morgan Gorge.

⁵² J Wright, Hydroelectricity or wild rivers: Climate change versus natural heritage, Parliamentary Commissioner for the Environment, May 2012; and a recent update of this report: J Wright, Update Report, Hydroelectricity or wild rivers: Climate change versus natural heritage, Parliamentary Commissioner for the Environment, June 2014.

The report notes that hydro development is not compatible with the DOC CMS backcountry-remote setting and recreation management category but states that the outcomes set out in the CMS for the Hokitika Place will still be achieved with the scheme in place. There is no basis for this conclusion in relation to the proposed development.

The final conclusion of the Recreation Report is that the loss of the Morgan Gorge through installation of the Scheme will only constitute a low effect on the recreation setting on the West Coast. In our view this is incorrect and not consistent with the outstanding natural feature of the Morgan Gorge and internationally recognised kayaking values in the river. This river is one of the 'jewels in the crown' of outstanding West Coast kayaking rivers and of national and international importance to kayakers. As outlined above access to the Morgan Gorge kayaking run would not be retained with the scheme in place because of the loss of flows.

As mentioned in the DoC Conservation Management Strategy for the region, a development such as the proposed hydro Scheme is incompatible with the current setting, and, recreational values of the river. The CMS aims to provide for valued recreation resources in the Hokitika Place. This would not be achieved by removing one of the outstanding recreational resources in the Waitaha River (the Morgan Gorge run) or allowing hydro development in its catchment. The Recreation Report arguments about substitutability of the Waitaha River resources, and in particular the Morgan Gorge and run below, by other Class V West Coast runs, are not supported by evidence and nor is the notion that the outcomes set out in the CMS for the Hokitika Place will still be achieved with the Scheme in place.

The Recreation report asserts that the internationally significant kayaking values in the Waitaha River exist because 'the Waitaha River contributes to a relatively abundant kayaking opportunity setting' (section 8, page 70) on the West Coast or is 'a component of the West Coast kayaking opportunity' (pages 55 and 56). This not so. The values exist because of the outstanding wilderness settings, scenery, white water, kayaking opportunities for expert paddlers, water quality and natural features (including the Morgan Gorge) found in the Waitaha River per se, i.e., they exist in their own right.

The wild and scenic values and outstanding natural gorges and landscape features in the Catchment place it in the category of valued wild and scenic rivers, the development of which the Parliamentary Commissioner for the Environment has recently signaled should only occur in exceptional circumstances (Wright 2012; 2014).

Similarities with the Amethyst Hydro Scheme – Amethyst Precedent

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 report⁵³:

"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 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]' "

Despite Westpower's claims to the contrary⁵⁴, 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. Unlike the Amethyst River, the Waitaha River has never been used for hydro generation and has quite different conservation and recreation values.

Summary of differences between the Waitaha Hydro and Amethyst Hydro Schemes

Key elements of differences between the schemes and river recreation values are summarised in Table 2. A fundamental difference is that the Amethyst catchment has long history of use for hydro generation, although the original scheme was relatively small and low down in the catchment. There are also fundamental differences in the wilderness and recreation values of the two rivers.

Table 2. Key elements and points of difference between the Amethyst and proposed Waitaha Hydro schemes and values and impacts on values in their respective rivers

Feature or issue	Amethyst	Waitaha
Scheme layout	High head and partial run-of-river diverting flow from the Amethyst Ravine with flow return to Wanganui River; weir in river diverting flow into penstocks initially in tunnel and then	Run-of-river diverting flow around the Morgan Gorge; weir in river diverting flow into penstocks initially in tunnel and then over land to powerhouse 1.5 km below Morgan Gorge adjacent to

⁵³ T Baldwin, Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations, Wellington, May 2015.

⁵⁴ Otago Daily Times, 31 May 2012 - <http://www.odt.co.nz/news/national/211438/westpower-plans-hydro-scheme-waitaha-river>

Feature or Issue	Amethyst	Waitaha
	on hill face down to powerhouse adjacent to Wanganui River	Waitaha River; flow return to Waitaha River adjacent to powerhouse
Installed flow (cumecs)	1.8	23
Head	395 m (nett)	100 m (gross)
Maximum output	7.6 MW	16-20 MW
Mean river flow (intake; cumecs)	3.25	34.6
Median river flow (intake; cumecs)	2.0	19.7
Residual river flow (litres/sec)	100	3500
Scheme location; affected river	Amethyst River, small foothill river in high rainfall area, tributary of the Wanganui River joining the latter near Harihari; no established kayaking runs or walking tracks	Waitaha River, smaller main divide river (but about 10 times the size of the Amethyst River) with glaciated headwaters and flowing to the Tasman Sea; number of outstanding high Class (high difficulty) kayaking runs; established foot access and huts
Scheme location; affected river reach	Amethyst Ravine on Amethyst River, downstream of upper catchment flats. Long history of being used for hydro generation lower down in the catchment. Steep sided ravine where river falls steeply down a series of waterfalls and chutes with extremely large boulders in the river. Extremely difficult access, shrubby vegetation not unique to the Central Westland area, possible use by Whio, freshwater habitat for aquatic species ⁵⁵	No history of hydro generation. Only modification to natural landscape from swing bridge, tramping track and hut. Morgan Gorge on Waitaha River; outstanding natural feature and landscape ⁵⁶ separating the back country from the front country featuring a water smoothed steep sided coloured schist rock constrained gorge with massive boulders; river falls through a series of tight drops with severe turbulent powerful white water; podocarp forest above the gorge and on the skyline ⁵⁷ ; remote area with difficult access on foot; wild and scenic pristine wilderness environment; freshwater habitat for aquatic species; high value, high Class kayaking run (described in reference in footnote 57); walking track around but near the Morgan Gorge to provide access upriver
Kayaking values	None established ⁵⁸ – high gradient of run would mean in certain flows could be a good creek run but difficulty of access to get to the run would remain an issue as would access to suitable	Established high Class kayaking runs in the Upper Waitaha, Windhover Gorge, the Waitaha Gorge, the Morgan Gorge and below the Morgan Gorge with outstanding white water; flows are

⁵⁵ M Doyle and R Smith, *Amethyst Hydro Limited Concession Application to Department of Conservation*, undated.

⁵⁶ Boffa Miskell Limited 2014. *Waitaha Hydro Scheme: Natural Character, Landscape and Visual Amenity Effects*. Report prepared by Boffa Miskell Limited for Westpower Ltd.

⁵⁷ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

⁵⁸ In the last year (2014-2015) kayakers have started to explore and use the lower Amethyst River as a creek run. This has included walking up from the road bridge about 1 km and running the river in high water. There are some good waterfalls in this section but above those the river is very tight and committing (Barney Young, personal communication, May 2015).

Feature or issue	Amethyst	Waitaha
	flows	currently available; pristine wilderness and wild and scenic river environment ⁵⁹
Effect on kayaking values	None, as no established values ⁶⁰	<p>Highly significant negative impact on wilderness and wild and scenic values and kayaking values of all runs, and especially the Waitaha Gorge and Morgan Gorge Run, by virtue of intrusion of industrial structures above and below Morgan Gorge into the currently essentially pristine natural untouched and undeveloped Catchment⁶¹; loss of Catchment wide wild and scenic values</p> <p>Significant (if not complete) loss of water flow for the last part of the Waitaha Gorge run (where kayakers portaging the Morgan Gorge rejoin the river below the Morgan Gorge); if too low the last 1.5 km of the run will have to be portaged – the residual flow of 3.5 cumecs is far too low to kayak this reach</p> <p>Complete loss (highly significant) of the kayaking resource in the Morgan Gorge down to the powerhouse (see the reference in footnote 57 for reasons why) contrary to what is claimed in a peer reviewed⁶² Westpower recreation report⁶³, as a result of the relatively large</p>

⁵⁹ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

⁶⁰ Typical flows used by kayakers on the Amethyst River are reported as 8+ cumecs (Barney Young, personal communication, May 2015). The offtake of a maximum of a relatively small 1.8 cumecs by the Amethyst hydro scheme in the upper catchment therefore will have little impact on the high flows used by kayakers on the Amethyst River run when compared with the proposed takes from the Waitaha River on the Morgan Gorge. In the latter case, where up to 23 cumecs are proposed to be taken, the kayaking resource will be completely absent and will not be usable by kayakers.

⁶¹ The importance of intact wild and scenic rivers for New Zealanders and New Zealand for tourism and other activities has recently been highlighted in a recent report by the Parliamentary Commissioner for the Environment; J Wright, *Hydroelectricity or wild rivers: Climate change versus natural heritage*, Parliamentary Commissioner for the Environment, May 2012; and a recent update of this report: J Wright, *Update Report, Hydroelectricity or wild rivers: Climate change versus natural heritage*, Parliamentary Commissioner for the Environment, June 2014.

⁶² D Bamford, Peer review of Waitaha Recreation and Tourism Effects Report – version 5 February 2014 for Westpower Ltd, 11 February 2014.

⁶³ Rob Greenaway and Associates, *Westpower Waitaha Hydro Scheme Investigations: Recreation and Tourism Assessment of Effects*, Prepared for Westpower Ltd, February 2014; data in the report concerning flow requirements of kayakers in the Morgan Gorge is incorrect, even though the report has been peer reviewed. The peer review states the Recreation report is thorough, includes extensive use of secondary research and consultation since 2008, and requires no alterations. No consultation has been had with kayakers over kayaker flow requirements since 2008 in constructing the report; very recently Whitewater NZ and Westpower have, however, discussed the matter.

The Recreation report has not correctly assessed or expressed kayaker flow requirements. The Recreation report author or peer reviewer are not experienced kayakers. The Recreation report does not identify the total loss of the Morgan Gorge if the scheme goes ahead, a matter which has been identified by Whitewater NZ and

Feature or issue	Amethyst	Waitaha
		<p>water offtake for the hydro scheme</p> <p>Highly significant negative impact on the kayaking values of the 'whole' river system, in changing the Catchment from one of an undeveloped natural pristine environment to one in which industrial structures are present and reaches dewatered and rendered unusable and 'unnatural'</p>
Tramping/walking values	None established	Established challenging walking tracks into remote back country with outstanding wilderness and natural features such as the Morgan Gorge, Waitaha and Windhover Gorges and the Ivory Glacier and Lake Ivory
Effects on tramping/walking values	None, as no established values	Highly significant negative impact on wilderness and wild and scenic values, especially below, in and above the Morgan Gorge, by virtue of the intrusion of industrial structures above and below the Morgan Gorge into the essentially pristine natural wild and scenic undeveloped catchment; dewatering of the river reaches will render the environment 'unnatural'

The Amethyst Hydro Scheme is a high-head micro-hydro scheme, producing a significant amount of energy (a maximum of 7.6 MW; 38-48% of that from the Proposed Waitaha hydro scheme) from a relatively small volume of water (a maximum of 1.8 cumecs compared with a maximum of 23 cumecs) by virtue of a much higher head of 395 m (nett) compared with 100 m (gross) of the proposed Waitaha Hydro scheme.

As the Amethyst Hydro Scheme is located in a small foothill river that has no tracks into it or other established recreational uses it has no actual or little perceived value to recreational users. The river has a long history of use for hydro generation. As a consequence there was little opposition to the Amethyst Hydro Scheme from New Zealand or international community based environmental

communicated to and understood and agreed to by Westpower but this has not been altered or addressed in the Recreation report. The Recreation report assumes the resource will still be available once the scheme is installed; in fact this would only be possible if flow takes were ceased on suitable flow days whenever kayakers wanted to use the resource but no such mechanism is provided for or is suggested as being essential in the proposal.

The Recreation report also concludes the net effect of the development on the West Coast kayaking scene is likely to be minor but provides no evidence for reaching this conclusion. For example, given the combination of extremely challenging kayaking runs on the Waitaha River, this makes the Waitaha River the outstanding river of this character on the West Coast, not just for West Coast kayakers but for New Zealand and international paddlers. Coupled with other values, such as wilderness, outstanding natural features and wild and scenic values, intrusion of industrial infrastructure and a hydro scheme into such a pristine river environment seems inappropriate unless really necessary (for example, see Wright 2012; 2014).

and recreation groups, including Whitewater NZ⁶⁴.

In contrast, the Waitaha River rises from the main divide and glacier sources, and has established wilderness, scenic and recreational conservation values. The recreational values include tramping, hunting and kayaking. The tramping and hunting values in the Catchment are typified by a relatively untouched wilderness environment that is relatively hard to travel through and hence not often visited. The kayaking values of the river are associated with the relatively untouched wilderness environment and a number of challenging white water runs of extreme difficulty suitable for only the top level of expert kayakers. The effects on kayaking values are outlined and referred to in preceding sections.

Review of Natural Character, Landscape and Visual Amenity Effects Assessment⁶⁵

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:⁶⁶

"...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,

⁶⁴ 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 and which also had minimal impacts on the white water resource.

⁶⁵ This review is largely taken from the Appendix in the letter to Marie Long from Whitewater NZ dated 1 May 2015 (D A Rankin, letter to Marie Long, Director, Planning, Permissions and Land for Director-General, DOC, re substantial and critical omissions concerning Westpower: Part 3B application relating to the proposed Waitaha scheme, and reports contained therein, Whitewater NZ, Christchurch, 1 May 2015, 19pp).

⁶⁶ Boffa Miskell report at section 4.2.3 – Appendix 9 of Westpower's Waitaha application

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.”⁶⁷

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.”⁶⁸

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*⁶⁹

“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)⁷⁰

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

⁶⁷ Boffa Miskell, page 72

⁶⁸ Boffa Miskell, section 4.2.2.4

⁶⁹ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015.

⁷⁰ A England, *An assessment of the whitewater recreational values of West Coast rivers – whitewater kayaking*. Land Environment and People Research Paper No. 2. Lincoln University.

within an area retaining very little modification and holding high natural character values.”⁷¹ 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.⁷² 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:⁷³

- **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.”⁷⁴
- “The installation of hydro development structures will be incompatible with the preferred management setting characteristics as described in the DOC CMS.”⁷⁵

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 analysis discussed above. We also observe that the

⁷¹ Boffa Miskell, page 73 and also page 56

⁷² Boffa Miskell, page 53

⁷³ Boffa Miskell, section 5

⁷⁴ Greenaway Report, Appendix 19 of Westpower’s Waitaha application, at page 8

⁷⁵ Greenaway Report at page 64

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:

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.”⁷⁶

⁷⁶ Boffa Miskell at page 73

Greenaway dilution

11. Acting for Westpower, R Greenaway & Associates⁷⁷ 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.

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.”⁷⁸

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 –

⁷⁷ Greenaway report, Appendix 19 of Westpower’s Waitaha application

⁷⁸ Isthmus report, Appendix 9 of Westpower’s Waitaha application

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 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."⁷⁹

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.

⁷⁹ Boffa Miskell, page 73 and also page 56

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".⁸⁰
- If a conservation area has "high intactness, scientific and distinctiveness values, as recognised in the Westland District Plan to be considered outstanding"⁸¹ and "very high biophysical, perceptual/ experiential and associational values based on the remote-like qualities and near pristine levels of naturalness"⁸², 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."⁸³ 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:⁸⁴

⁸⁰ Long title and s.2, Conservation Act 1987

⁸¹ Boffa Miskell, page 72

⁸² Boffa Miskell, section 4.2.2.4

⁸³ Boffa Miskell, page 72

⁸⁴ Extracts from "Hydroelectricity or wild rivers? Climate change versus natural heritage", May 2012, Parliamentary Commissioner for the Environment

“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.

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:⁸⁵

“...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.”

However, if the original intent of use of the land was to be considered then a very different view is reached:⁸⁶

“the clear intention in creating stewardship areas was to protect them from development or extractive use until their conservation value could be established, the appropriate form of protection chosen; unless of course the conservation values were found to be inadequate, when the area could be disposed of”.

⁸⁵ Extracts from “Investigating the future of conservation: The case of stewardship land”, August 2013, Parliamentary Commissioner for the Environment, Wellington

⁸⁶ Extract from “Investigating the future of conservation: The case of stewardship land”, August 2013, Parliamentary Commissioner for the Environment, Wellington, section 2.3, page 21; statement from the Hon Philip Woollaston, Associate Minister of Conservation

The Westpower scheme is both development and extractive (industrial structures and taking and using water) use of/on the stewardship land. 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 many high conservation values of the Upper Waitaha Catchment have been mentioned above earlier in this document.

Therefore no significance can be given to the Boffa Miskel view of “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:

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.⁸⁷ To have six schemes in place does not make them common.

9. **Boffa Miskell ‘dilution’ argument: Follow Amethyst precedent**

Rebuttal:

As discussed later, 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, as discussed earlier. Some of these differences are set out in Table 2 in this submission and are discussed above. 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,

⁸⁷ “Renewable Energy Assessment – West Coast Region”, August 2008, Sinclair Knight Mertz, section A5, pages 54-57

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 the report prepared for Whitewater NZ, kayaking the Morgan Gorge is like climbing the Caroline face of Mt Cook. For many years, climbing Mt Cook 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. Climbing the Caroline face, however, is still the domain of the few.

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 discussed above:

- 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)].

Policies and Objectives of the CMS

Should the Westpower hydro scheme be built, there is no effective remedy or mitigation possible for the loss of the white water, wild and scenic values, and kayaking resource values on the Waitaha River. For all of these values a key consideration is that equivalent resources do not exist and cannot be made.

However, these significant impacts can be avoided by not building the proposed scheme in this location.

Part 3B of the 1987 Conservation Act requires a proposed activity on a conservation area to be consistent with the Act, the Conservation General Policy 2005 (CGP) and the West Coast Conservation Management Strategy 2010-2020 (CMS)⁸⁸. The adverse effects outlined above and in the report by Rankin and Orchard of January 2015 do not seem to be consistent with several parts of the CGP and CMS. In particular, the effects do not appear to be consistent with CGP Policy 9.1 – Planning and Management for people's benefit and enjoyment.

A review of the DOC CMS indicates that the hydro scheme is incompatible and inconsistent with a number of the key objectives and policies. Although not clear cut, because utilities development is permitted under some circumstances, there are a number of points made in the preamble to matters and in the outcomes, objectives and policies in the West Coast CMS that clearly support this incompatibility.

Provision for retention of natural features and recreation resources, and recognition particularly of the kayaking values on many of the rivers throughout the region is a clear aim of the CMS, as is enunciated by the overall outcomes and Hokitika Place outcomes (of which the Waitaha River is a

⁸⁸ Department of Conservation (2010a). West Coast Te Tai O Poutini Conservation Management Strategy 2010-2020 (2 vols), Department of Conservation West Coast Tai Poutini Conservancy, Hokitika.

part) in Part 4 Desired Outcomes of the strategy. Some key objectives and policies of relevance, and whether or not the scheme is consistent with them, are listed in Table 3.

As discussed by Wright (2012), for a concession to be granted the activity should be consistent with the Department of Conservation's management strategies and plans. The Minister of Conservation can only give permission to build and operate a hydroelectricity scheme on the conservation estate if it:

- Would not compromise the purposes for which the land is held
- Could not reasonably be done elsewhere, including in another conservation area where the effects would be less significant (Conservation Act 1987, sections 17U (3) and (4)).

Table 3. Key objectives and policies of the West Coast Te Tai O Poutini CMS and their consistency with the proposed Westpower power scheme

Objective/policy	Relevant values/issues	Scheme consistent with objective/policy; yes (y)/no (n)
Objective 1. To protect geodiversity and landscapes from adverse effects of human use or management. (Part 3.3.4.3)	Outstanding wilderness and landscape values (wild and scenic values) of the Waitaha River and particularly the Morgan Gorge would not be retained	n
Objective 3. To protect recreational opportunities from adverse effects of authorised uses of public conservation lands. (Part 3.5)	Kayaking values, particularly outstanding values of the Morgan Gorge and just below, and also the rest of the Waitaha River above the Morgan Gorge would not be protected	n
Objective 1. To provide a comprehensive range of recreational opportunities that enable people with different capabilities and interests to enjoy and appreciate West Coast Te Tai o Poutini public conservation lands, whilst protecting natural, historical and cultural heritage from adverse impacts of recreational use. (Part 3.6.1.1)	The loss of the Morgan Gorge and other kayaking runs in the Waitaha River catchment, including some of the most difficult in the country (the 'Mount Cook' of New Zealand rivers), would not provide for a comprehensive range of kayaking runs (including such extremely difficult runs) throughout the country	n
Objective 1. To provide access to a range of recreational opportunities via facilities that enable people to enjoy challenging natural settings in the backcountry. (Part 3.6.1.4)	The extreme kayaking opportunity down the Morgan Gorge would be lost, and this would negatively impact on the other highly valued hard kayaking runs in the Waitaha River	n
Objective 1. To provide opportunities for people to undertake a wide range of recreation and tourism activities at places and in ways that optimise the quality of the experiences available, whilst avoiding or otherwise minimising adverse effects on conservation values and conflicts with other users. (Part 3.6.4)	The extreme kayaking opportunity and technical challenge provided by the Morgan Gorge would be lost to New Zealand as well as international kayakers, negatively impacting on the other highly valued hard kayaking runs in the Waitaha River and reducing the quality of experiences available	n

Objective/policy	Relevant values/issues	Scheme consistent with objective/policy; yes (y)/no (n)
Policy 2. Landscape assessments should be conducted on an as-needed basis, e.g. when considering proposals to develop utilities on public conservation land. (Part 3.3.4.3)	Little recognition of the outstanding natural feature that is the Morgan Gorge and loss that will occur when it is dewatered	n
Policy 1. The cumulative effects of other authorities for use, issued in respect of a particular area or opportunity, should be taken into account when considering new applications for those areas or opportunities. 2. When approving concessions or other authorisations, specific conditions may be applied as deemed appropriate. (Part 3.5)	The outstanding nature of the natural feature of the Morgan Gorge has not been evaluated relative to other landscapes on other rivers on the West Coast. This requires consideration in order not to underestimate the significance of its values	n
Policy 1. When assessing applications for any activity on or in the bed of a river or lake, consideration should be given to (but not limited to) the following guidelines: a) Adverse effects on freshwater and terrestrial species, habitats and ecosystems, historical and cultural heritage values, public access, recreation opportunities and amenity values should be avoided or otherwise minimised;..... e) The natural character within the setting of the activity should be maintained. (Part 3.7.2)	The loss of the Morgan Gorge kayaking run will be a significant adverse effect that cannot be avoided or minimised. With dewatering the natural character of the Morgan Gorge (noise, white water, hydraulic features, water flow) would not be maintained	n
Policy 3. The development, installation, maintenance and management of utilities on public conservation lands should be consistent with the desired outcome for the relevant place/s (see Chapter 4.2). (Part 3.7.11)	Dewatering the Morgan Gorge would not provide for retention of the kayaking and natural feature values on the Morgan Gorge and the river immediately below the Morgan Gorge	n
Objective 1. To provide for public access to conservation areas in ways that meet people's reasonable aspirations but do not compromise public safety or the protection of conservation values. Policy 3. Activities and access to public conservation lands may be restricted in accordance with legislation: a) where necessary to protect natural, historical or cultural heritage values; or b) where a particular activity will adversely affect the enjoyment of the area by other people, including the qualities of solitude, remoteness, wilderness, peace and natural	Loss of the values in the Morgan Gorge via dewatering and construction of industrial structures will impinge on kayakers and other users of the Waitaha River with respect to the wilderness and scenic (wild and scenic) values within the catchment, and would not preserve conservation values, natural values, or the outstanding kayaking values on the Morgan Gorge and just below, or for the river as a whole in its current untouched state	n

Objective/policy	Relevant values/issues	Scheme consistent with objective/policy; yes (y)/no (n)
quiet, where these qualities are present; or c) where a particular activity will prevent the desired outcome for a Place from being achieved (see Part 4); or d) for public health and safety reasons. (Part 3.8.4)		

In addition, the Minister must also consider the impact of any structure, along with what might be done to reduce its impact (Conservation Act 1987, section 17U (1)).

The incompatibility between the proposal and the Department of Conservation's management strategies and plans was also recognised in the Greenaway (2014) report (pages 6 and 89) where it is stated that the hydro development is not compatible with the back-country remote setting and recreation management category.

Notified Concession Officers Report

The DOC Officer's Report⁸⁹ to the decision maker appears to take a narrow view as to the assessment of the Westpower application. It appears as though the only key parameters that have been considered in the assessment of whether to grant the concession are those associated with conservation values, and particularly ecological, landscape and recreation values, but not other key issues such as the need for the power. In Whitewater NZ's view this has led to the assessment being weak and drawing the incorrect conclusions.

Looking in from the outside, and from having been involved in the process providing DOC with additional information to rectify concerns we had with the Incompleteness and inaccuracies in the Westpower application and supporting documentation, it seems to Whitewater NZ that DOC had almost concluded at the outset of the process that the scheme would be acceptable on DOC West Coast Conservation Estate, nobody except kayakers would be affected, and that therefore intention to grant was a foregone conclusion. This may be an incorrect assessment of the situation but there are consistent threads throughout the report that appear to support this conclusion.

Throughout the report there is a consistent approach to presenting the analysis of the case in such a way that much of what is said by the applicant is given validity by being presented as originally stated, and without correction. However, corrections are needed in many areas as identified in preceding sections in this submission, and as had been submitted to DOC previously. The corrections required are not discussed or referred to, implying that they have not been considered, not believed or simply not included and essentially ignored. At times there is oblique language in the DOC report

⁸⁹ D Clendon, Notified Concession Officer's Report to Decision Maker, Permission Record Number WC-34113-OTH, DOC, Hokitika, 4 August 2016.

that suggests that Westpower has downplayed impacts, and that some impacts are recognised as perhaps being much greater than Westpower state.

Having presented the applicants view on a topic, DOC staff then discuss and form their own views, based on their own knowledge (and that of their staff), and supplementary reports and information they have also requested and considered, before drawing conclusions. Overall this creates real confusion for the reader trying to understand what impacts exist and how significant they are.

In addition, throughout the report there are a number of inaccuracies presented as facts, whereas if the situation had been reviewed and handled more carefully these would have been avoided and a more correct picture might have arisen. For example, on page 6 of the report para 1 (para 2.9), the response from the West Coast Conservation Board, after being asked for its view on the application, that *'Overall there were no major objections to this application.'* beggars belief. Conservation Board members were well aware of kayakers interests and wilderness values in the Morgan Gorge and the Waitaha (kayakers had already had conversations with a number of board members) but presumably chose to ignore such values⁹⁰. Presumably DOC did not forward the report prepared for Whitewater NZ on the impacts of the proposed scheme on kayaking and white water values, or the supplementary report from Whitewater NZ detailing the errors in the applicants documents, both of which were submitted to DOC and both of which were key to understanding the significance of the impacts of the scheme.

Analysis of the DOC Officer's Report

An extensive analysis of the Officer's report will not be given, as many of the details and deficiencies relevant to the incomplete application have already been discussed in previous sections of this submission, or will be covered in subsequent sections. However, glaring anomalies or omissions, or important findings will be briefly mentioned, particularly where these are relevant to the final conclusions of the report, the decision of the Minister as to whether the concession should be granted or not, and our own views.

Provision of Data to DOC

On page 7 in paras 2.13 and 2.14 reference is made to the receipt of the Baldwin report and a supplementary report from Whitewater NZ, but not to a covering letter (and Appendix) that outlined particular omissions and key issues and analysis concerning Westpower's application. Particular omissions and key issues included:

- 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

⁹⁰ Dr Doug Rankin spoke to the Chair of the Board and challenged this stance after hearing of the Board's support for the scheme published in a local newspaper. Dr Rankin was told by the Chair that kayakers had plenty of opportunities to present to the Board on the matter. This seemed to be a rather strange response as kayakers were never asked to present any views on the matter to the Board even when it was clear we were a seriously affected party and a number of West Coast kayakers had already informed Board members of their concerns about the scheme and impacts on values. Kayakers can only assume the Board reached the conclusion it did so on the basis of the limited information it was provided with and without reflecting on the recreation values and the West Coast CMS.

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.

The covering letter also included a review of the applicant's natural values effects assessment (as an Appendix) and the statutory framework applied to Westpower's application.

It is our view that lack of consideration (or consideration of 'relevant sections' of the two reports only as DOC expresses it) of the whole package of material has led DOC to a somewhat perverse outcome and decision. This is discussed further later.

Financial viability

On page 8 para 2.20 the financial viability of the scheme is discussed. Although Westpower in their response to DOC have labeled Mr Baldwin's report as flawed⁹¹, they have produced no evidence to substantiate this position, and have refused to release the report provided to DOC on financial viability. It is Whitewater NZ's understanding that financial viability of hydro schemes is entirely predicated on the assumptions used in the model used to determine scheme viability. Without this information, and because of the uncertainty around future power demand and prices, it is impossible to determine whether Westpower's assertions on financial viability (and possibly DOC's exposure) are realistic and reliable. It would seem reasonable that DOC is not in a good position to judge these technical issues itself⁹² and that they should be considered by a more appropriate suitably qualified party. Certainly Westpower's assertions should be treated with a degree of skepticism given their interests.

National interest in values

On page 9 para 4.6 the '*national interest in terms of potential effects on some conservation values, particularly those effects on the natural character of the area under application and recreational values.*' are noted. This national interest does not seem to be reflected in the decision in principle to grant the concession.

Outstanding Natural Features and Outstanding Natural Landscapes

On pages 14 through to 28 an assessment of effects on natural character, landscape and visual amenity is given. This analysis concludes that the Morgan Gorge is an outstanding natural feature (ONF) and that the Morgan Gorge and the Waitaha River (perhaps just downstream of the gorge and) upstream of the Morgan Gorge are an outstanding natural landscape (ONL). Such landscapes are identified as requiring protection in the Regional and District Plans.

⁹¹ Westpower response on website

⁹² In para 39 of his decision on the Fiordland Link monorail case, the Honourable Dr Nick Smith, Minister of Conservation noted the same when considering the financial viability of the proposed monorail (letter to Mr Bob Robertson, Office of the Hon Dr Nick Smith, 29 May 2014).

However, rather than accepting this situation, and declining the concession because adverse effects will be created if the scheme is installed and such values would not be protected, consideration is then given to assessing the scale of the effects, and possible mitigation. This is an illustration of the perception that DOC approval of the scheme is a given, and a means has to be determined as to how the scheme can be 'inserted' into the landscape and not impact on the ONF and ONL.

It is noted by DOC that much of the mitigation offered was aspirational (and therefore not mitigation at all, just something that can be effectively ignored – we considered it and might do something (undefined) and won't if we don't think we need to) and absent in cases (e.g., none for the loss of flow down the Morgan Gorge and river reach below down to the powerhouse (abstraction reach)). The photo simulations of the intake weir and portal structures show how out of keeping with the natural environment such currently designed features will be. For example, the 'engineer designed' angular flat straight-lined weir faces in the river bed would be far better as rounded smoother more rock like and variable in height and less 'industrial', or 'faced' with natural local rock as suggested in para 4.78 page 23. The photo simulation only shows a reasonably small version of the access road portal (3 m by 5 m), although an up to 5 m by 5 m portal is requested by Westpower, which will have a far greater visual impact than the one shown.

However, DOC's final assessment is that as some adverse effects to landscape, visual amenity and natural character will be high from the powerhouse and intake structures and river bed dewatering, the Minister will need to consider whether the proposed mitigation measures are sufficient to grant the concession or whether they are insufficient and so should be declined or whether granting is contrary to the Conservation Act or the purposes for which the land is held.

General concerns over mitigation measures

Throughout the document there are a number of mitigation measures proposed that lack specificity with regards to who is responsible for deeming them necessary, who is to act on them, what is to be developed, how much might they cost, how often will they be monitored etc. For example, the bullet point (part of 4.266) at the top on page 57 includes the sentence *'Additional studies shall be undertaken in the event of uncertainty about the scale of effect of flow changes on fish or invertebrates so that additional protective protocols or other mitigation to minimize effects can be developed and adopted within flow change protocols.'* is very vague and non-committal. Protocols relying on reporting by the applicant's staff working during construction (eg, of lizards etc found) that might impede progress of construction seem a little unrealistic – they are unlikely to report anything that will impede their work.

It seems as though the application is incomplete if there is so much uncertainty as to what the outcomes might be. Also if negative outcomes such as fish strandings, or loss of the koaro populations in the upper river, occur as a result of the scheme, what will be done to rectify the situation? Will the scheme be removed? What will happen if as a result of the scheme if in 4.274 *'in the case of a decline in the fish population appropriate mitigation measures are adopted as soon as possible to address any such losses to ensure no net loss of populations of at risk species.'* no appropriate mitigation measures can be found and so at risk species populations decline and cannot be restored? Will the scheme be removed? Similar arguments apply to other mitigation noted for impacts on blue ducks and lizards.

Although not directly in Whitewater NZ's sphere of interest the issues raised in the preceding two

paragraphs are still relevant to us, as we are concerned that rivers remain healthy and able to support their natural environment. In addition, such cavalier consent conditions provide no certainty that negative impacts, if they do occur, will be able to be rectified.

Assessment of effects on kayaking and kayaking values

The DOC report summarises the Westpower and DOC assessments on impacts on kayaking values in pages 67 through to 83.

In paras 4.318 to 4.331 the Westpower stated impacts of the scheme are listed, including a number of statements which require correction for reasons discussed previously. For example impacts on and losses of kayaker wild and scenic, wilderness and challenge values are not acknowledged in para 4.318.

Misleading statements from Westpower

In para 4.327 where Westpower conclude that '*Morgan Gorge (and the remainder of the Waitaha River) would retain its ability to challenge highly skilled kayakers, albeit with additional restrictions on the use of the Morgan Gorge due to the need to confer with a management authority (Westpower) if a cease to abstraction is required to provide a natural flow.*' while sounding plausible and fine is really quite nonsensical and meaningless. Westpower are not offering kayakers access to natural flows in the Morgan Gorge and below whenever they want them, they propose to severely restrict them, so it is quite misleading to suggest otherwise (retaining its ability to challenge). In addition, the natural flows in the last 1.5 km reach of the Waitaha Gorge run will be severely reduced and no longer useable, by the scheme abstracting water from the Morgan Gorge.

Further in para 4.328 where Westpower states '*... The Scheme may sustain nationally significant kayaking values on the River with the retention of current kayaking opportunities above Morgan Gorge.*' an equally nonsensical statement is made. The Scheme has nothing to do with sustaining the existence of values above the Morgan Gorge. In one regard it destroys some of the wilderness and wild and scenic values within the catchment by placement of their scheme in the Morgan Gorge, thereby degrading values of the Morgan Gorge directly and upper river catchment by association.

In para 4.329 it is stated '*...the effects ... on the river .. that this level of significance relates as much to the West Coast complex of kayaking opportunities as it does to the values of any single river.*' This is not true and is misleading, the values of the river alone give it its national and international significance.

The DOC report does not seem to question any of these views but accepts them all, and in the subsequent discussion, paras 4.332 to 4.431. There doesn't appear to be any understanding or recognition of the concerns raised immediately above and earlier in this submission, and which were in the documents sent to DOC on 1 May 2015, over the veracity of the applicants impact assessment on kayaking values in its application. It appears from the reference to the Rankin and Orchard Report in para 4.335, that that is the material that has largely informed the current DOC impact assessment, unlike what is implied previously in paras 2.13 and 2.14 and discussed above in the section 'Provision of data to DOC'.

Therefore, there does not seem to be any form of critical assessment of the data and analysis of the application and supporting documentation, nor of the additional information provided to DOC. In the

DOC report, statements from different documents are often reported verbatim, sometimes a DOC view is expressed, thus leaving the reader very unclear as to what rational basis, if any, has been used to reach the final conclusions. In reality few conclusions are reached, with a number of decisions essentially being left to the Minister to decide. This is all really rather unsatisfactory.

Mitigation proposed for loss of resources from the construction of the access road, tailrace, powerhouse and tunnel

The scheme will significantly interfere with current access to different reaches of the river for kayakers and trampers. DOC recognizes this in their analysis in paras 4.337 to 4.352 with some but not complete suggested mitigation. One condition is to provide tramping track access to Kiwi Flat on the true right, routed to avoid the powerhouse site construction area below the Morgan Gorge. However, maintenance of this track is only proposed for the duration of construction, and needs to be for the duration of the consent (Figure 6).

Foot tracks are also required to give access to the bottom of the Morgan Gorge off the tramping access track to Kiwi Flat (Figure 6; track 1 (yellow)), where portaging kayakers return to the river after branching off from the tramping access track to Kiwi Flat, and also up the lower river around the powerhouse site (green track along the river edge from the power station to the lower end of Class IV run) and up to the same site at the foot of the Morgan Gorge.

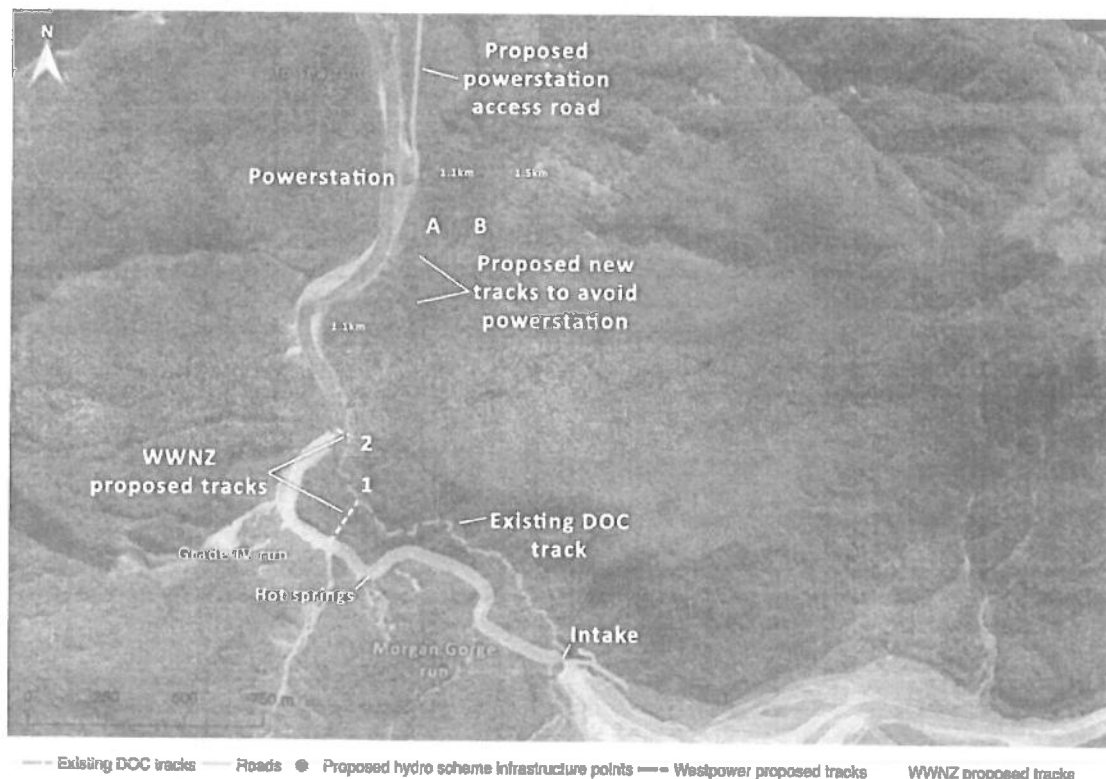


Figure 6. Overview of tracks proposed as mitigation or requested as mitigation for some of the impacts of the Westpower hydro scheme. Tracks A and B (red) are alternative walking tracks proposed to avoid the power station. The current track up beside the river from the power station to the bottom of the Class (Grade) IV run (green) and/or junction with either track A or B also needs to be maintained for kayakers wanting walk-in access to the reach above the powerhouse (no mitigation is provided for this at present), or

as an easier portage route if having to portage this section of river after a run down the Waitaha Gorge and portage of the Morgan Gorge, for the duration of the concession. Track 1 (yellow) is the track providing access for kayakers portaging the Morgan Gorge, or who have walked in from the powerhouse, and who want to access the top of the Class IV run at the bottom of the Morgan Gorge. Track 2 (yellow) is a short access track down to the top of the pool at the bottom of the Class IV kayaking run or the start of the Class III+ to III kayaking run. Providing bridges at the termini of both tracks 1 and 2 is recommended to allow foot access to the true left bank so that walkers can access the hot springs on the true left bank above the start of the Class IV kayak run, or for kayakers to walk up further to run some of the last Class V rapids in the Morgan Gorge from the hot springs down.

The first track (track 1 (yellow)) is essential to allow kayakers to return to the Waitaha River after portaging the Morgan Gorge after a Waitaha Gorge run, assuming the river flow is sufficient. The second track (green track along the river edge from the powerstation to the lower end of Class IV run) is essential to allow kayakers to easily do walk in trips from the bottom of the river to the bottom of the Morgan Gorge, or to more comfortably portage the last 1.5 km of the reach below the Morgan Gorge to the powerhouse (rather than have to climb up and down the longer tracks A or B carrying kayaks) if flows are not sufficient to kayak, which will be frequently once the scheme is operating.

In addition, further mitigation is warranted. Track 2 (yellow) is a short access track down to the top of the pool at the bottom of the Class IV kayaking run or the start of the Class III+ to III kayaking run. Providing bridges at the termini of both tracks 1 and 2 is recommended to allow foot access to the true left (left looking downstream) bank so that walkers can access the hot springs on the true left bank at the bottom or above the start of the Class IV kayak run, or for kayakers to walk up further to run some of the last Class V rapids in the Morgan Gorge from the hot springs down.

Walking/scrambling up river on the true left bank, from where track 2 cuts down to the river and after crossing the river, and up to the start of the Class IV run and further up to the hot springs is possible, whereas this is not possible on the true right bank. These additional pieces of mitigation need to be put into appropriate consent conditions.

A consent condition is suggested for a track off the tramping access track to Kiwi Flat to the bottom of the Morgan Gorge, but not for the section of track adjacent to the river past the powerhouse up to the bottom of the Morgan Gorge. Extra track consent conditions need to be included for this reach as it does for other mitigation discussed above. All track consent conditions need to specify the grid coordinate start and finish points of these tracks, and that the tracks be uniformly graded and wide enough and clear enough of vegetation to ease the burden of portaging bulky kayaks through the bush. The tracks also need to be built to and maintained by Westpower to suitable tramping track standards for the duration of the scheme consent.

Consent conditions arising from the presence of the intake channel, tunnel portal and weir at the head of the Morgan Gorge

In paras 4.353 to 4.362 aspects of consent conditions relating to construction of the weir at the entrance to the Morgan Gorge, that will allow safe access into the Morgan Gorge for paddlers, and access for whio and koaro to the upper river are considered. The construction of a 4-5 m weir to pass the residual 3.5 cumecs down a 1 m wide chute, or the about 20 cumec flow to provide for the kayaking resource, and that can provide a safe passage down into the Morgan Gorge, is not a trivial

matter. Weirs are notoriously lethal and kill swimmers and paddlers alike, and other people accidentally caught in them, in the recirculations or 'suck back' formed at their bases. Weirs are mostly designed to dissipate energy not keep people safe. Currently access via the river into the Morgan Gorge is safe, the weir will pose a potentially lethal structure.

Thus, the design of the weir needs to be done by an internationally recognised and proven white water engineering expert skilled in the art of designing safe river structures in-keeping with the natural environment (such as Scott Shipley of the USA, who designed and oversaw construction of the white water features in the Hawea Whitewater Park near Wanaka), and also providing safe foot access around the weir. The design also needs to be done in consultation with whio and koaro experts to ensure conditions are appropriate to maintain those fauna and exclude others. The extra Department recommendations around safety in para 4.360 are insufficient to guarantee an appropriate outcome, as are Westpower's recommended conditions in 4.358. Robust consent conditions need to be constructed if the concession is to be granted.

Effects on recreation values from the proposed water takes

In paras 4.366 to 4.431 DOC presents data from Westpower and Whitewater NZ on flow impacts of the scheme on recreation values. Peppered through the document are many comments from Westpower, which, as outlined earlier, are often irrelevant or incorrect or misleading. Corrections stated as being necessary by Whitewater NZ in their additional report⁹³ have been ignored. Some other data from Whitewater NZ that have been discussed previously with Westpower are presented. There is a severe lack of critical analysis of all this data in the DOC report which ultimately means it is virtually impossible to tell what the real impacts of the proposed scheme are, and therefore whether the mitigation proposed is acceptable, and is sufficient, or not. Ultimately it means some areas where mitigation is required are not even recognized, and so none is given, and so the information, process and analysis is still not complete for the decision maker to make a decision.

Whitewater NZ has to say it is really frustrating to see applicant's misrepresentations and mistakes presented as facts throughout the DOC report, especially with Whitewater NZ having taken the time and effort to communicate so clearly to DOC prior to and during the concession process that many of the presumptions of Westpower and its consultants were in error.

For example, some irrelevant or incorrect or misleading statements in this section include:

- paras 4.371 and 4.372 from Westpower are irrelevant to the discussion on impacts as they bear no relation to required flows to kayak the Morgan Gorge
- para 4.373 from Westpower is wrong because the Morgan Gorge will not be able to be paddled on any other days besides suitable no take days with the scheme in place (this mistaken belief is repeated in para 4.387 referencing the Greenaway report (also in error) '*... and take advantage of suitable natural flows which augment the residual flow.*'). This same error is repeated again in paras 4.395, 4.397, 4.407
- para 4.397 (Westpower) for the section stating '*When flows are suitable for kayaking in the Gorge (naturally or via a cease to abstraction) there should be no experience of hydro developments until the powerhouse is encountered near Alpha Creek.*' is very misleading on a

⁹³ D A Rankin, Additional Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme, Whitewater NZ, 1 May 2015, 20pp

number of levels (this is complex but very important and is dealt with further below)

- para 4.383 repeats a mistake discussed earlier in the submission. The most kayaked section of the Waitaha River, namely the run down to the powerhouse, after the last Class V rapid at the bottom of the Morgan Gorge, and where kayakers completing the Waitaha Gorge run rejoin the river after portaging the Morgan Gorge, is Class IV easing to Class III easing to Class II as the river is descended. It is not largely a grade 2 (Class II) experience as stated by the applicant.
- para 4.400 (Westpower) is not a condition but a loosely worded statement of intent at best
- paras 4.408 and 4.409 (Westpower) are completely misleading as discussed extensively earlier in this submission (see the analysis of the Greenaway & Associates Recreation Report above)
- para 4.413 (DOC & Westpower) DOC notes that Westpower does not want to offer more no-take days but still wants to talk to Whitewater NZ. This meaningless.
- data presented in para 4.423 (DOC) is used completely out of context, as discussed earlier in this submission (see the analysis of the Greenaway & Associates Recreation Report above). The data from England's survey was referring to the Waitaha Gorge run, not the more difficult Morgan Gorge run, not the even harder Windhover Gorge run, not the combined value of all the runs in the Waitaha River, and so on.

Impacts of the proposal on kayaking the Morgan Gorge

The data in paras 4.374 to 4.384, which is the data from Whitewater NZ that has been shared with the applicant, show that installation of the scheme will mean that the kayaking resource in the Morgan Gorge will be completely lost. This means that none of the 51.9 days on average over the September to May kayaking season that are currently available, with flows in the right flow range to run the Morgan Gorge, will be available. This is a 100% loss of the resource.

Although DOC repeats a number of the applicants incorrect statements and particularly that the Morgan Gorge will still be runnable by kayakers when the scheme is in place, where suitable natural flows augment the residual flow (e.g., see para 4.387), and the applicant chose to leave such incorrect statements in its application and supporting documentation even after the applicant was informed of the errors, in para 4.388 DOC admits '*... the situation would remain that when the power scheme is operating at capacity no days may be suitable for kayakers to complete a run of the Waitaha River, including Morgan Gorge.*' DOC chooses to use the word '*may*' in this statement which is misleading, as it implies this perhaps is or perhaps is not the case. DOC chose to leave their view unclear and ambiguous. DOC should have used the verb '*will*'.

As Whitewater NZ states in para 4.382 '*... It is apparent that the days where the residual flows were suggested as being 'suitable' for kayaking in Table 1⁹⁴ will not be suitable at all. In other words the scheme represents a 100% loss of the resource to kayakers.*' This illustrates the lack of critical analysis by DOC displayed in the report, and/or possibly where it does not want to believe the statements of the users of the resource as opposed to the views of the applicant and their consultant, or where it prefers the views of the applicant.

⁹⁴ For example in the Table on page 76 of the DOC report this would correspond to the 8.8 days in the modified flow column (2nd row of data), on average for the whole September to May kayaking season, calculated using data from 2006-2012.

Mitigation proposed by Westpower for the loss of Morgan Gorge kayaking resources

Westpower suggests that as very few kayakers use the Morgan Gorge the number of days of 'mitigation' provided need only be small (paras 4.389 to 4.395). This conclusion is not really based on any sound arguments, and makes no allowance for future expanded use of the Morgan Gorge for example or simply continued unfettered access to the resource. Thus for the total loss of 51.9 days on average of the resource, Westpower suggests 2 'no-take' days is all that is needed as 'mitigation' because, as they repeat, there will be other augmented flows when kayakers can use the resource (paras 4.396, 4.397 and elsewhere). However, as outlined above, the statements about accessibility and utility of augmented flows for kayakers are totally incorrect.

Furthermore at most, as the number of extra days that might be available to kayakers through such 'augmented flows' if what Westpower says is correct (and it isn't) only amounts to 8.8 days on average, this still means that only a limited number of days, say 10.8 on average out of the 51.9 days currently available, would be available for kayakers to use. Using the questionable Westpower logic concluding that only 2 days mitigation needed is needed, because another 8.8 days are available, one can logically conclude that what Westpower is saying is that 10.8 days (rounded to 11 days), will provide sufficient mitigation and access for kayakers to the Morgan Gorge. Given that days when 'augmented flows' are supposedly available are not actually available, it could be argued that what this then equates to is that Westpower is saying 11 days per year is appropriate to provide access for kayakers by way of mitigation⁹⁵.

What needs to be stated at the outset is that what is being offered by Westpower is not mitigation, the loss of each of the 60 days when the Morgan Gorge is able to be kayaked is not capable of being mitigated, and 2 days being offered as access to the resource is far from sufficient. In addition, as is discussed shortly the 2 'no-take' days being offered are too time limited and embodied in an unworkable and inflexible consent condition and undefined protocol. It is not even clear whether the 11 days deduced above that Westpower suggest is appropriate to provide for access to the Morgan Gorge is sufficient access to the resource for kayakers considering the 100% loss of the resource. Even if it was agreed that 11 'no-take' days were to be confirmed, no mitigation is offered for the total loss of the remaining 41 days when the river will not be able to be accessed by kayakers.

The last sentence in para 4.397 which DOC has chosen to use from the Westpower application states '*When flows are suitable for kayaking in the Gorge (naturally or via a cease to abstraction) there should be no experience of hydro developments until the powerhouse is encountered near Alpha Creek*' is blatantly untrue and very misleading as mentioned above, and DOC should not have repeated it. Clearly kayakers using the river will experience the presence of the hydro scheme:

- at the weir and structures at the entrance to the Morgan Gorge and the loss of the entrance rapid to the Morgan Gorge
- at the sediment flushing pipe whose exit point (and possibly detritus or 'marking' from which) will be part way up a cliff somewhere part way down the Morgan Gorge
- at any point where the penstock coming down to the powerhouse will be visible from the river below the Morgan Gorge

⁹⁵ Of course it is highly unlikely Westpower will be comfortable with providing 11 'no-take' days when kayakers would be able to use the Morgan Gorge. It is most likely when confronted by this argument and logic that they will backtrack and say this is unsuitable.

- from signage all over the river warning of dangers and hazards associated with the hydro scheme
- where for those kayakers portaging the Morgan Gorge, after say doing a Waitaha Gorge run, they may experience a very different lower part of the river below the Morgan Gorge
 - If the scheme is running the flow below the Morgan Gorge will be 23 cumecs lower than in the river above the Morgan Gorge, where it will be between 40.5 to 45.5 cumecs to generate on average a daily flow of 17.5 to 22.5 cumecs down the Morgan Gorge. The loss of this quantity of water will be very obvious to paddlers rejoining the river. It will significantly alter and reduce their level of enjoyment and challenge of their white water experience, as would also happen for kayakers walking in from the bottom of the river to run the reach below the Morgan Gorge
 - If it is a 'no-take' day there will be no flow differences but the other impacts will all apply.

Consent conditions proposed by Westpower for the loss of Morgan Gorge kayaking resources

DOC makes an incorrect statement in para 4.398 when it states '*The Department agrees with Westpower that the challenge in protecting the regional kayaking resource, with the Morgan Gorge in mind, would be establishing a protocol for ceases to abstraction that is suitably flexible for kayakers. The'*

DOC has ignored the extensive evidence⁹⁶ Whitewater NZ has provided to demonstrate that the kayaking runs in the Waitaha River, and in the Morgan Gorge in particular, are outstanding and of national and international significance. Therefore, an assessment of ceases to abstraction predicated on the Morgan Gorge kayaking run only being of regional importance will likely be flawed and reach incorrect conclusions, including the conclusions around the amount and degree of mitigation required.

The consent conditions offered by Westpower, and recognised by DOC as needing to be very flexible, to provide for no-take days for allowing kayakers to paddle the Morgan Gorge, are unnecessarily restrictive and essentially unworkable and do not meet the needs of kayakers. Also there is no protocol provided with the application which clearly outlines just what will be done/needed, and without this the application is incomplete. The assessment of the application in this regard is also incomplete, because it is not possible to consider whether the proposed protocol is suitable or not.

Notwithstanding DOC's statement that in para 4.401 '*... The issue of whether agreement on the number of no take days where natural flows are made available at short notice as an acceptable for of mitigation is controversial.*' DOC needs to find out and have agreement from parties that consent conditions are agreeable and workable, so that the mitigation proposed can be fully assessed for its fairness and sense.

In para 4.404 the applicant lays out a proposed consent condition. In 17.4 (1) it lays out an unnecessarily restrictive protocol for Whitewater NZ applying for access to the Morgan Gorge and the Concessionaire replying on an application, with a suggestion that the Concessionaire can

⁹⁶ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015; D A Rankin, *Additional Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme*, Whitewater NZ, 1 May 2015, 20pp.

withhold granting a no-take day and have significant discretionary control over how no-take days are processed, accepted, and changed, and especially so after one no-take day has been applied for. With the additional constraint that all communications must be sent in writing this creates a totally unworkable punitive environment. In addition, the cease of take needs to be from daylight to darkness on any no-take day, not 7.00 am to 5.00 pm as suggested by Westpower. Other additional conditions suggested by Westpower are equally unsatisfactory for various reasons.

Mitigation provided for the loss of white water in the Morgan Gorge

No mitigation is provided for the loss of the white water and the water flow in the Morgan Gorge, which is a major contributor to its spectacular nature and the landform that it is. Dewatering the Morgan Gorge and leaving it a vestige of its normal flow reduces its mauri (life force) and makes it into a feature that is but a vestige of its actual self and will impact very significantly and severely on it as an outstanding natural feature. It will effectively destroy many of those outstanding natural feature values. To anyone who understands rivers and their power, they will immediately see there is 'something wrong with the river' when it only has 3.5 cumecs residual flow flowing down it.

Therefore the application and the assessment of the application in this regard are incomplete because these values have not been considered and mitigation provided for.

Mitigation provided for the loss of white water in the 1.5 km reach below the Morgan Gorge

No mitigation is provided for the loss of the white water and the water flow in the 1.5 km reach down to the powerhouse at the bottom of the Morgan Gorge. This flow and gradient and bed features are major contributors to the value of this white water run, which is a fitting denouement to the Waitaha Gorge or Morgan Gorge runs, or a run in its own right for paddlers accessing it from the road end. Again, to anyone who understands rivers and their power, they will immediately see there is 'something wrong with the river' when it only has 3.5 cumecs residual flow flowing down it. This is not sufficient flow to kayak this reach.

The impacts on the loss of water from this reach of river will be very significant, as for the losses from the Morgan Gorge. Whitewater NZ have not calculated these impacts as we never expected to see the concession being granted in principle, thinking that common sense would prevail and that the concession could not be justifiably granted for many of the reasons discussed in this submission.

The applicant has also ignored and not provided mitigation for these impacts. No doubt it is not in the applicant's interest too, but DOC should have recognised this matter and requested further information and checked what mitigation would be provided.

Therefore the application and the assessment of the application in this regard are incomplete because these values have not been considered and mitigation provided for.

No-take days in the Morgan Gorge

In para 4.413 DOC mentions the lack of agreement between Whitewater NZ and the applicant over the number of no-take days the applicant has offered. DOC states that '*Given the diverse views of the members of Whitewater NZ, it is accepted at this time Westpower has not been able to reach agreement with Whitewater NZ on a number of cease to abstraction/no take days. Westpower has, however, stated a willingness to continue to talk to WWNZ on these matters.*'

This statement is misleading and unfairly sums up and misrepresents the situation. I doubt any kayakers in New Zealand and around the world are happy with the scheme Westpower proposes. The lack of agreement between Whitewater NZ and Westpower is nothing to do with diverse views of Whitewater NZ members but everything to do with what is proposed, and the special place it is proposed in, and the conflict that this posits at so many levels.

The scheme and granting of the concession in principle is anathema to what most kayakers would believe is the statutory role of DOC to look after outstanding features and landscapes and stewardship land of the DOC Estate. DOC according to the Act is supposed to prevent development or extraction on stewardship land, and in particular the special wild places, such as the Morgan Gorge and the Waitaha River, that make the New Zealand environment outstanding and what it is, and why the DOC Estate exists.

For DOC to imply that Whitewater NZ just needs to talk to Westpower (by stating Westpower's willingness to talk) to resolve the question of the number of no take days that Westpower have offered is nonsensical when Westpower has already stated 'take it or leave it', they are not proposing to review the number of no-take days. This analysis could be taken to mean it is Whitewater NZ's fault that no agreement has been reached, which is really unreasonable.

DOC has also suggested an additional consent condition where they will review the number of no-take days on a five yearly basis. How meaningful will such a review be when DOC will not know whether kayakers have been prevented from using the resource, and if they haven't the suggestion might be that the number of no-take days might be further reduced. It is not DOC that is being restricted by no-take days, it is kayakers. Whitewater NZ requests that these conditions need to be rewritten significantly so as to more fairly protect the recreation resources, not diminish their accessibility even further. DOC's view does not seem to be one of protecting the resource, it appears to be more one of facilitating development, as mentioned previously.

Assessment of white water recreational values of West Coast Rivers

In paras 4.416 to 4.425 a discussion is had of the findings from a report produced by a very experienced West Coast kayaker who completed a Royal Society Teachers Study Award study on the kayaking values of West Coast rivers in 2010⁹⁷. Many West Coast rivers offer outstanding white water and environments for kayaking over a range of classes of difficulty.

DOC presents a ranking for the Waitaha River from that study (para 4.423), which refers to the Waitaha Gorge run, and which does not reflect the value of any of the other runs in the catchment. Thus it is out of context, as referred to in para 4.424, and as mentioned earlier in para 4.419, where comments communicated previously to DOC revealed the pinnacle status of the whole Waitaha River and the kayaking runs it contains, including the Morgan Gorge. The report cited (the first reference⁹⁸; further supporting evidence and analysis is provided in the second reference) stated '*The West Coast of the South Island has a number of rivers that provide outstanding kayaking and*

⁹⁷ England, A (2011), *An assessment of the whitewater recreational values of West Coast rivers - whitewater kayaking*. Land Environment and People Research Paper No. 2, Lincoln University, Canterbury, January 2011.

⁹⁸ D A Rankin and S Orchard, *Impacts of the proposed Waitaha River Westpower Hydro Scheme on white water and kayaking values*, report prepared for Whitewater NZ, 75 pp, January 2015; D A Rankin, *Additional Information from Whitewater NZ on the Proposed Westpower Waitaha Hydro Scheme*, Whitewater NZ, 1 May 2015, 20pp.

rafting white water and amenity values over a range of Classes of difficulty (England, 2011). Other than the Waitaha River only one other river offers such a range and variety of extremely challenging white water for the most expert of kayakers, namely the Hokitika River, and some of its tributaries such as the Mungo and Whitcombe Rivers. However, a number of the Waitaha runs are more challenging still, thus resulting in its pinnacle status. There is no other resource offering the same mix and level of extremely challenging white water that can substitute for the Waitaha River. Thus, its loss would be a travesty for the New Zealand and international white water kayaking community.'

Whitewater NZ considers that this full quotation more correctly states the true relative value of the Waitaha River, and the Morgan Gorge, to the New Zealand and international kayaking community, and therefore is the key consideration for DOC in considering the concession application. DOC does not seem to have rationally considered this aspect in the Concession Officer's Report.

Conclusion

Conclusions are drawn in paras 4.426 to 4.431 on the effects on recreation and tourism values. In its conclusion DOC does not recognise the pinnacle status of the Waitaha River kayaking runs and their associated values in the New Zealand and international context. DOC only expresses '.... *reservations about the adequacy of that mitigation [proposed by Westpower] in light of the fact that the river would change from its natural state and would no longer be available to kayakers except on a very small number of 'cease to abstract' days. The Department agrees with Westpower that the scheme would likely result in net 'high' adverse effects on kayaking the Morgan Gorge.*' The report then goes on to say that the Minister will have to consider whether the proposed mitigation is adequate, or whether it is inadequate and so decide the scheme should be declined, or whether the activity is contrary to the provisions of the Conservation Act 1987 and so should also be declined.

The Department's Summary and Conclusions from the Assessment of Effects of Waitaha Hydro and Relevance to the Decision Made to Grant the Concession in Principle

In the summary and conclusions section of the report (paras 4.443 to 4.513) the material considered earlier in the report is brought together and summarised, and then considered in the light of meeting the purpose and different sections of the Conservation Act 1987. However, as mentioned and discussed in the earlier sections of the report, many of the factual inaccuracies in the Westpower application are likely to have been carried forward into this analysis.

This state of affairs leaves the reader, and presumably the DOC decision maker, in a confused state as to what true impacts are, whether mitigation provided is appropriate and sufficient, and with a view that DOC has already reached a view that the scheme is acceptable for a concession to be granted. Rather than highlight every single point where Whitewater NZ finds flaws or inaccuracies in the report we have chosen to highlight a number of the more significant ones. We request that the officer considering submissions apply all of the previously mentioned inaccuracies to this latter section of the report, and make sure such corrections are noted accordingly. Any Hearing Panel considering submissions on this decision to grant the concession in principle also needs to clearly understand these inadequacies and inaccuracies in the report.

Natural character, landscape and visual amenity

We note in para 4.445 that DOC agrees the upper Waitaha Catchment is an ONL and the Morgan Gorge an ONF.

In para 4.447 we note DOC considers the effects of the proposal on natural character, landscape and visual amenity on a broad scale to be moderate, on a scale, as we understand it, of low, moderate, high and significant. Whitewater NZ disagrees and considers the effects to be higher than this, and that they should be high or significant. This is based on the views of the Parliamentary Commissioner for the Environment with respect to the importance of protecting our best outstanding wild and scenic rivers and the ONL and ONF status of the upper catchment (including the Morgan Gorge) and the Morgan Gorge, respectively.

In para 4.450 DOC considers the natural character effects on river flow through the abstraction reach to be moderate. Whitewater NZ disagrees with this analysis. Any river person worth their salt and an informed member of the public would be able to assess the dewatered Morgan Gorge with a residual flow of 3.5 cumecs flowing down it as an unnatural highly modified environment. Such a residual flow will see little white water reflecting the size and power of the forces that have created this ONF. This effect is at the highest level, i.e., significant.

In para 4.448 and 4.451 DOC considers the local landscape level effects and natural character effects at the intake, respectively, to be high. Again Whitewater NZ disagrees with this analysis. Any river person worth their salt and an informed member of the public would be able to assess the industrial structures at the entrance to the Morgan Gorge as an unnatural highly modified environment imposed on this ONF. This effect is at the highest level, i.e., significant.

In para 4.452 the absence of mitigation for loss of water flow in the abstraction reach, both in the Morgan Gorge and below the Morgan Gorge, is referred to. This makes the application incomplete.

In para 4.453 DOC concludes that even though some adverse effects will be high, which Whitewater NZ believe to be significant, this is not sufficient reason to decline the application, although in Whitewater NZ's view this is sufficient reason. DOC states:

'As some adverse effects would be high [significant] you will need to consider:

- (a) whether the proposed mitigation measures are adequate and where there are no or inadequate mitigation measures you will need to consider whether the effects are such that the proposed hydro scheme should be declined pursuant to 17(2)(b) of the Conservation Act and;*
- (b) Whether granting the proposed activity would be contrary to the provisions of the Conservation Act or the purpose for which the land is held pursuant to 17U(3) of the Conservation Act 1987.'*

In making the decision to grant in principle the Minister has clearly made the decision whilst ignoring the fact that the application is incomplete as no mitigation is provided for the loss of water in the Morgan Gorge. In addition the Minister has effectively decided that the proposal is acceptable even though there are high [significant] adverse effects on natural character, landscape and visual amenity, and that the proposal is keeping with the provisions for which the land is held. Whitewater NZ does not agree with either view as is discussed previously and later in this submission.

Recreation and Tourism local/Regional

In para 4.470 DOC concludes the final adverse effect on kayaking on the Waitaha River remains significant (not high but significant, the highest category of impacts, although elsewhere and

inconsistently within the document the residual impacts are often only referred to as high), with which Whitewater NZ agrees. DOC states to the decision maker:

'You will need to consider:

- (a) *Whether the proposed mitigation measures on recreationists in particular kayakers are adequate and where they are inadequate you will need to consider whether the effects are such that the proposed hydro scheme should be declined pursuant to 17(2)(b) of the Conservation Act and;*
- (b) *Whether the granting the proposed activity would be contrary to the provisions of the Conservation Act or the purpose for which the land is held pursuant to 17U(3) of the Conservation Act 1987.'*

In making the decision to grant in principle the Minister has clearly made the decision whilst ignoring the fact that the application is incomplete as no mitigation is provided for the loss of water below the Morgan Gorge. In addition the Minister has effectively decided that the proposal is acceptable even though there are significant adverse effects on kayaking values, the mitigation is not sufficient or appropriate, and that the proposal is not in keeping with the provisions for which the land is held. The Minister has ignored the national and international kayaking values associated with the Waitaha River; the values are not just regional and local as the DOC subtitle to this section might imply. Whitewater NZ does not agree with the Minister's views as is discussed previously and later in this submission.

In para 4.471 DOC correctly states Whitewater NZ's views on the importance of retaining the unspoilt character of the Morgan Gorge and Waitaha River. DOC states:

'Many kayakers hold the belief that it is critical that the unspoilt character of the Waitaha River including the Morgan Gorge is retained. They consider that the application is inconsistent with Conservation Act 1987, in which conservation is described as the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for the appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.'

However, what is absent from this statement is that many New Zealander's would agree with this same view either, not just kayakers. This is exemplified by the existence of the Conservation Act 1987 and its provisions, the existence of stewardship land, declarations of ONF and ONL values, the RMA and its provisions for Water Conservation Orders and protecting natural environments from inappropriate development and use, and the Parliamentary Commissioner for the Environment's views expressed on wild and scenic rivers;

'In a world increasingly losing wilderness, wild and scenic rivers are an important part of the clean green country tourists come here to experience.'

- Jan Wright, 2012, Parliamentary Commissioner for the Environment

The Minister's decision flies in the face of these values that many New Zealander's hold dear, and especially so in providing for a development, the power from which is not needed.

Section 17U(2) Minister may decline application

In paras 4.480 to 4.488 DOC discusses the discretion that the Minister has to decline the application if the Minister considers that:

- (a) *'The information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure or facility;*
or
- (b) *There are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.'*

The DOC report actually states the fact that the mitigation offered is insufficient or absent in some cases [it is not even recognized either in other areas, e.g., the 1.5 km reach down to the powerhouse], that some concession conditions are vague and incomplete and unclear, and that DOC has real concerns about the adequacy of information provided by Westpower and/or the adequacy or reasonableness of methods proposed by Westpower to be undertaken to avoid, remedy or mitigate the adverse effects of the proposal.

However, in defiance of logic the Minister, by granting in principle the concession, has ignored these concerns. As is discussed later, the precedent set by the Minister's decision on the Fiordland Link proposal, when considering the same matters, would suggest that the Minister's decision to grant on the Westpower application is flawed and not appropriate. Certainly it is Whitewater NZ's view that the concession should be declined on the basis of 17U(2) (a) and (b).

Section 17U(3) An application shall not be granted where contrary to the Act or purposes for which the land is held

In paras 4.489 to 4.502 DOC discusses the purpose of the Conservation Act and stewardship areas, noting that the Minister shall not grant a concession if the proposed activity is contrary to the purpose for which the land is held. As is discussed previously and in subsequent sections of this submission (see para 6 on page 57 and section 'Purpose for which the land is held' pages 96-97), including in the precedent set in the Minister's decision on the Fiordland Link proposal when considering the same matters, Whitewater NZ holds the view that DOC has erred in its advice to the decision maker and the Minister has erred in granting the concession in principle.

This is simply because although DOC is right to point out that utilities can in some cases be built on stewardship land that is not the primary purpose for which such land is held. Given the outstanding values of the stewardship land and areas in question impacted upon by the proposed scheme, it is clear this land needs to remain protected in the DOC Estate (Figure 7), and not either disposed of or subjected to inappropriate development or extraction. The application should therefore be declined as granting of the application would be contrary to the purposes for which the land was held.

Section 17U(4) Structures

In paras 4.503 to 4.509 DOC discusses aspects of the consideration applied by the applicant to alternative locations where the facility could have been built. However, the analysis is somewhat narrow in scope. As outlined in para 4.503 section 17U(4) provides that:

'The Minister shall not grant any application for a concession to build a structure or facility,

.... Where he or she is satisfied that the activity- Could reasonably use an existing structure or facility or the existing structure or facility without the addition.'

Implicit in this analysis, one assumes, is that there is a real need for the power from the scheme. When the scheme was originally mooted and Westpower investigations began the electricity demand landscape on the West Coast was significantly more bullish with a large number of power intensive industries looking to expand activities on the West Coast. These activities produced a flourish of consents sought by a number of companies, including upgrading and expansion of the capacity of the National Electricity Grid supply to the West Coast (see the Baldwin report⁹⁹). Much of the extra supply need has now gone completely, as a result of changed economic circumstances, and there are plenty of alternative already consented schemes including those supplying the national grid that can provide the power that the Westpower scheme would provide. In summary, the power from the Westpower scheme is now no longer needed, except perhaps by Westpower for its own ends.

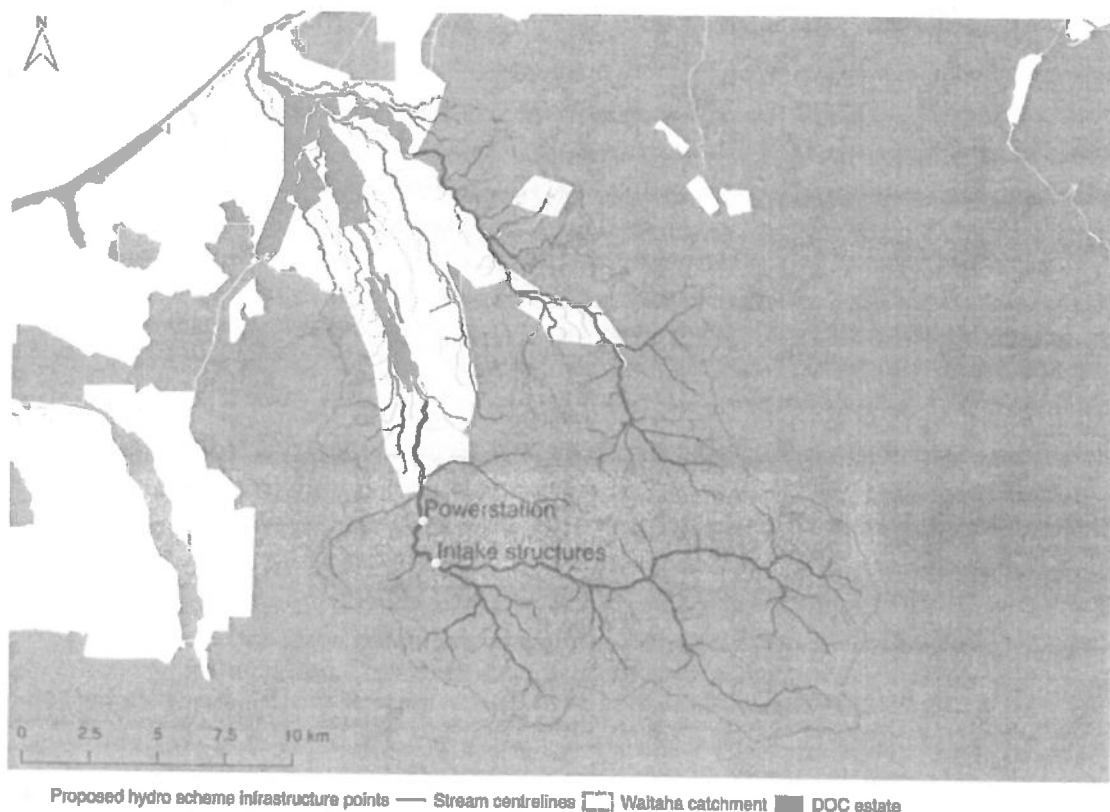


Figure 7. Schematic showing the boundary of Waitaha Catchment and the DOC Estate therein. The Waitaha River is shown and the other larger river to the north is its other major tributary, the Kakapotahi River.

DOC traverses the options considered by Westpower in its investigations into alternative generation sites but takes a rather narrow view and a local view as to possible sites. For example, it does not

⁹⁹ T Baldwin, Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations, Wellington, May 2015

entertain the use of the upgraded National Grid referred to in the Baldwin report as an alternative to the Westpower proposal, and yet according to s17U(4) the Minister is obliged to. In addition Westpower is not open or frank about the conflict with kayakers (para 4.507), when concluding and implying in its proposal on the Waitaha that that was the most suitable choice, given the kayaking values (and presumably other values such as fishing values) in some cases on other rivers that they investigated. At the time of their assessments Westpower was told of the outstanding natural and kayaking values in the Waitaha River¹⁰⁰, the kayaking values of which at that time were confined to the Waitaha Gorge run, as the Morgan Gorge and other harder runs had not even been kayaked at that stage.

It is Whitewater NZ's view that the Minister should not have granted the concession in principle, and that indeed cannot grant the concession, as that is contrary to s17U(4) in respect of Westpower being able to reasonably use the National Grid as a source of power for the needs of its customers, when and if such power is needed in the future.

Planning Instruments

In paras 4.514 to 4.630 DOC discusses planning Instruments relevant to the granting of the concession, such as Conservation General Policy (CGP) and the West Coast *Tai Poutini* Conservation Management Strategy 2010-2020 (CMS). These Instruments are required to be considered under s17W(1) of the Conservation Act which provides:

'.....a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan.'

Conservation General Policy (CGP)

In paras 4.529 to 4.540 utilities under Policy 11.3 are discussed. Parts (a) and (d) of the Policy state:

'(a) Utilities may be provided for on public conservation lands and waters where they cannot be reasonably located outside public conservation lands and waters, or if specifically provided for as a purpose for which the place is held.

(d) Utilities should, wherever possible, be located in, or added to, an existing structure or facility and use existing access options.'

These Policies suggest the Westpower proposal is unnecessary and inappropriate, as the power, if and when required, can be provided by generation capacity outside public conservation lands by the already expanded (in terms of capacity to the West Coast) National Grid. Paras 4.533 and 4.534 only take a narrow view of alternatives, and especially so with respect to the National Grid, which is designed to generate power most efficiently and distribute it effectively throughout the country. In Whitewater NZ's view it is somewhat inappropriate of DOC to *'consider that Westpower could reasonably use an existing structure or facility without the addition (of the proposed structures).'* (para 4.534) when the National Grid exists to do that very thing.

West Coast Tai Poutini Conservation Management Strategy 2010-2020 (CMS)

¹⁰⁰ Mr A England, personal communications to Mr R Caldwell, CEO of Westpower (relayed to D A Rankin by A England).

CMS Section 3.3.4.3 Management of Geodiversity and Landscapes

In paras 4.569 to 4.573 DOC discusses Objectives and Policies relevant to the application. However DOC takes a narrow view of Objective 1 *'To protect geodiversity and landscapes from adverse effects of human use or management'* and Policy 1 *'The Department should seek to protect and preserve the natural character, integrity and values of landscapes, landforms, geological and soil features and processes in all aspects of conservation management.'* The mere preparation and peer review of reports, along with proposing measures to avoid, remedy and mitigate (whereas in reality no avoidance is proposed at all), is not enough to meet Objective 1 and Policy 1, neither will be achieved if the concession is granted. Building the scheme will not protect and preserve the natural character, integrity and value of the landscapes, landforms and geological features of the Morgan Gorge and surrounding areas from the powerhouse site to the upper catchment. By granting the concession DOC is ignoring both Objective 1 and Policy 1, and is therefore inconsistent with and contrary to s17W(1) of the Conservation Act.

CMS Section 3.5 Authorised Uses of Public Conservation Lands

Objective 3 *'To protect recreational opportunities from adverse effects of authorized uses of public conservation lands.'* (para 4.574) is not provided for by granting the concession. Granting the concession will clearly remove a number of highly valued recreational opportunities from the Morgan Gorge and below the Morgan Gorge. They will not be protected, they will be lost. No consultation has been had with the Conservation Board even though the Board would have known that we were the most affected party. In fact the Conservation Board appears to have shown a very cavalier regard for their duties in respect of consultation with affected community parties. The proposal is inconsistent with Objective 3 of section 3.5 of the CMS and therefore inconsistent with section 17W(1), and the concession cannot be granted.

CMS Section 3.6.1.1 Provision and Management of Recreational Opportunities

Although in paras 4.579 to 4.584, where in the Objectives and Policies around provision and management of recreational opportunities DOC considers the main thrust is to deal with avoiding or minimizing conflicts with different recreation users, there are some Objectives and Policies which when considered together also are relevant to the Westpower proposal.

Objective 1 *'To provide a comprehensive range of recreational opportunities that enable people with different capabilities and interests to enjoy and appreciate West Coast Te Tai o Poutini public conservation lands, whilst protecting natural, historical and cultural heritage from adverse impacts of recreational use.'* and Policy 3 *'Recreation opportunities that are based on the special character and features of West Coast Te Tai o Poutini public conservation lands should be provided, taking into account existing opportunities available elsewhere in the country, both within and outside of public conservation lands.'* are particularly relevant.

In our view, the Waitaha River and the Morgan Gorge are particularly important and need to be protected in their current state, and not impacted upon as they will be by the Westpower scheme. This is because the Waitaha River is the premier white water river for expert kayakers containing an array of very challenging white water kayaking runs. It is important locally, regionally, nationally and internationally as a result. It is outstanding and amongst the 'best of the best' of such waterways in New Zealand for expert kayakers.

This characteristic makes its protection and preservation as part of the Conservation Estate even more important than normal. As Objective 1 indicates, this would meet the aim 'to provide a comprehensive range of recreational opportunities to people with different capabilities and interests to enjoy and appreciate West Coast Te Tai o Poutini public conservation lands,'. In order to meet this aim it is very important to protect and preserve the outstanding kayaking runs of different degrees of challenge throughout the region. As the Waitaha is the river at the top of this scale it follows that it is one deserving such recognition.

In addition, Policy 3 recognizes that the special character and features of West Coast Rivers may be important for providing recreation opportunities, even when compared to existing opportunities elsewhere in the country. This is very true of the Waitaha River, where the essentially pristine environment, water worn and smoothed schist rock gorges, West Coast rain forest, hard terrain to move through, and wild and scenic values provides a kayaking challenge second to none for those with the requisite skills. The special character and features are born of the place where the river is, and its geomorphology. It is outstanding in the New Zealand and international context, not just a regional context. Thus retention of this river unencumbered by the Westpower proposal would ensure this policy was met. Granting the concession would be inconsistent with section 17W(1), and therefore the concession cannot be granted.

CMS Section 3.6.1.4 Backcountry-Remote Zone

In paras 4.585 to 4.587 the preamble discussing the purpose of this zone, and its relevance to changing patterns of recreation use, including kayaking on more difficult rivers often accessed via helicopter, is reflected in Objectives 1 and 2(a) and Policy 1:

Objectives

1. *To provide access to a range of recreational opportunities via facilities that enable people to enjoy challenging natural settings in the backcountry.*
2. *To enable people to access extensive natural settings where:*
 - a) *Facilities are provided but a considerable degree of physical challenge, self-reliance and isolation is involved;*

Policies

- a) *The backcountry-remote zone should be managed to meet the desired outcomes described in Part 4 of this CMS providing facilities and services that cater principally for the needs, interests and abilities of most backcountry comfort seekers and backcountry adventurers....' [underlined for emphasis]*

The requirement to manage the resources to principally meet the needs, interests and abilities of backcountry adventurers such as kayakers for them to enjoy the extensive challenging natural settings has implicitly woven into it the need to retain such settings, and especially the best examples of them. Without such natural settings it will not be possible to provide for such opportunities.

Therefore it follows that allowing the Westpower proposal to proceed would not achieve the Objectives and meet the Policies, especially with respect to not retaining the significant ONL and ONF values on the Waitaha River and Morgan Gorge, and their providing some of the best

challenging white water for expert adventurer kayakers in New Zealand. The proposal is inconsistent with Objectives 1 & 2 and Policy 1 of section 3.6.1.4 of the CMS and therefore inconsistent with section 17W(1), and the concession cannot be granted.

CMS Section 3.7.2 Activities on or in beds of Rivers or Lakes

As outlined in para 4.594, Policy 1 states:

'When assessing applications for any activity on or in a bed of a river or lake, consideration should be given to (but not limited to) the following guidelines:

- a) *Adverse effects on freshwater and terrestrial species, habitats and ecosystems, historical and cultural heritage values, public access, recreation opportunities and amenity values should be avoided or otherwise minimize;*
- e) *The natural character within the setting of the activity should be maintained.'*

However, granting the concession will not avoid or minimize the adverse effects on recreation opportunities and amenity values or maintain the natural character within the setting of the activity. Adverse effects of a significant nature will remain if the scheme is built. Mitigation proposed (and some is not included at all, e.g., loss of water flow down and below the Morgan Gorge) is not mitigation in some cases and does nothing to minimize the impacts of the scheme, particularly on kayaking values. The proposal is inconsistent with aspects of Policy 1 of section 3.7.2 of the CMS and therefore inconsistent with section 17W(1), and the concession cannot be granted.

CMS Section 3.7.11 Utilities

In para 4.603 Policy 3 states:

'The development, installationof utilities on public conservation lands should be consistent with the desired outcome for the relevant places/s'

DOC does not discuss this matter in great detail and concludes somewhat strangely without any rationale in paras 4.628 and 4.629 that the Westpower proposal is consistent with the back country remote zone Objectives and Policies in Section 3.6.1.4. This is discussed further later. Whitewater NZ does not agree with this conclusion at all, and as the Westpower proposal would be inconsistent with Policy 3 it would be inconsistent with section 17W(1) of the Act, and the concession cannot be granted.

CMS Section 4.1.1 The West Coast Tai Poutini Conservancy in 2020

In paras 4.605 and 4.606 the vision in this section according to DOC allows for the provision of business opportunities consistent with conservation outcomes. Whereas this is true, it does not necessarily mean that the Westpower proposal is consistent with desired conservation outcomes for the Conservancy. It is strongly Whitewater NZ's view that this is not the case, the Westpower proposal is completely at odds with many Objectives and Policies within the CWS, therefore meaning the proposal would be inconsistent with section 17W(1) of the Act, and therefore that the concession cannot be granted.

Rather than discuss the consistency or lack thereof of the Westpower proposal with conservation outcomes, the approach DOC appears to have taken is one where it recognizes the inconsistency of

the proposal with conservation outcomes but then seeks to facilitate the proposal despite this by suggesting that it can mitigate such matters. In Whitewater NZ's view this equates to 'having one's cake and eating it'. If the proposal is inconsistent with conservation outcomes then the concession must be declined and the decision to grant reversed. The concession cannot be entertained on the basis that Westpower and DOC can mitigate such matters, and that the decision maker will have to weigh up whether the mitigation offered is sufficient or not.

CMS Section 4.1.1.5 Protection of conservation values from adverse effects of authorized uses in 2020

The vision to safeguard 'the Conservancy's natural, historical and cultural heritage values by identifying and taking appropriate action to avoid or otherwise minimize adverse effects of human use or management. Potential threats and risks to natural, historical and cultural heritage values are avoided or are managed in ways that are consistent with the desired outcomes for Places described in Chapter 4.2 of this CMS.' clearly enunciates the need to very carefully assess the need for and impacts of a proposal such as the Westpower scheme.

Whereas DOC claims to have identified the adverse effects of the proposal and the range of measures to help avoid, remedy and mitigate the adverse effects (para 4.613), as described earlier in this submission, this analysis is incomplete, flawed and confusing. DOC essentially concludes that a proposal that is contrary to many CMS Objectives and Policies is consistent with these Objectives and Policies, subject to appropriate mitigation, and therefore may be granted a concession. This does not make sense.

CMS Section 4.1.1.6 Recreational use and enjoyment of public conservation lands in 2020

The vision that '*People appreciate and enjoy public conservation lands and receive in full measure the inspiration, enjoyment, recreation and other benefits that may be derived from them, where these are not inconsistent with the protection of natural, historical and cultural heritage. Increasing use is made of backcountry facilities and remote zones.*' is not reflected well in the analysis that DOC provides should the scheme go ahead. In para 4.614 DOC attempts to minimise the adverse impacts of the proposal by using words such as '*would not prevent the continued appreciation of the Waitaha Catchment*', '*would potentially be a decrease in the appreciation and enjoyment of the area*', '*for a small number of recreationists including kayakers from the adverse effects on Natural Character and kayaking values*'.

Installation of the scheme would irrevocably reduce the wild and scenic, natural and wilderness values of the river and thereby the appreciation and enjoyment to all users visiting the river and Catchment and prevent those users receiving '*in full measure the inspiration, enjoyment, recreation and other benefits that may be derived from them [public conservation lands]*'.

CMS Section 4.2.6.3 Geodiversity, landform and landscapes in 2020

The aim for the Hokitika Place is that the overall character of geodiversity, landforms and landscapes will be maintained (para 4.624). However, as discussed previously under CMS Section 3.3.4.3 Management of Geodiversity and Landscapes building the scheme will not protect and preserve or maintain the natural character, integrity and value of the landscapes, landforms and geological features of the Morgan Gorge and surrounding areas from the powerhouse site to the upper catchment. Furthermore the Morgan Gorge is an ONF, and the river above the powerhouse an ONL, and it might be logical to assume that as these features are outstanding they would be retained as

part of the DOC Estate and not be considered as suitable for hydro development. If such features are not worthy of protection and preservation for the New Zealand public to enjoy into the future, then what features are? By granting the concession DOC is ignoring both Objective 1 and Policy 1 in Section 3.3.4.3 and the vision in Section 4.2.6.3 of the CMS, and is therefore inconsistent with and contrary to s17W(1) of the Conservation Act. The concession cannot be granted.

CMS Section 4.2.6.7 People Benefit and Enjoyment in 2020: Hokitika Backcountry-Remote Zone

In para 4.627 the DOC vision in the CMS recognises Hokitika as a world-wide kayaking destination. The Waitaha River, including the Morgan Gorge, although not explicitly mentioned, is a key component, the pinnacle for expert kayakers, of the valued resources within the Hokitika Place and this destination.

In para 4.628, DOC finally concludes (agreeing with Westpower's consultant¹⁰¹) that a hydro development, such as the Westpower proposal, is not compatible with the back-country-remote recreation management category in the Hokitika Place. However, with no logical explanation (and nor is there one from the applicant's consultant) DOC also concludes/agrees with the applicant that *'the outcomes of the CMS for the Hokitika Place will still be achieved with the scheme in place'*.

In para 4.629 DOC restates that it considers the *'proposed hydro scheme is consistent with the backcountry-remote zone Objectives and Policies 3.6.1.4 above'*. It goes on to say that *'the desired outcomes for the Hokitika Place would still be maintained although there would be a degree of loss of solitude and sense of isolation for those recreating in the location of Kiwi Flat and the powerhouse.'*

However, as is discussed above in an analysis of the Objectives and Policies in Section 3.6.1.4 of the CMS, the DOC requirement to manage the resources to principally meet the needs, interests and abilities of backcountry users and adventurers such as kayakers and to enjoy extensive challenging natural settings has implicitly woven into it the need to retain such settings, and especially the best examples of them. Without such natural settings it will not be possible to provide for such opportunities and so therefore a hydro scheme which removes such opportunities would be incompatible with such Objectives and Policies. Furthermore, if management is principally to meet the needs, interests and abilities of backcountry adventurers such as kayakers and for them to enjoy the extensive challenging natural settings, then presumably protection and preservation of such resources will take precedence over development of hydro utilities in such resources.

In para 4.630 DOC concludes in a weak statement that recreational opportunities in the Waitaha River would still remain and that proposed mitigation methods *'that help the structures blend in with the landscape and alternative track access would help to avoid or otherwise reduce effects on the natural setting.'* No comments are made about the loss of significant kayaking and white water resources, which is the dominant impact of the Westpower scheme on backcountry adventurers, and the lack of mitigation to compensate for these losses.

Whitewater NZ does not agree with DOC that 'the outcomes of the CMS for the Hokitika Place will still be achieved with the scheme in place' and so finally concludes, for this reason and a number discussed above, that the proposal would be inconsistent with section 17W(1) of the Conservation

¹⁰¹ Greenaway, R (& Associates) (2014). Westpower Waitaha Hydro Scheme Investigations – Recreation and Tourism Assessment of Effects (Draft for consultation only), Prepared for Westpower Ltd by Rob Greenaway & Associates, February 2014.

Act, and therefore that the concession cannot be granted.

Other matters

In Appendix 1, para 2.2, Whitewater NZ notes that the application is incomplete. No bond figure is given in the proposed consent conditions.

Baldwin report on power need, viability and alternative locations

Whitewater NZ 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 report¹⁰²:

“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.

Statutory framework applied to Westpower’s application

Letter and reports to DOC 1 May 2015

A letter was provided to DOC¹⁰³ on 1 May 2015 so that DOC and the Minister were properly

¹⁰² T Baldwin, Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations, Wellington, May 2015

¹⁰³ D A Rankin, letter to Marie Long, Director, Planning, Permissions and Land for Director-General, DOC, re substantial and critical omissions concerning Westpower: Part 3B application relating to the proposed Waitaha scheme, and reports contained therein (including D A Rankin, Additional Information from Whitewater NZ on

informed for their assessment of Westpower's concession application. This letter included the Baldwin report and an additional report from Whitewater NZ (enclosed), a review of natural values effects assessment (as an Appendix), and the statutory framework as applied to Westpower's application. The Minister was invited to receive this material as "a report[s] 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).

Statutory decision-making framework

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 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]."¹⁰⁴
- The review in the appendix to the 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 Proposed Westpower Waitaha Hydro Scheme, Whitewater NZ, 1 May 2015, 20pp; T Baldwin, Proposed Waitaha Hydro Scheme: Assessment of Reasons, Financial Viability and Alternative Locations, Wellington, May 2015), Whitewater NZ, Christchurch, 1 May 2015, 19pp.

¹⁰⁴ Greenaway Report, Appendix 19 of Westpower's Waitaha application, at page 64

- The Rankin paper attached to the 1 May 2015 letter to DOC 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.

Is the proposed scheme "appropriate" under Part 3B?

As summarised in the appendix to the 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 not 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."¹⁰⁵

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.

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

¹⁰⁵ Long title and s.2, Conservation Act 1987

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.

Update on and relevance of material in letter and reports to DOC 1 May 2015

Since forwarding the letter and reports to DOC on 1 May 2015, DOC has received further material both before and after that time from Westpower and other consultants that is germane to their deliberations. Some of this material has been material referred to in the 1 May letter as being necessary for the application to DOC to be considered complete and for DOC to make a decision.

Some of the reports supplied by Westpower to DOC concern the economic viability of the scheme¹⁰⁶. DOC has reviewed the reports and satisfied itself that the scheme is viable but has not released a key relevant report on economic viability citing provision in confidence. This does not give Whitewater NZ any comfort as we are well aware that the viability of schemes is very dependent on the assumptions behind the costing and financial models. Without being able to scrutinize such material it is impossible to tell whether Westpower's assertions are correct or not. Certainly based on their earlier comments in their application (see section above *'Blind' approval not permitted*) about the potential viability there are serious questions as to whether this will be the case. In addition, as mentioned earlier DOC is unlikely to be in a position to properly assess the economic viability of the scheme.

As mentioned above in Step 4 part (i) of the preceding section the application must be complete. In our submission above we have mentioned various areas where the Westpower application is still incomplete (although DOC has said it is complete), particularly in regard to various mitigation measures which are missing or incomplete or unsatisfactory in the application. Therefore, before a decision to grant in principle can be considered any further, these matters need to be completed so that the application can be received as complete. Then the Minister can confirm the decision to grant in principle, or decline, based on an appropriate assessment of a fully completed application.

Otherwise all the other views expressed in the 1 May 2015 letter stand, which means that for a variety of reasons DOC cannot grant the concession.

The Relevance of the Resource Management Act (RMA)

Although not necessarily directly needing to be considered at this stage of the concession deliberation process, the RMA is very relevant in providing some guidance for interpretation of matters where parts of the Conservation Act are silent, and also to further processes that need to run their course before the proposed scheme can be built.

For example, on matters of national importance, such as outstanding natural features (ONF) and outstanding natural landscapes (ONL), the RMA provides guidance as to how these matters are to be considered and dealt with. This is particularly relevant to the proposed Westpower scheme, which is to be built on an outstanding natural feature and within an outstanding natural landscape. If a concession is to be granted the next step of the process will require the applicant to gain the

¹⁰⁶ See para 4.479 of the DOC Notified Concession Officer's Report to the Decision Maker for a list of the material supplied by Westpower.

necessary resource consents for their proposal. Such consents will be sought under the RMA and must be consistent with the provisions of that Act.

The RMA and matters of national importance

The following extract from the RMA is taken from Brookers¹⁰⁷, notably s6 of the Act, which sets out matters of national importance. In addition, some commentary [from Brookers] is also taken directly from annotations to the section cited (s6).

'6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

[(f) the protection of historic heritage from inappropriate subdivision, use, and development.]

[(g) the protection of protected customary rights.]

Values not recognised in the relevant planning documents

The fact that a particular value or values (including matters of national importance) may not be recognised in the relevant planning documents does not prevent the decision maker finding on the evidence that such a value exists. See in particular *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 noted at [A6.13(1)] and *Unison Networks Ltd v Hastings DC* EnvC W058/06 (noted at [A6.06(1)(a)]) where the Court held that, although such identification is not necessarily determinative of the issue, it is a highly relevant consideration (upheld in *Unison Networks Ltd v Hastings DC* HC Wellington CIV-2007-485-896, 11 December 2007). See also *Clearwater Mussels Ltd v Marlborough DC* [2016] NZEnvC 21, where the Environment Court accepted that opposing parties were entitled to lead evidence from experts supporting values not recognised in the relevant plan (in this case landscape and natural character) although in the circumstances of

¹⁰⁷ Brookers Resource Management, Volume 1, Thomson Reuters.

that case the stopbank did define the margin for a certain reach of the river.

Preservation and protection

Section 6 does not give primacy to preservation or protection; it simply means that provision must be made for preservation and protection as part of the concept of sustainable management. However, a particular planning document may give primacy to preservation or protection in particular circumstances: *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

"Inappropriate"

The RMA requires protection from "inappropriate" activities. In *NZ Rail Ltd v Marlborough DC* [1994] NZRMA 70 (HC), the High Court held that "inappropriate" has a wider meaning than "unnecessary" will be considered on a case by case basis, but must be judged from the point of view of preserving the matters identified as being of national importance: *Aquamarine Ltd v Southland RC* EnvC C126/97; *Pigeon Bay Aquaculture Ltd v Canterbury RC* EnvC C179/03; *Lowe v Auckland RC* A021/94 (PT) and *Minister of Conservation v Kapiti Coast DC* (1993) 1B ELRNZ 234; [1994] NZRMA 385 (PT).

The use of the word "inappropriate" suggests that there may still be appropriate developments in areas to which s 6(a) and (b) apply. The scope of the words "appropriate" and "inappropriate" is heavily influenced by context. Where the term "inappropriate" is used in the context of protecting areas from inappropriate subdivision, use or development, inappropriateness should be assessed by reference to what is sought to be protected: *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

Analysis of the requirements of the RMA with respect to nationally important values

The RMA requires that matters of national importance are recognised and provided for by all persons exercising functions and powers under it. In particular, this includes 'the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development' and 'the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development'.

Given that the Morgan Gorge is an ONF with significant white water values and outstanding kayaking values, and is part of an ONL, it would be unlikely that the Westpower proposal could be considered an "appropriate" development or use of the river under the Act. The Westpower proposal would neither preserve the natural character and associated values of the Waitaha River in the Morgan Gorge or protect that reach from inappropriate use and development. The reach would be essentially dewatered and become only a vestige of its former self, losing its natural character and white water and kayaking values. Natural character and kayaking and white water values below the Morgan Gorge and downstream to the powerhouse would also be largely lost. The intrusion of industrial structures including a weir in the river, tunnel portals, a discharge tunnel up the wall in the Morgan Gorge, penstocks lower down the valley, and dewatering of reaches will also irrevocably alter the pristine nature and wilderness values of the environment from the powerhouse to the upper reaches of the catchment, and the outstanding natural landscape that this area embodies.

The Conservation Act 1987 and nationally important values

The Conservation Act is silent on how to deal with nationally important values associated with stewardship land. However, stewardship land is held for the purpose of:¹⁰⁸

"the clear intention in creating stewardship areas was to protect them from development or extractive use until their conservation value could be established, the appropriate form of protection chosen; unless of course the conservation values were found to be inadequate, when the area could be disposed of"

It is clear from preceding sections in this submission that the stewardship land upon which Westpower propose to build their scheme has significant outstanding conservation values and that the scheme will have significant impacts on these same values. Thus, an appropriate form of protection should be provided for this land and inappropriate development or extractive use should not be permitted on this DOC Estate. To not retain the land in the DOC Estate or permit inappropriate development or extractive use would be perverse with respect to why the land was being held and its conservation values, and especially more so once the outstanding conservation values had been established. In addition, the RMA gives clear guidance as to how such outstanding conservation values (ONF and ONL) are to be protected from inappropriate development and use.

Therefore, notwithstanding the fact that the Conservation Act does not explicitly state how to deal with such matters as does the RMA, the nationally outstanding values in the Morgan Gorge and Waitaha River warrant and need protection from inappropriate development or extractive use. Even if DOC took the somewhat counterintuitive and perverse view and still decided to grant the concession, the applicant still has to apply for resource consents needed to permit the development. It would be unlikely that such consents could be granted, given the requirement under the RMA to recognise and provide for the aforementioned matters of national importance, and not permit inappropriate development or use in ONF or ONL.

The Fiordland Link Monorail Case Precedent and Matters Related to the Westpower Application

On 29 May 2014 the Hon Dr Nick Smith, Minister of Conservation, wrote a letter to Mr Bob Robertson, MD of Infinity Investment Group Holdings Ltd, with his decision on the consent sought by Riverstone Holdings Ltd to construct and operate a monorail between the Mararoa River and Te Anau Downs¹⁰⁹. This proposal was to traverse and use National Park, DOC stewardship area and marginal strip. The Minister declined the application for five reasons, namely:

- (a) *'I do not consider there to be adequate information to assess the effects of the proposal;*
- (b) *I do not consider there to be adequate methods to remedy, avoid or mitigate the potential adverse effects of the proposal;*

¹⁰⁸ Extract from "Investigating the future of conservation: The case of stewardship land", August 2013, Parliamentary Commissioner for the Environment, Wellington, section 2.3, page 21; statement from the Hon Philip Woollaston, Associate Minister of Conservation

¹⁰⁹ Hon Dr Nick Smith, decision letter to Infinity Investment Group Holdings Ltd re Riverstone Holdings applications for consent for a monorail, Office of Hon Dr Nick Smith, Parliament Buildings, 29 May 2014 (<http://www.doc.govt.nz/Documents/about-doc/news/issues/decision-letter-fiordland-link-monorail.pdf>); also see <https://www.beehive.govt.nz/sites/all/files/1.QandA-Decision-on-the-Fiordland%20ink-monorail.pdf>

- (c) *I consider the proposal to be contrary to the purposes for which the land is held;*
- (d) *I do not consider the proposal to be consistent with the area's world heritage status;*
and
- (e) *I have strong reservations about the financial viability of the proposal.'*

It is Whitewater NZ's submission that the precedents set here clearly apply to Westpower's application in many areas, and particularly with respect to the interpretation and application of the Conservation Act 1987, and that for similar reasons DOC should reverse its decision and decline granting the concession to Westpower.

Adequate information, including mitigation, to assess the impacts of the proposal

As for the monorail case, Westpower's 'envelope' approach, where the exact path of the access road up to the site and a number of other matters are not yet determined, means that the impacts on wildlife through loss of habitat are not known. In addition, the size and scope of impacts in other areas are uncertain, such as the road-end cliff portal for access to the intake site, as the size of this exit tunnel is not yet confirmed. The extent to which this will impact the visual landscape is not known - only a small sized tunnel portal is illustrated in the application.

Westpower's application proposes safeguards to avoid, remedy or mitigate various effects but in a number of cases residual impacts will still be very high and significant, and mitigation provided is limited, undefined, inadequate or not mitigation at all. Of particular note will be the impacts on ONF, ONL and outstanding kayaking and other recreation and wilderness values, and other conservation values such as lizard and bat habitat. In addition, no mitigation is provided at all for the loss of some values, e.g., ONF values via loss of flow down the Morgan Gorge, outstanding kayaking values (Waitaha Gorge run) through the loss of flow below the Morgan Gorge down to the powerhouse, thereby meaning the application is incomplete and adequate information is not available to fully assess the application.

As in the monorail case, the requirement in the conditions for management plans are not supported by strong clear consent conditions, making it clear that there is not sufficient or adequate information on which a decision maker can base a decision consistent with the Conservation Act. The concern over inadequate information is illustrated by the wording repeated often throughout the Notified Concession Officers Report to the Decision Maker, where in one form or another the decision maker is asked to consider whether the information provided is sufficient for the decision maker to reach a decision. For example, in para 4.431¹¹⁰ the report states:

'... . You will need to consider:

- (c) *Whether the proposed mitigation measures on recreationists in particular kayakers are adequate and where they are inadequate you will need to consider whether the effects are such that the proposed hydro scheme should be declined pursuant to 17(2)(b) of the Conservation Act and;*
- (d) *Whether the granting the proposed activity would be contrary to the provisions of the Conservation Act or the purpose for which the land is held*

¹¹⁰ D Clendon, Notified Concession Officer's Report to Decision Maker, Permission Record Number WC-34113-OTH, DOC, Hokitika, 4 August 2016.

pursuant to 17U(3) of the Conservation Act 1987.

implying in part sufficient information is not available to be sure the mitigation provided is adequate.

As for the monorail proposal Whitewater NZ believes DOC needs to decline the Westpower concession because of insufficient information to assess the impacts of the proposal.

Purpose for which the land is held

In paras 20 to 30 of his decision, the Minister outlines his rationale and decision that allowing the monorail would be contrary to the “protection/preservation” purpose for which the land is held.

The Minister’s rationale in this case is that although current users’ enjoyment of the stewardship area would be adversely affected by the monorail, the likelihood that a significant number of new users would enjoy the forest via the monorail satisfied the public enjoyment purpose for which the land is held.

With regards to the “protection/preservation” purpose for which the land is held the Minister concluded that not enough information was provided for him to assess the impacts of the scheme properly. In addition if the scheme were to fail, which he considered to be a serious risk, the structure would cause significant adverse effects that could not be adequately remedied or mitigated. Along with the monorail being inconsistent with the government’s obligations under the World Heritage Convention, the Minister finally concluded allowing the monorail would be contrary to the “protection/preservation” purpose for which the land is held, and so declined the consent on that basis.

With regards to the Westpower application, we have presented arguments and information that suggest that not enough information is provided for the decision maker to assess the impacts of the scheme properly. Current users’ enjoyment of the stewardship area would be adversely affected by the scheme if installed, at many levels. However, unlike in the case of the monorail proposal, there is no countervailing argument that a significant number of new users would enjoy the Waitaha River and Morgan Gorge if the scheme was installed, to satisfy the public enjoyment purpose for which the land is held. Therefore, the land should be retained for the enjoyment of current users, if we apply the Minister’s logic, and the development should not be permitted.

There are some parallel arguments with regards to the financial viability of the proposal, as Westpower in their own application hint at the potential marginal nature of the economics of the scheme (paying itself off over generations). Although Westpower throughout their application refer to the removable nature of the infrastructure they do not offer a bond for the removal of structures should the scheme prove to be uneconomic in the long run.

In addition, there is another key element or argument concerning the status of stewardship land not traversed by the Minister in his monorail decision, that Whitewater NZ considers even more relevant to both the monorail and the Westpower application. As has been discussed previously, stewardship land is held for the following purpose:¹¹¹

¹¹¹ Extract from “Investigating the future of conservation: The case of stewardship land”, August 2013, Parliamentary Commissioner for the Environment, Wellington, section 2.3, page 21; statement from the Hon Philip Woollaston, Associate Minister of Conservation

"the clear intention in creating stewardship areas was to protect them from development or extractive use until their conservation value could be established, the appropriate form of protection chosen; unless of course the conservation values were found to be inadequate, when the area could be disposed of"

Given this purpose, and the established standing of the Morgan Gorge as an ONF in an ONL, with outstanding kayaking and white water and wilderness values, Whitewater NZ would suggest that this situation alone should be sufficient for DOC to not permit the hydro proposal to be progressed. This part of the DOC Estate has too many high values to warrant either its disposal or inappropriate development or use. In combination with the impacts of the scheme on the established values this adds further to the conclusion that Whitewater NZ reaches, namely that the hydro scheme is clearly contrary to the "protection/preservation" purpose for which the land is held and therefore the concession must be declined.

Area's world heritage status

Although the Morgan Gorge and the Waitaha River above do not have world heritage status as did the land where the Fiordland Link monorail was to be built, they do have ONF and ONL status, respectively. The Minister decided he could not grant the concession because of world heritage status obligations. The ONF and ONL values and areas warrant protection under the RMA from inappropriate development and use. Therefore, it is Whitewater NZ's view that the Westpower hydro proposal is inconsistent with the development and use of the DOC Estate in this case, given that such values exist. The impacts of the scheme are severe and cannot be mitigated, and therefore need to be avoided, and thus the concession should be declined.

Financial viability and electricity need

As discussed previously in this submission Whitewater NZ commissioned Mr Baldwin, an electricity industry expert, to write an independent report covering the need, viability and alternative locations of the hydro scheme. Mr Baldwin found the viability of the scheme was likely to be questionable and certainly likely to be less economic than other more viable alternatives already consented, and that there is no need for the electricity.

Although Westpower have since claimed Mr Baldwin's report is flawed they have not provided any substantive documentation to support this view. In addition Westpower and DOC have refused to release a key report on the economic viability of the scheme prepared by Westpower and forwarded to DOC after submission of the application. This means it is not possible for Mr Baldwin to examine the assumptions made by Westpower in their analysis and so advise us any further. Whitewater NZ remains skeptical that the scheme is economic given Westpower's own earlier comments on the scheme in their application, Mr Baldwin's initial findings, and Westpower's lack of disclosure on the issue. Whitewater NZ is also concerned that DOC does not have the necessary capability to analyse the supplementary Westpower reports, in contrast to the degree of rigour that an electricity industry expert would be able to provide.

Dr Smith considered the financial viability of the monorail proposal in paras 37 to 46 of his letter to the applicant. Amongst other matters he noted DOC does not have sufficient financial expertise to advise him on such matters and that he commissioned expert advice on the matter. These are matters that as Minister he needs to have regard to under the Act (para 38). After considering the

further reports, and the applicant's response to them, the Minister still felt there was enough uncertainty around the proposal that he could not even grant a conditional consent.

Thus in totality the Minister finally concluded that the grant of the concession would be inappropriate in the circumstances of the application because of the reasons set out above.

In the case of the Westpower proposal, DOC considers the economic viability of the proposal is sufficiently well established, based on the supplementary economic assessment reports provided [in confidence] by the applicant. However, given that DOC may not have sufficient financial expertise to make such an assessment, Whitewater NZ feels that this response is possibly somewhat unqualified, and that a more expert opinion should be sought.

In addition, there is one other key point that needs to be considered. The viability of the proposed scheme is incontrovertibly linked to the need for the electricity that the scheme will produce. Currently there is no need for the extra generation capacity; New Zealand is awash with surplus power. This is a key reason why a number of other likely more profitable consented power schemes have not been progressed in recent times and the investigations of many other proposed schemes cancelled; currently they are simply not needed. It therefore follows that the Westpower concession should be declined; there is no sense in desecrating an ONF and ONL when there is clearly no need for the development.

Conclusion

In conclusion, Whitewater NZ requests that the Minister of Conservation's intent to grant a concession to Westpower Ltd to construct and operate a hydro scheme on the Waitaha River be reversed and that the concession not be granted as the proposed development:

- is incompatible with the outstanding natural feature and outstanding natural landscape status of the stewardship land involved
- is incompatible with the purpose of the Conservation Act, and especially with respect to DOC stewardship land
- is not needed for the power it will generate, nor would it provide for greater reliability of power distribution for the West Coast
- is contrary to various Objectives and Policies in Regional and District Plans and the West Coast Conservation Management Strategy
- will prevent current recreational users from accessing the Morgan Gorge and a river reach below, which is an outstanding recreation resource, and
- will severely impinge and intrude on the wilderness, recreational and landscape values of an outstanding wild and scenic West Coast river
- is contrary to precedents set in the decision to decline the Fiordland Link monorail proposal concession.

For DOC to permit this development would be an environmental travesty even if there was a power

need, but far worse when there is none. DOC's primary role is to look after the Conservation Estate, not permit development on it, unless it is not inappropriate on the Conservation Estate. This development is clearly not appropriate at many levels, and therefore the concession application must be declined.



Doug Rankin

**Conservation Officer
Whitewater NZ**

12 November 2016



28 Waipara Street
Cracroft
Christchurch 8025

17 March 2014

Ms Di Clendon
Department of Conservation
Hokitika Area Office
Private Bag 701
Hokitika 7842

Dear DI

Potential Application by Westpower for a DoC Concession for a Proposed Hydroelectric Power Development on the Waitaha River.

Further to the letter from Julia Mackie from your office dated 9 October 2012 to ourselves, and our recent conversation concerning the process around DoC considering a Concession for a Proposed Hydroelectric Power Development on the Waitaha River by Westpower, I wish to register a concern with you that we discussed around the material that DoC considers as part of this process.

Whitewater NZ is very concerned that only material provided by the applicant or by other DoC recreation personnel on the kayaking values of the Waitaha (the kayaking values along with the wilderness values will be seriously impacted upon by the proposed Scheme) will be used in making a decision in principle¹¹² on the application that then will be announced to the public for submissions.

The reasons for these concerns are primarily that documentation provided by the applicant around our values is not accurate nor properly reflects our values and so a decision based on such data may be flawed. In addition, other expert advice sought needs to be from suitably qualified kayakers that know the resources in question and those elsewhere on the West Coast, and other kayakers that understand how the impacts of the Scheme on kayaking values can be evaluated. We know who such kayakers are but do not know what level of expertise will be available to DoC from the parties they might consult.

Like you, we have also received a copy of a draft report for consultation prepared by Westpower and dated

¹¹² We understand that a process of making a decision in principle – where data provided with the concession application and any other relevant information from other parties is gathered and assessed and a preliminary decision made on the concession – before publically announcing the concession application and decision in principle, and then requesting submissions from interested parties, may be used in the DoC Concession Assessment process in this case.



14 November 2016.

Pauline Adams
Department of Conservation
Hokitika.

Dear Pauline,

Federated Mountain Clubs opposes granting Westpower a lease, licence, and easement concession for a hydroelectric scheme on the Waitaha River

We wish to be heard in support of our submission

Federated Mountain Clubs (FMC) was founded in 1931 and advocates for New Zealand's backcountry and outdoor recreation on behalf of 20,000 members. This fundamental function gives our organisation an interest in the Waitaha as a singular place for recreation and as a part of the public conservation estate not yet appositely classified; it also gives us an interest in the spirit, intent, and letter of the Conservation Act 1987.

Recreationists' views of the Waitaha

Morgan Gorge's wild magnificence is revered throughout the tramping, kayaking, and hunting communities; the contrasting peace of Kiwi Flat and the otherworldly beauty of Ivory Lake, above the gorge, are also parts of the vibrant, living korero around the Waitaha. If a hydroelectric scheme were to be built in this valley, parts of it would be sullied, other parts ruined, with mitigation impossible; granting a concession for such would be in strong tension with the protection New Zealanders trust is given such values under the Conservation Act 1987.

Stewardship

The Parliamentary Commissioner for the Environment noted in her 2013 report *Stewardship Land*, that when the Conservation Act 1987 was enacted,

A large proportion of the land put under DOC management was denoted stewardship land. These mostly forested lands had not been protected previously, but were to be protected until their value had been assessed. After assessment, they were to be reclassified into appropriate categories of conservation land or turned over to commercial production.

Given that without appropriate classification the lands enjoy low legal protection status only, she went on to recommend that:

The Minister of Conservation instruct the Department of Conservation to identify areas of stewardship land that are clearly of significant conservation value, and reclassify them in accordance with that value.

The triggers for her report were significant tests of the protection of high value stewardship land that were enabled by the absence of appropriate classifications. It would be unacceptable, given the red flags raised by the report, and, indeed, the challenges that prompted it, for any more such challenges to bear fruit or even distract DOC significantly.

FMC believes that, were assessment to take place, the area affected by Westpower's application would be considered worthy of very high - national park or conservation park - classification. Expert advice to Westpower and hence, the Department, is that, were the appropriate studies to be completed, Morgan Gorge would likely be given outstanding natural feature status, and its wider upper Waitaha catchment would, on district and regional levels, be deemed an outstanding natural landscape. The area is described as near pristine and contains wildlife that needs support, such as whio, kea, and pekapeka. It is our view that the area 'clearly' has the significant conservation value to trigger the reclassification process and that the process should indeed take place.

Lack of understanding of the values of the area in question should not enable a short circuit to the compromise of those values, especially given that they have been strongly signalled. This would be abrasive to the Act, with respect to this case, and, more broadly, as a precedent.

Westpower's case and the Conservation Act 1987

Westpower's case for its proposed scheme is weak and does not meet the test laid down by the Act. Under Part 3B, it is required that:

* the applicant supply reasons and sufficient information to satisfy the Minister that granting the application is *appropriate* and *lawful* (s17S(2)).

- * an application not be granted if *the activity could reasonably be undertaken in another location that- (i) is outside the conservation area to which the application relates; or (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less (s17U(4)(a)).*
- * an application not be granted if *the activity- could reasonably use an existing structure or facility or the existing structure or facility without the addition (s17U(4)(b)).*
- * an application not be granted if *the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held (s17U(3)).*

Robust evidence of high growth in demand does not exist; the application predicts a demand growth rate for Westpower's service area that is significantly higher than that forecast by MBIE in its 2015 national projection and Transpower in its 2014 annual planning report, and its trajectory exceeds the trajectories of its own 2014 information disclosure and asset management planning. Even if demand were to defy present evidence and grow at the rate Westpower predicts, as the company itself acknowledges in the 2014 Asset Management Plan referred to above, the national grid's provisions are sufficient for the West Coast's needs. This calls into question the application's appropriateness (s17S(2)).

Self-sufficiency, reliability, and community ownership are cited as justification for approving the application. These rely on emotional leverage and do not bear scrutiny. As noted above, the national grid provides, amply and reliably; Westpower's own 2014 Asset Management Plan acknowledges this. The company's parochially-driven arguments do not satisfy the appropriateness test (s17S(2)).

Even if need for a further hydroelectric scheme could be demonstrated, alternatives to the proposed Waitaha project exist. These include the Arnold River scheme, expansion of generation from any other existing scheme, and development of any generation scheme already granted but unbuilt. It is abundantly evident that the hydroelectric activity proposed could take place in alternative locations (s17U(4)(a) and (b)).

As noted above, FMC believes that, had the stewardship land in question been properly assessed, it is highly likely it would now be held for specific purposes related to its natural values that would preclude granting approval for this application.

Additionally but not least, it is vital that the matter be approached through the lens of Departmental *raison d'etre* (s17U(3)). There is a raft of factors for consideration, granted, but it is of utmost importance to keep sight of the big picture, encapsulated in s6(a)'s statement of Departmental function: *to manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act*. Granting the application, which would

permanently reduce the rare original power and beauty of the Waitaha, would be contrary to this high-level provision of the Act and to the purposes for which the land concerned is held.

Recommendations:

- * that Westpower's application be declined on the grounds that it does not satisfy the demands of the Conservation Act 1987 as outlined above.
- * that the Department of Conservation assess the significant inherent values of the Waitaha catchment and stewardship land surrounding it for the purposes of classifying it appropriately.

Yours sincerely,

J R Finlayson
Federated Mountain Clubs vice-president.

Contact: Jamie Stewart
Administrator, Federated Mountain Clubs
P O Box 1604
Wellington 6104
04 9346089
secretary@fmc.org.nz

1643

OFFICE OF THE MAYOR
Bruce Smith



FILE REF: CCL 7

Westland District Council
36 Weld Street
Private Bag 704
Hokitika 7842

Phone 03 756 9010
Fax 03 756 9045

Email council@westlanddc.govt.nz

14 November 2016

Director-General
Department of Conservation
Private Bag 701
Hokitika 7842

Attention: Pauline Adams, permissionshokitika@doc.govt.nz

Dear Director-General,

PROPOSED WAITAHA HYDRO SCHEME

Westpower Limited is applying for concessions to construct a hydro-electric power scheme on the Waitaha River on the West Coast.

I am writing in support of their application and the Minister of Conservation's intention to grant a concession to Westpower Limited to construct and operate a hydro scheme on the Waitaha River.

The proposed scheme, located within the Westland District, will provide a number of positive benefits for the West Coast including:

- Westpower Limited is a 100% community owned company, meaning that all benefits are accrued to the community within the Westpower distribution area as well as contributing at a regional, national and international level in terms of renewable energy generation.
- The Scheme will provide a significant long term asset that will be owned by West Coast residents and businesses.
- The Scheme utilises a renewable water resource to generate electricity and which will improve resource efficiency. The Scheme will increase the installed electricity capacity and security of supply within the Westpower distribution area, reducing the need to import electricity. The proximity of the Scheme to end-users reduces transmission losses.

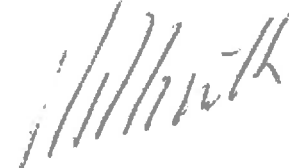
- The Scheme will improve the economic wellbeing of the Westland District and West Coast region by increasing employment, and economic activity in the Westland District and West Coast region during the construction and ongoing operations.
- The improvements in electricity supply, self-sufficiency and security of supply will help sustain employment for the Westland District and West Coast regional economies by providing increased confidence for business investment.

In developing this run-of river scheme, Westpower has taken every step to minimise the effects of its proposal on the environment. The scheme has a very small environmental footprint, and we consider that the mitigation and conditions proposed in the application will adequately avoid, mitigate and manage the effects of the scheme with opportunities to enhance the habitat for blue duck and other species, through weed and pest management or other enhancement projects.

Westpower Limited has a proven record as a sound commercial company and in the development of hydro schemes. The company's recent experience in developing the successful Amethyst Hydro Scheme is testament to this.

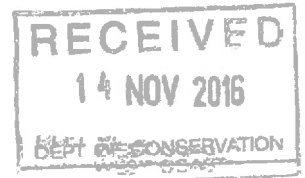
I wish to be heard in support of my submission.

Sincerely



Bruce Smith
Mayor

BS/DM



To :
Director-General
Department of Conservation
Private Bag 701
Hokitika 7842

From: David Vass
P O Box 101
Wanaka 9343
deepdududave@gmail.com
027 443 7922

9th November 2016

Dear Sir/Madam,

I am writing to object, in the strongest terms, to the decision of the Minister of Conservation to grant a concession to Westpower Limited to construct and operate a run of the river hydro scheme on the Waitaha River. I consider there to be no compelling reasons to favour the scheme and many to deny it.

My reasons, in summary, are as follows.

Stewardship lands.

DOC manages stewardship areas under the Conservation Act 1987 to protect their natural and historic values - to 'protect them from development or extractive use until their conservation value has been established'.

The decision to ruin a spectacular natural feature within the DOC estate before this process has been seen through, or even begun, is preposterous and doubtless outside the intention of the Act.

Demand and supply.

The Waitaha scheme is not needed. Demand nationally for more power is relatively flat and there are several already consented schemes presently on hold, including others on the West Coast. The uncertainty of the future of the Tiwai point aluminium smelter allows for the potential of 900 MW of generation capacity to be added to the National Grid in the medium term – enough to cover demand nationally for several decades to come. This is not the time to be permanently destroying outstanding natural features for commercial gain.

Security of supply.

Security of supply is a non-issuc. The National Grid is designed to feed electricity from generation sites to usage areas and is a proven and robust method of doing so. The capacity of transmission lines to the West Coast was only very recently upgraded, indeed doubled.

Hydro power.

Hydro generation is a dinosaur in a rapidly evolving field (wind, solar, tidal, wave, microgeneration etc). A government that doesn't even provide incentives for home solar as a way of easing demand, should not be contemplating the permanent destruction of wilderness features for power generation. To suggest that hydro power is renewable is incorrect – wild rivers are a scarce commodity and they are not “renewable”.

The value of wildness.

New Zealand is a destination visited by many people, often due to it being a place that wild nature can be appreciated. This decision devalues that perception.

Tourism is the main money earner on the Coast – removing a potential drawcard from the tourism mix makes no sense. The Morgan Gorge is a relatively accessible feature – better an upgraded track and some viewing platforms looking into a spectacular gorge than turning the river into a dribble.

Less tangible is the value of wild places in a general sense. These values however have been well recognised as important for protection in many places including the Conservation and National Parks Acts. The Morgan Gorge would be a stellar addition to any national park; just because it is outside the (present) Park boundary is no reason to downgrade its status as an outstanding natural feature.

This decision devalues the perception of New Zealand as a wild and cutting-edge destination, as it does our perception of ourselves as New Zealanders, as an adventurous and environmentally minded population.

Kayaking.

The West Coast is a world-famous venue for high end white-water kayaking. The Waitaha and in particular the Morgan Gorge, is well recognised as one of the pinnacles of kayaking here, both for its difficulty and its unique character and beauty; it is the jewel in the Crown of extreme kayaking.

That the Morgan Gorge is seldom paddled is to miss the point. Every sport has its ‘Everests’; to remove a source of inspiration for achievement, both in kayaking and in a general sense, would be wrong.

Mitigation.

The lack of any meaningful mitigation from Westpower is shameful. At the very least, if the scheme goes ahead there should be provision for a number of no take/recreational flow levels per year, to allow the gorge to be paddled.

I wish to support this submission in person should there be a hearing.

Yours sincerely,

David Vass



1646



Federated Farmers of New Zealand

Submission on Waitaha River Hydro Scheme

14 November 2016

0800
327
646 | FED
FARM
.ORG.NZ

SUBMISSION TO DEPARTMENT OF CONSERVATION ON WAITAHA RIVER HYDRO SCHEME

To: Director-General
Department of Conservation
Private Bag 701
Hokitika 7842
permissionshokitika@doc.govt.nz

Submission on: Intention to grant a run of the river hydro scheme concession to Westpower Limited – Waitaha River

Date: 14 November 2016

From: **Federated Farmers of New Zealand (West Coast Province)**

Contact: Angela Johnston
SENIOR REGIONAL POLICY ADVISOR

M 021 518 271

E ajohnston@fedfarm.org.nz

Address for service: Federated Farmers of New Zealand
PO Box 20448
Bishopdale
Christchurch 8543

I wish to be heard in support of my submission

Intention to grant a run of the river hydro scheme concession to Westpower Limited – Waitaha River

Federated Farmers of New Zealand supports the proposed concession for Westpower Limited to construct and operate a run of the river hydro scheme on the Waitaha River on the West Coast.

The proposed hydro scheme would provide much needed security to the supply of electricity for the South Westland area. This security is especially required for the Westland Milk dairy factory and the region's dairy farmers.

Almost all milk produced on West Coast farms is processed locally by Westland Milk, who is also a major employer in the region. The primary industries make a substantial contribution to the West Coast economy, both directly and indirectly. Primary production directly contributes around 13% of West Coast's regional GDP, in addition to contributions made by the servicing and manufacturing sectors.

To be resilient and sustainable communities require consistent and reliable employment. The proposed construction and operation of the hydro scheme would provide a valuable opportunity to the West Coast community.

Federated Farmers represents 273 members on the West Coast.

**SUBMISSION ON THE WAITAHA DAM
FROM GREY POWER HASTINGS & DISTRICTS ASSN. INC.**

Submitter: Marie Dunningham. President.

Email artful@clear.net.nz

Address

**Grey Power Hastings & Districts Assn. Inc.
P.O Box 98,
HASTINGS 4156**

PH 06 877 8409

Legal address

**C/o McDonald Brummer
Karamu Road
HASTINGS 4122.**

14th November 2016

After consulting with our full committee and also some 36 of our members we wish to submit this plea. We are awaiting further confirmation from our remaining 1500+ members and also from our New Zealand Grey Power Federation.

We respectfully request that the dam above the Morgan Gorge on the Waitaha River be not built. We feel ashamed to be party to such wanton vandalism of our environment, which, like the rest of the whole is under enormous pressure from human needs taking precedence over natural landscape features. (*Reference 1 – Forest and Bird Submission*)

We know that Grey Power Electricity, a subsidiary of Pulse Energy, is 51% owned by the lines company, Westpower. We do not see that as an impediment to our ability to voice our real concerns over the building of this dam without jeopardising our relationship with this company. At a time when

- other countries are demolishing dams, (*Reference 2. Listener, October 15 – 21. 2016*)

- at a time when only 1% of the world's rivers are untouched by human intervention (*Reference 3. Baldwin Report 2015*)
- and at a time when the consumption of electricity is on a downward trend

we see no advantage in having this dam built.

Grey Power Electricity, along with Pulse Energy were recently bought by Westpower Lines Company of Buller and the West Coast with a 51% shareholding. Westpower is the company which wants to put a dam on the Waitaha River which lies between Ross and Harihari. This is an untouched, wild river. ***Only 1% of the world's rivers are now left in this state.*** Surely some rivers should be undisturbed so we know what this country once looked like.

This river, since 1987 is in "stewardship" land. That is, it is not part of a national park or reserve. In the last 30 years 2.8 million hectares, about 1/3 of the total DoC estate, is held in stewardship where it has the weakest level of legal protection of all conservation land.

Meanwhile Westpower has concluded that the Morgan Gorge on the Waitaha is an ideal spot for a power scheme. Westpower plans to build a low dam across the mouth of the gorge, blast a 0.5 km tunnel and construct a powerhouse on the river flats below the gorge. The river will be largely diverted away from the gorge. A road will be carved through the forest for access to the power station. Last month Conservation Minister, Maggie Barry, gave notice of her intention to grant Westpower permission to develop this scheme on DoC land. Public submissions are being received until November 14th. (*Reference 2 NZ Listener, 15 - 21 Oct 2015*)

You will be pleased to know that any blue ducks will be scared off before blasting. Doc will refrain from cutting down any trees that bats roost in. That is all the mitigation that is to be put in place. Diverting the river is to receive no such mitigation. Currently other lines companies are investigating alternative ways of generating power, so there are alternatives. Reference

Source: *The Listener* October 15-21 2016

Westpower Internet site *Proposed Waitaha Hydro Scheme*

8.3 Demand outlook from the Tony Baldwin Consultation.

The outlook for growth in electricity demand in New Zealand remains relatively weak. MBIE has recently released its latest Draft Electricity Demand and Generation Scenarios, which is dated 2 April 2015. Under its draft base case, electricity demand grows at 1.1% per annum compared with GDP growth of 2.0%. Most GDP growth comes from the less energy intensive commercial sector. MBIE notes that: "The average projected GDP growth rate in the Mixed Renewables scenario [the base case] is 2.0% per annum, but electricity demand growth is only 1.1% per annum. This is explained by two effects. The first and most important is that 80% of the assumed economic growth takes place in the commercial sector, which is less energy intensive. This means that the economy will be increasingly weighted towards lower energy intensive sectors, resulting in lower overall intensity. The second is that in general, energy is used more efficiently because of improvements in technology." *Reference 165 in Baldwin Report*. This outlook is relatively unchanged since MBIE's outlook as at 2012, which also projected a base-case scenario of growth at just 1.1% per year: "...the average growth in gross domestic product over the next 30 years is less than the rapid growth seen from 1990 to 2004. On top of this, over 80% of the assumed economic growth takes place in less energy intensive service sectors. Combined with continued energy efficiency improvements, these factors explain why electricity demand grows at a slower rate than in the past." *Reference 166 in the Baldwin Report*. This view is also reflected in the forecasts of the Security and Reliability Council and Transpower. *Reference 167 in the Baldwin Report*. Its Draft Electricity Demand and Generation Scenarios dated 2 April 2015, MBIE outlines a range of scenarios. In the Mixed Renewables scenario (which is the draft base case), total grid electricity demand is projected to grow at an average of 1.1% per annum. This compares with 1.3% and 0.7% in the High Growth and Low Growth scenarios respectively. *Reference 168 Baldwin Consultation Guide – 2 April*.

Reference 165 – Draft Electricity Demand and Generation Scenarios – Consultation Guide – 2 April 2015", paras 182–183, page 45
166 MBIE – "New Zealand Energy Outlook: Electricity Insight" (as at 2012) at page 7

Reference 167 – 1.1% pa is the mid-range scenario in Security and Reliability Council 2014 report (above) at page 15; MBIE’s “New Zealand Energy Outlook: Electricity Insight” (as at 2012) at page 7.

Reference 168 – Note that with effect from its 2015 draft scenarios, MBIE’s Electricity Demand and Generation Scenarios will not include regional or prudent peak demand projections (although each EDGS scenario will have expected peak demand projections associated with it at the island level). Transpower prepares regional peak demand projections and prudent peak demand projections for transmission planning purposes.

We find ourselves in agreement with the submission on the Waitaha hydro scheme from New Zealand Forest and Bird and we endorse their arguments.

We respectfully send you this submission we beg you to consider alternatives to the Waitaha hydro scheme.

We will speak to our submission provided we can afford to and depending on where it is held.

From Marie Dunningham

President, Grey Power Hastings & Districts

Ph. 06 8778409

Email artful@clear.net.nz

1676



14 November 2016

Director-General
Department of Conservation
Private Bag 701
HOKITIKA 7842

Attention: Pauline Adams, permissionshokitika@doc.govt.nz

Dear Sir

SUBMISSION – INTENTION TO GRANT A RUN OF THE RIVER HYDRO SCHEME CONCESSION TO WESTPOWER LIMITED

This submission is in response to the Minister of Conservation's notice of her intention to grant a lease, licence and easement concession for a term of 49 years under section 17Q of the Conservation Act 1987 to Westpower Limited to construct and operate a run of the river hydro scheme on the Waitaha River on the West Coast – the Waitaha River Hydro Scheme (WRHS).

Westpower intends to develop a renewable hydroelectric power scheme to meet the current and future needs of the West Coast community it serves, and is owned by. The WRHS will complement the Amethyst Hydro Scheme, also developed on conservation land.

Development West Coast (formerly the West Coast Development Trust) supports this proposal given the significant economic development benefits that will emerge from the implementation of this initiative. Development West Coast (DWC) recognises that there is a direct correlation between economic growth and the timely provision of robust infrastructure. It also notes that the WRHS is consistent with the Government's goal under the New Zealand Energy Strategy of having 90% of New Zealand's power from renewable sources by 2025.

Development West Coast's (DWC) mission is to create an environment for sustainable investment, development and employment opportunities including partnerships with organisations and community groups engaged in areas such as economic development, environmental sustainability and infrastructure developments. DWC is commercially and politically neutral, and is able to act as a regional advocate on economic development and commercial matters.

The construction and operation of the WRHS will increase economic activity for the local Westland District and West Coast regional economies. DWC understands that the estimated construction cost of the WRHS is between \$80-100 million and will use, where practicable, local products and services (including concrete, tunnelling, civil construction and labour) over the expected four year construction period.



It is estimated that as much as 70% - 80% or \$64 - \$80 million could be spent on the West Coast. Furthermore, employment directly created by this local expenditure is estimated to average 20 full time equivalent jobs over the construction period with wages and salaries paid estimated at \$1.8 million per annum. Once operational there will be an additional fulltime equivalent staff member required to undertake regular operations and maintenance duties.

There are also indirect effects arising from the effects on suppliers of goods and services to the firms directly contracted by the WRHS from within the region e.g. additional jobs and incomes for employees of supermarkets, restaurants and bars as a consequence of the additional expenditure by employees directly involved in construction at the site.

Once constructed and in operation, the WRHS will produce approximately 110-120 GWh per year with a peak output of about 16-20 MW (equivalent to providing electricity to approximately 12,000 households), and in terms of current annual peak demand the WRHS will make the Westpower area almost self-sufficient in local power generation (from 50% to 90%) thereby reducing the need for, and reliance on, electricity generated and imported from outside the region.

The WRHS will help enable the communities of the Westland District and West Coast region to provide for their economic well-being, by making West Coast consumers significantly less reliant on electricity imported via Transpower's transmission system. As Westpower is a community owned company, lower costs will be passed through to local business and residential consumers either via lower retail electricity prices and/or via larger annual rebates to consumers.

DWC also requests that it wishes to be heard in support of this submission and understands that if a hearing is required, that it is likely to occur in the week commencing 5 December 2016.

Yours sincerely



Chris MacKenzie

CHIEF EXECUTIVE OFFICER



14 November 2016

Director-General
Department of Conservation
Private Bag 701
Hokitika 7842

Attention: Pauline Adams, permissionshokitika@doc.govt.nz

Submission on a Notified Application for a Lease, Easement and a Licence for a Hydro Scheme on the Waitaha River

The Environmental Defence Society makes the following submission on the proposal to grant a concession to Westpower Limited to build and operate a run of river hydro electricity scheme on the Waitaha River. The land concerned is stewardship land held by the Department of Conservation.

In our submission the issues are very clear. The grant of the concession would be unlawful and in breach of the Minister's clear responsibilities under the Conservation Act 1987 (the Act). We focus on the reasons why that is the case in this submission. There are a range of other issues that go to the merits of the proposal that we do not traverse but that should not be taken to infer that they are unimportant.

The legal argument is as follows.

Section 17U(3) of the Act states that:

The Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held.

Section 25 of the Act states that:

Every stewardship area shall so be managed that its natural and historic resources are protected.

In *Royal Forest and Bird Protection Society of New Zealand Incorporated v Minister of Conservation* [2016] NZCA 411, the Court of Appeal said:

Our starting point is with the long title to the Act. Its stated purpose is to "promote the conservation of New Zealand's natural and historic resources" which the Department is established to carry out. Conservation is described as meaning "the preservation and protection of natural and historic resources" for the purpose of maintaining "their intrinsic values". In relation to each particular resource, preservation and protection mean "maintenance, as far as is practicable, of its intrinsic values"; and in "its current state" including its enhancement.

That jurisprudence is being challenged in the Supreme Court by the Minister but meantime it stands as good and binding law which she is obliged to follow.

"Intrinsic" values are not defined in the Act but the online dictionary says it means: *of or relating to the essential nature of a thing.*

So based on this jurisprudence, Westpower Limited could only be lawfully granted a concession if doing so maintains the "intrinsic values" of the River. The Outstanding Natural Landscape (ONL) values and the Outstanding Natural Feature (ONF) values form an essential part of the intrinsic values of the River. The officer's report makes it clear that those values are present. It is described there as a pristine wilderness and its undeveloped nature is emphasised. The impacts of the power station on landscape values are variously High, Medium and Low.

The grant of the concession therefore would degrade the intrinsic landscape and natural values and would compromise the area's current natural state and would be contrary to the purpose of the Act.

The second reason why the grant of the concession would be unlawful relates to the availability of alternatives.

The Act states at s17U (4):

The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—

(a) could reasonably be undertaken in another location that—

(i) is outside the conservation area to which the application relates; or

(ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or

(b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.

The Arnold River hydro scheme is an already consented project. It is based on an existing dam structure, is situated on mostly low value conservation land. It is a viable alternative to the present proposal. Given the availability of the Arnold River scheme the approval of the Westpower Limited proposal would be contrary to s17U(4) of the Act.

For the two principal reasons outlined above, EDS contends that the grant of the concession would be an unlawful exercise of her statutory powers and the Minister of Conservation should decline the application.

Yours sincerely



Gary Taylor QSO
Chief Executive
Environmental Defence Society

To: The Director-General, Dept of Conservation, Hokitika

Waitaha Hydro scheme proposal

We write this submission on behalf of the members of our society Te Whare o te KaitiakiNgahere – Dan Lane Chairperson and Kath Lane Secretary.

We are opposed to the application by Westpower Limited for a Lease, Easement and License for a hydro scheme in the Waitaha River for the following reasons:

We believe this development would go against the core of the Conservation Act.

Allowing commercial companies to industrialise public estate should be done minimally and not in areas with such high conservation values as the Waitaha - as pristine and as stunningly beautiful as the Morgan Gorge. It is an amazing place to behold – a gorge that has been gouged out over many thousands of years – interesting rock formation; unspoilt native bush; rare wildlife and untainted turquoise glacial water. Wild places do not get any better than this.

ALTERNATIVES

There are alternative schemes which have been proposed in places on the Coast where development has already taken place such as Arnold River and Stockton. Thus, there is no reason to disturb such an untouched and special place as the Waitaha.

WILDLIFE

The wildlife in the proposal area includes whio, kaka, western weka, bats and geckos – all of which are rare species and should not be threatened in any way. The mitigation factors listed in the proposal simply cannot prevent losses and disruption to these at risk species.

RECREATION

Westpower's own report says that there will be "more than minor" impact on recreation values in this river under the RMA.

Even then, the Report completely underplayed the role the Hotsprings in the Morgan Gorge – quoting it as "inaccessible"; neglecting to notice that it has been listed and access described in the past 3 editions of the guidebook 'Hotsprings of New Zealand' and not mentioning the information which we had previously provided to Sue Cotton of Westpower of our knowledge of the usage of these springs (to follow). They use the hut-book of Kiwi Flat to justify low use of these springs, which completely ignores the possibility of people going for a day-trip only to the hotprings, without going the extra hour for an overnighter to Kiwi Flat Hut.

Several times per year, we, personally, indulge in the awesome and unparalleled hot springs which spurt forth from a cliff face in the middle of the gorge. We have been to many hot springs in our years but none compares with the experience of sitting in a naturally gouged stone bath filled with piping hot water, while 1 or 2 metres from you is a raging torrent of white-water that is the Waitaha through the Morgan Gorge.

We were, in fact, photographed enjoying just this and published in an article entitled "Hot Spring Heaven" in the August 2011 issue of Wildness Magazine.

Over the past 10 years we have taken a number of tourists up this valley, often just for a day trip to the springs, sometimes to Kiwi Flat Hut. On the overnight trips we always detour off the track to the high rocky outcrop further beyond the springs where an incredible view up and down the gorge can be admired and take them across the swing-bridge at the top of Morgan Gorge to admire the view

Looking back over four years of our digital photos to 2013 shows at least 25 different tourists we have taken to Morgan Gorge (see attachments). There were more visitors we accompanied who were not photographed or did not give us copies of photos they took. There were also a number of others we took there in the years prior to this.

All were enamoured with the beauty of the river, even before they got to Morgan Gorge - when they arrived there they were generally awestruck.

Every one of those tourists have made the comment that without a doubt it was one of the most amazing places they had been to and experiences that they had had while in New Zealand. This is the true "clean green 100% pure New Zealand" that they had found and went away telling everyone about - a memory that lasts a lifetime.

We have attached a small selection of the photos taken by some of these tourists who were a mixture of German, Australian, American and English.

In the Proposal the only factor mentioned which would be detrimental to the hotspring experience is the reduced soundscape. However, we believe the consequences to be far greater. The main one being the safety of those bathing in the springs. There will be 250-300 m backwater at the top of the gorge and if this were to be let loose, or a failure of the weir, those bathing in the lower pool risk being swept to their death down the rugged gorge.

Furthermore, they propose a flushing channel from an underground settling basin to flush sediment back into the river "approximately halfway down Morgan Gorge and 10 m above the river bed" which is around where the hotspring is. So bathers would have an unsightly pipe to look at across the river, or at the least (if around the corner), dirty water to look down into (the effect of the flushing sediment on who is also likely to be bad). The severe decrease in the water level will also detract from the powerful experience that bathing in the Morgan Gorge currently is.

The lack of flow will also affect opportunities for kayaking in the river.

For trampers who want to experience the best that New Zealand can provide, the weir, flushing channel, building and road will all severely denigrate that experience.

We believe the whole Waitaha area should be incorporated into National Park so that it may remain untouched as it is such special scenery. At the very least the track on the true left should be maintained, with the beginning realigned slightly down to the river bed, away from the farm. The new track made in recent years on the true right is not worth maintaining in our opinion, as it completely misses the best vistas of Morgan Gorge and access to the hotsprings.

Wai means water and taha means beside - this is the ultimate location to be beside the water in this valley. The name Morgan also relates to water - one interpretation we have read is "beautiful but dangerous". Take the "Wai" out of Waitaha and the name becomes meaningless. Tamper with the water flow in the gorge and Morgan will never be the same.

We wish to be heard at the hearing.

Please acknowledge receipt of this email.

Yours sincerely,
Dan and Kath Lane
Te Whare o te Kaitiaki Ngahere Inc Soc
4194 Hari Hari Highway
RD1
Hari Hari 7884

1683







Forest & Bird
GIVING NATURE A VOICE

**SUBMISSION ON AN APPLICATION BY WESTPOWER LIMITED FOR A LEASE, EASEMENT AND
LICENSE FOR A HYDRO SCHEME ON THE WAITAHA RIVER.**

PERMISSION RECORD NUMBER: WC-34113-OTH

14 November 2016

To: The Minister of Conservation

By Email: permissionshokitika@doc.govt.nz

From: Royal Forest and Bird Protection Society of New Zealand Incorporated

Address for service: P.O Box 2516

Christchurch, 8014

i.miller@forestandbird.org.nz

A. INTRODUCTION

1. The Royal Forest and Bird Protection Society Incorporated ("Forest & Bird") has campaigned for more than 90 years for the protection of New Zealand's native species and the habitats on which they depend. Forest and Bird has been actively involved in raising awareness and seeking to protect the high natural values on the West Coast including the protection of its wild rivers.
2. Nationally, Forest & Bird has approximately 80,000 members and supporters who support the Society's objectives of securing protection for native species, ecosystems, and landforms.
3. Forest and Bird opposes the application for a run of river hydro scheme and seeks that the Minister declines the application.
4. Forest and Bird wishes to be heard at any hearing held on the matter.

B. GENERAL SUBMISSION

5. The proposal is almost entirely within Public Conservation Land and managed as a stewardship area. Section 17U(3) of the Conservation Act (the Act) states that the Minister shall not grant an application for a concession if a proposed activity is contrary to the provisions of the Act or contrary to 'the purposes of which it is held'.
6. Forest and Bird considers that the application is both contrary to the purpose of the Act which seeks to preserve and protect natural resources for the purpose of maintaining their intrinsic values and contrary to section 25 of the Act which states that every stewardship area 'shall be' managed so that its natural resources are protected.
7. Forest and Bird considers that the application should be declined for the following reasons:
 - a. The adverse effects have not been adequately mitigated and the application should be declined under section 17U(2)
 - b. The application cannot be granted due to section 17U(3) as it is contrary to:
 - i. the purpose of the Act, which provides preserve and protect natural resources for the purpose of maintaining their intrinsic values; and/or
 - ii. the purpose for which the land section 25 of the Act which states that every stewardship area 'shall be' managed so that its natural resources are protected.
 - c. The activity can be carried out at an alternative location and the application therefore contravenes S 17U (4) (a) (i).
 - d. The Application is inconsistent with policies set out in Conservation General Policy, including Policies 3(e), 4.5, 9 and 11.3. It is also contrary to various objectives and policies of the West Coast Tai Poutini CMS including sections 3.3, 3.5, 3.6 and 3.7, and section 4.1.

C. SPECIFIC SUBMISSIONS

Adverse Effects

8. S 17U of the Act lists matters the Minister must have regard to when considering any application, and includes the consideration of the effects and the measures that can be

(reasonably and practically) taken to avoid, remedy or mitigate the effects. Forest and Bird considers the following adverse impacts on the natural resources within the proposed development footprint cannot be adequately avoided, remedied or mitigated and will fail to preserve and protect the natural values.

Natural character, Landscape and Visual Amenity

9. There is little dispute by the landscape architects who have assessed the Application that the Upper Waitaha catchment is an outstanding natural landscape by any measure and that the Morgan Gorge is an outstanding natural feature. Forest and Bird concurs.
10. A significant part of the intrinsic and natural character values of the Waitaha River is that it is a "wild river" with unimpeded flow from the mountains to the sea. There is little human influence, particularly in the upper reaches.
11. The significant reduction of river flow, particularly within the Morgan Gorge, will irreversibly damage the natural character of the river. It will no longer be unimpeded but will be predominantly human influenced through the Morgan Gorge, which is a Geopreservation Site. The flow of water through the Gorge will be reduced to nothing more than a trickle.
12. This is a significant and unmitigated effect on the natural character of the Waitaha River.
13. In addition the introduction of industrial elements such as the weir, the intake structure, roading, turbines and a powerhouse will have a dramatic and overwhelming impact on what is currently a wild river within a highly natural landscape.
14. Forest and Bird considers the 'design' elements being proposed as mitigation are inadequate and nothing more than window dressing. They cannot mitigate the loss of what is a currently spectacular and highly natural landscape and feature. No matter what softening, contouring or other design elements are introduced, such as 'roughening' concrete surfaces are used the natural elements will be irrevocably lost.
15. The Application is contrary to the purpose of the Act in relation to:
 - I. the protection of the natural character of the river broadly and the Morgan Gorge specifically and
 - II. the maintenance of the intrinsic values of the river and the public conservation land impacted by the proposal.

Indigenous Vegetation

16. The proposal will result in around 4 ha of indigenous vegetation being cleared or disturbed.
17. The vegetation is considered in the Department's ecological report to be significant and although there are no rare or threatened plant species there are some that are at their southern limits at the Waitaha River (4.125 Concession Officers Report).
18. Forest and Bird considers the wrong test has been applied by both the Applicant and the Department in assessing the impacts of vegetation removal (4.137 Concession Officers Report). The proposal will result in an overall loss of indigenous vegetation, will significantly impact on the naturalness of the area, will result in the loss of habitat for important species such as bats and geckos and will effect the intactness of the vegetation within the public conservation land.
19. The key question is whether the vegetation is being protected and preserved and the intrinsic values of the land are being maintained. The loss of naturalness and intactness is not being adequately mitigated and will result in the mortality of species such as the long-tailed bat and geckos.
20. The question is not whether the impacts will be 'minor' or whether the loss is not great given the degree to which the vegetation is represented in the Ecological Districts. In any event the adverse effects are significant. The loss of habitat of a critically endangered species cannot be considered "minor".

Bats

21. The critically endangered long tailed bat is present within the footprint. The clearance of habitat and tree felling will result in loss of both their breeding and feeding habitat and has the potential to cause the death of bats. Given their threat status this would be of national and international significance.
22. Forest and Bird is concerned that there is no certainty that the Applicant is able to avoid any loss of bat habitat. The Concession Officers Report (4.163) presumably referring to the 'more prescriptive' conditions being proposed by the Department (4.148) concludes that '..if Westpower could avoid felling any bat roosts then the potential impacts on bats could be considered minor'. This is nothing more than a statement of the obvious. What is required is confirmation that bat roosting habitat will not be destroyed. The absence of this confirmation means that the natural values of the site will not be protected and the activity

is contrary to the purpose to which the land is held. Concession should be declined for this reason alone.

23. It is, in Forest and Bird's view entirely inappropriate to countenance a proposal that could result in loss of bat habitat on public conservation land given that they are critically endangered and the Department has a Bat Recovery Plan with a stated Goal *to ensure the perpetuation of all extant bat species and subspecies throughout their present ranges, and where feasible establish new populations within their historical ranges.*¹

Birds

24. There are 10 threatened bird species in the Application footprint, including the critically endangered grey duck, nationally endangered kea and nationally vulnerable kaka and falcon (C O'Donnell Advice).
25. Overall there appears to be an absence of a thorough assessment of the adverse impacts on threatened bird species as a result of the proposal. The Westpower assessment is that the because of the small scale of the scheme and that it (largely) avoids the destruction of mature trees the effects will be 'negligible'. This is despite the loss of habitat for threatened fauna (including a critically endangered species) and potentially the direct loss of fauna during construction. The Concession Officers Report appears to accept this contention.

Aquatic Ecology

26. Fish species found within the footprint of the proposal include three at risk species within the diversion reach, Galaxias sp, long fin eels and torrent fish. A tributary referred to in the Concession Officers Report as the 'stable tributary' is acknowledged as biodiversity hotspot. The major impact on the aquatic ecology would appear to be the diversion of 23 cumecs of river immediately upstream of the Morgan Gorge reducing the river flow for up to 1.6 km.
27. Long term Impacts listed by Westpower, apart from the loss of in-stream habitat, include fish stranding and displacement within the abstraction reach, impeded passage for kaoro and greater access for salmonid, trout and eel, mortality to larval kaoro passing through headworks, settling ponds and turbines, vegetation loss and sediment release when flushing settling basins.

¹ <http://www.doc.govt.nz/Documents/science-and-technical/TSRP15.pdf>

28. There is a long raft of proposed conditions by Westpower along with others proposed by the Department to protect the aquatic values of the mainstream and tributaries. This makes for depressing reading. The many conditions appear to rely on monitoring and reporting and effectively propose an adaptive management regime. These include a fish monitoring and mitigation plan to address fish passage issues, fish survival rates for fish migrating over the weir, entrainment and koaroa survival rates through the turbines. What is to occur if koaroa are being significantly impacted by the infrastructure, what will happen if the stable tributary, the biodiversity hotspot, is demonstrating adverse impacts?
29. Despite these many proposed conditions both the Department and the Applicant acknowledges that 'there is a level of uncertainty that remains regarding the long term effects of the Scheme on the koaroa population upstream of Morgan Gorge and 'At Risk' native fish in the abstraction reach' (Concessions Officer's Report 4.276).
30. What is currently an outstanding and dynamic wild river is being proposed to become highly modified with a loss of natural values, for at least as long as the life of the proposed scheme, being considered for approval on the basis of conditions which rely on baseline data yet to be collected and monitoring and reviewing of them with no assurance about the long term protection of fish species that are already highly vulnerable and at risk of extinction
31. Adaptive management is not "suck it and see". In *Sustain our Sounds Incorporated v New Zealand King Salmon Company Ltd* the Supreme Court put it as follows:^[1]

[125] As to the threshold question of whether an adaptive management regime can even be considered, there must be an adequate evidential foundation to have reasonable assurance that the adaptive management approach will achieve its goals of sufficiently reducing uncertainty and adequately managing any remaining risk. The threshold question is an important step and must always be considered. As Preston CJ said in Newcastle, adaptive management is not a "suck it and see" approach. The Board did not explicitly consider this question but rather seemed to assume that an adaptive management approach was appropriate. This may be, however, because there was clearly an adequate foundation in this case.

^[1] [2014] NZSC 40

32. The Supreme Court considered that, before endorsing an adaptive management approach it would have to be satisfied that:^[2]
- a. There will be good baseline information about the receiving environment;
 - b. The conditions provide for effective monitoring of adverse effects using appropriate indicators;
 - c. Thresholds are set to trigger remedial action before the effects become overly damaging; and
 - d. Effects that might arise can be remedied before they become irreversible.
33. The proposed conditions fail these requirements and should not be endorsed.
34. The conditions fail to provide any assurance that the impacts on the aquatic values can be avoided, remedied or mitigated and are entirely contrary and inconsistent with the purpose for which the land is held.

Whio

35. The whio population in the Waitaha is relatively stable and consists of 1% of the national population of breeding pairs. The whio territory where the weir is proposed is thought to be the most productive at the Kiwi Flat. The area has been assessed as having 'high significance and natural heritage values' for whio according to criteria in West Coast Regional Policy Statement, Westland District Plan and the CMS. (Concession Officer's Report various paras)
36. The Impacts according to the Applicant include effects of disturbance and noise during the construction period, issues around trout and duckling access to Kiwi Flat, on-going effects of the Scheme and effects of water abstraction and sedimentation in and below Morgan Gorge.
37. The weir is proposed to be designed to provide for both whio ducklings and koaro movement through the Gorge. The Department is unconvinced this could be feasible and is proposing conditions as a fall back if that is the case.
38. Again the ability to mitigate impacts on whio appears to be reliant on a series of adaptive measures. These include monitoring of the whio population at Kiwi Flat to Douglas Creek with Amethyst Ravine being monitored for comparison. Where monitoring shows a decline a decline in the Kiwi Flat population (at a time of low stoat numbers and no corresponding

^[2] [2014] NZSC 40 at [133].

decline at Amethyst) a number of measures are proposed in an effort to return the population to pre construction numbers. These include implementing a Who Operation Nest Egg operation or fund a captive bred blue duck programme or extend the predator control commitments.

39. The Officer's Report at paras 4.293-4.294 discusses the uncertainty around the relationship between the Waitaha catchment and other adjacent catchments and how changing the habitat or behaviour of the Waitaha birds could influence the wider population. It is stated that 'there is some suggestion' that the catchments are integral in the meta population but this relationship and 'the various contributions or dependencies of the other catchments are not well understood'.
40. The proposed adaptive management conditions fail to meet the requirements of *Sustain our Sounds* and are inadequate compared to leaving the blue duck alone in the first place.
41. During the construction phase it is proposed to 'scare off' birds from the blasting site or delay blasting until the birds fly away. It is unclear how this is to be monitored other than a requirement to take photos of any birds in the vicinity and providing them to the Department.
42. Given the uncertainty, and the less than reassuring monitoring / adaptive management the application should be declined.

Lizards

43. At 4.182 Adams (2014) states that the cryptic nature of lizards makes any search difficult, and from experience of lizard surveys on the West Coast, "*searches are even more difficult there*". Surveys must be done by highly skilled herpetologist, ideally assisted with specially trained detection dogs. Even under ideal conditions there is a likelihood of missing/ detecting some/many species and detecting even abundant species would require significant effort over time.
44. The Applicant did not find any lizards during their 10 day survey although it would appear it is likely that they are within the footprint, including At Risk Mokopirriakau spp and the Nationally Vulnerable green gecko. Any loss of these species would be nationally significant.
45. The Department considers that there would be localised negative effects through loss of individuals and permanent loss of potential habitat. However it would appear that there has been little offered by the Applicant as mitigation other than the reporting of any incidental

lizard finds are reported to local Department staff to inform them of taxonomy and distribution patterns due to basic information on the way the lizards interact in Westland.

46. Given the uncertainty about the lizard fauna, including those at risk of extinction, the absence of inadequate information to be able to assess effects and the absence of any mitigation being proposed to ensure At Risk species are not destroyed the application fails to give effect to s 17U, s.25 and various CMS policies and should be declined.

Recreation

47. The Waitaha River provides an important recreational opportunity. The numbers of people using the areas are relatively small compared to other areas such as Punakaiki or the Glaciers. However this should not detract from the value of the Waitaha as recreational area for tramping and white water kayaking.
48. The Department has a statutory function to foster recreation.

6 Functions of Department

The functions of the Department are to administer this Act and the enactments specified in Schedule 1, and, subject to this Act and those enactments and to the directions (if any) of the Minister, — ...

(e) to the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism:

49. The impact on white water kayaking is significant. The Waitaha is a testing ground for kayakers where they can prove their skills against an extremely challenging stretch of water.
50. The application will effectively remove one of the premier difficult white water runs from the West Coast.
51. The back country tramping experience will also be harmed by the intrusion of industrial machinery and infrastructure into what is otherwise an area where the only human constructions are the track and huts
52. The removal of kayaking opportunities and degrading of the tramping experience is contrary to the conservation purpose for which the land is held. It is also inconsistent with the conservation of the Department's function to foster recreation.

Alternative locations

53. S 17U (4) (a) (i) of the Conservation Act states that the Minister shall not grant any application for a concession for a structure where they are satisfied that the activity can be carried out in another location that is not on Conservation Land.
54. Several alternative power generation projects have been identified by Baldwin (2015). Many of these projects are already consented, are not on the relevant Conservation Land and could be operational within the relevant timeframe. These alternatives alone are sufficient in their own right to preclude the Minister from granting a concession for Westpower's proposed Waitaha Hydroelectricity Scheme Under section 17U(4)(a) of the Act.
55. Westpower's Application for Concessions and Assessment of Effects asserts the need for the proposed project, however in all regards the activity proposed by Westpower can be carried out and benefits achieved using alternative storage technologies. Supporting material presented by Westpower in their Application superficially claims that lower cost generation and supply will arise from the project along with improved security of supply (Brown, Copeland and Co., 2014). Environmental benefits too are claimed by the authors "if the Scheme results in the avoidance of an equivalent level of generation from gas thermal plants." Furthermore Westpower's Assessment of Alternatives and Options (2014) does not consider alternative technologies. For example modern battery technologies currently being deployed could allow for a more immediate realisation of the claimed benefits without the need to disrupt the Waitaha River.
56. Vector Limited, the Auckland based infrastructure company that is 75% owned by Auckland Energy Consumer Trust (AECT), recently announced the deployment of grid scale battery storage in the Auckland suburb of Glen Innes. Opened and enthusiastically endorsed by the Honorable Simon Bridges, Minister of Energy and Resources, this technology will allow Vector to continue to provide power supply whilst deferring a conventional upgrade to the Glen Innes substation. The batteries have a storage capacity of 1MWh - 2.3MWh - the equivalent to powering 450 average homes for nearly two and a half hours – to which incremental increases in storage capacity can be readily added. Vector's chief executive Simon Mackenzie states that the battery storage system could help to reduce peak demand and extend the life of the substation, deferring capital expenditure and providing supplementary power to the Glen Innes area (Vector, 2016 and New Zealand Herald, 2016).

57. Battery storage technology of this nature could provide Westpower with an immediate alternative to the proposed Waitaha River hydro electricity scheme, providing for:
- a. Efficiency - the deferment of capital investment and risk mitigation associated with investment that may ultimately prove to be inefficient and unnecessary
 - b. Competitiveness - lower cost power leveraging pricing differentials - storing off-peak and utilising the stored capacity during peak periods
 - c. Reliability and security of supply - provide storage capacity that could be utilized during transmission outages providing for an uninterrupted power supply; and
 - d. Sustainability – through avoidance of carbon emissions and avoiding unnecessary and irreparable disruption to landscapes, rivers and ecosystems.
58. Modern battery storage technologies provide a credible alternative that allows for the Waitaha River to be maintained in its current state whilst meeting all of the demand, competitiveness and reliability of supply benefits that are claimed by Westpower to accrue from the proposed disruption of the Waitaha River. It is in Forest and Bird's view a significant oversight by the Department Report not to have considered the full suite of alternatives when agreeing in principle to a concession for Westpower to conduct the proposed activities on Conservation Land.

CONCLUSION

59. This application will involve the loss of the Morgan Gorge as an outstanding natural feature. It will go from being an impressive mountain gorge providing an extreme challenge to the most competent of white water kayakers to a trickle of no moment, except for what it once was.
60. This will have significant impacts on the Waitaha River. It will no longer be a wild river, its uninterrupted flow being interrupted by an industrial structure. This is a significant impact on its natural character and intrinsic values.
61. There are also impacts on ecological values, including the critically endangered long tailed bat as well as various other threatened species known to live in the area.
62. There has been inadequate assessment of these impacts. It is not even known if any bat roosting trees will be removed. Given the inadequate assessment it is unsurprising that the conditions that provide for adaptive management fail to meet minimum standards.

63. For these reasons the application should be declined.

64. The land is stewardship land, it is held for conservation purposes and managed so its natural and historic resources are protected. The application, which involves such significant impacts on natural character and ecological values, does not protect the natural and historic resources and is contrary to the purpose for which the land is held. The application must be declined if it is contrary to the purpose for which the land is held.

65. The application should also be declined under section 17U (4). There are alternatives to this project which means that the application cannot be granted.

Jen Miller
Canterbury West Coast Conservation Manager

References

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New Zealand Herald (2016). Tesla power for Glen Innes. 20 October 2016.



Submission to the Director-General

By Pioneer Energy Limited

**As relates to: Westpower Limited application
for concession for a run-of river hydro-
scheme**

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Document: Submission to the Director-General by Pioneer Energy Limited as relates to: Westpower Limited application for concession for a run-of river hydro-scheme

Date: 27 October 2016

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Reviewed By: Werner Murray

Client Review: Tony Jack

Version Number: A

1. OVERVIEW

- 1.1 This is a submission by Pioneer Energy Limited (Pioneer) on a notified application for concession activities by Westpower Limited (Westpower) associated with a run-of-river hydroelectricity generation scheme on the Waitaha River, Westland District. The permission record number for this proposal is identified as WC-34113-OTH.
- 1.2 The submission, whilst lodged against this particular concession application, is a general submission to object to the inconsistent stewardship by the Department of Conservation (the Department) in decision-making as relates to the management of activities within national conservation estate. In this respect, Pioneer would consider themselves to be neutral to the intention to grant a lease, licence and easement concession for a term of 49 years under section 17Q of the Conservation Act 1987 to Westpower to construct and operate a run of the river hydro scheme on the Waitaha River on the West Coast provided it was done so in a consistent and robust manner.
- 1.3 Pioneer wishes to be heard in support of their submission and if others have made a similar submission, will consider presenting jointly with them before the Director-General in support of their submission.

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PURPOSE OF DOCUMENTATION

- 1.4 In accordance with Section 49(2)(a) of the Conservation Act 1987 (the Act), this document is a submission made in writing to the Director-General on a notified application to grant a lease, licence and easement concession.

2. INTRODUCTION

'A HISTORY' - NEW ZEALAND'S STRATEGIC APPROACH TO ENERGY

- 2.1 New Zealand has a generous proportion of electricity supply from renewable sources mainly in the form of hydro and geothermal generation. Successive governments have considered the merits of renewable energy generation (REG), however, increasing international climate obligations set upon the country in the late 90's and early 2000's stirred political action in the form of an Energy Policy Framework which was released by the Government in October 2000 with the objective to *"ensure the delivery of energy services to all classes of consumer in an efficient, fair, reliable, and sustainable manner"*. The outcome of this policy was that *"environmental sustainability, including continuing improvement in our energy efficiency and a progressive transition to renewable sources of energy"*. The National Energy Efficiency and Conservation Strategy (NEECS) was borne and guided from this overarching policy framework.
- 2.2 Between 2000 and 2002, the Central and Local Government Action Plan tasked the Ministry for the Environment (MfE), in conjunction with the Energy Efficiency and Conservation Authority and Local Government NZ to put the NEECS into action. The NEECS had by this time morphed into a 'foundation policy' in the Government's announcement on a climate change policy package which identified greater use of REG and improved energy efficiency as being key ways of reducing New Zealand's emissions of greenhouse gases at the least cost to the economy. If greenhouse gases could not be offset by the use of REG's, more reliance on sink credits would be needed.
- 2.3 By the end of 2002, it was clear that New Zealand needed to respond to international climate change obligations and to protect its 'clean green' image as an environmentally responsible nation. Consequently, and after thorough quantitative and qualitative analysis, a package of amendments were initiated to be able to achieve responsible changes in the field of resource management which in turn was expected to stimulate interest and support investment in new REG developments. These changes included amendment to include a requirement of Resource Management Act 1991 (RMA) decision-makers to have particular regard to *'the effects of climate change'* and *'the benefits to be derived from the use and development of renewable energy'*.
- 2.4 Following these changes, in 2007, the New Zealand Energy Strategy (NZES) set a target that 90% of electricity generation would be from REG by 2025 and that this target would only be achieved through an injection of Government direction in the planning framework by a supporting National Policy Statement.
- 2.5 Although considered ambitious, the target of 90 % of electricity by 2025 from REG was used as the basis of the Board of Inquiry process on the proposed National Policy Statement for Renewable Energy Generation (NPSREG) which was publicly notified in September 2008. The NPSREG in its final form was made operative in 2011.

- 2.6 Fast forward to the present day and the NPSREG has permeated itself through all tiers of resource management planning giving direction and consistency in the consenting process. This in turn has led to a change in attitudes towards environmental modifications associated with REG, working hand-in-hand with the target of increasing the proportion of investment into the investigation and development of new REG infrastructure.
- 2.7 These adaptations within one facet of environmental management gives tangible effect to the NZES which is reviewed every 10-years and provides a plan for the energy sector.
- 2.8 While the NZES is aimed at all levels of government, it seems to be rarely considered or even mentioned in the processing and decision-making for activities requiring legal authority to pass over or, reside on, land within the conservation estate. This in turn leaves REG proposals at the mercy of an unduly impeded and variable decision-making process under the Act.

CONSERVATION ACT 1987

- 2.9 Section 5 of the Act establishes the Department while Section 6 outlines the functions of this state department as being;

The functions of the Department are to administer this Act and the enactments specified in Schedule 1, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—

- (a) to manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department:*
- (ab) to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:*
- (b) to advocate the conservation of natural and historic resources generally:*
- (c) to promote the benefits to present and future generations of—*
 - (i) the conservation of natural and historic resources generally and the natural and historic resources of New Zealand in particular; and*
 - (ii) the conservation of the natural and historic resources of New Zealand's sub-antarctic islands and, consistently with all relevant international agreements, of the Ross Dependency and Antarctica generally; and*
 - (iii) international co-operation on matters relating to conservation:*
- (d) to prepare, provide, disseminate, promote, and publicise educational and promotional material relating to conservation:*
- (e) to the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism:*
- (f) to advise the Minister on matters relating to any of those functions or to conservation generally:*
- (g) every other function conferred on it by any other enactment.*

2.10 Overall, the Act seeks to promote the conservation of New Zealand's natural and historic resources, and for that purpose to establish a Department of Conservation.

2.11 In many situations relating to the establishment of hydro electricity generation schemes, easement or occupation over land administered by the Department is required. This is because hydro-schemes often seek to be installed in remote areas which may be Stewardship land (Conservation Areas) to avoid significant adverse environmental effects which may be more prevalent in more frequented areas. Furthermore, due to their natures, these installations will often require passage and instalments on and over Marginal Strip areas.

2.12 Land held under the Act is held for conservation purposes whereby conservation is defined in the Act as;

'...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.'

2.13 Preservation and protection are further defined in the Act as being;

'preservation, in relation to a resource, means the maintenance, so far as is practicable, of its intrinsic values.'

'protection, in relation to a resource, means its maintenance, so far as is practicable, in its current state; but includes—

- (a) its restoration to some former state; and*
- (b) its augmentation, enhancement, or expansion.'*

2.14 Part 3B of the Act sets out the framework for the Minister in considering whether to grant or decline concessions or whether further information is required to make such a decision.

2.15 Part 3B of the Act, specifically s.17U, offers the Minister a reasonable level of discretion when considering a proposal. One such discretionary matter is that the Minister may require an applicant to provide an environmental impact assessment in the form set out in Schedule 4 of the RMA.

2.16 Therefore, within the context of Schedule 4 of the RMA, there is capacity for the Minister to consider an assessment of the activity against any relevant provisions of a document referred to in s.104(1)(b) of the RMA being;

any relevant provisions of—

- (i) a national environmental standard;*
- (ii) other regulations;*
- (iii) a national policy statement;*
- (iv) a New Zealand coastal policy statement;*
- (v) a regional policy statement or proposed regional policy statement;*

(vi) a plan or proposed plan

- 2.17 However, due to there being no higher mandate contained in the Act to consider certain matters a particular way (i.e., as being nationally important), there remains the problem that decisions to grant continue to contain variable conditions that are the end-product often of a costly, long and arduous process. This is the primary focus of Pioneer's submission which is outlined in the next Section.

3. OBJECTION DISCUSSION

- 3.1 Pioneer submits neutrally to the intention to grant a lease, licence and easement concession for a term of 49 years under section 17Q of the Conservation Act 1987 to Westpower to construct and operate a run of the river hydro scheme on the Waitaha River on the West Coast provided it was done so in a consistent and robust manner. Pioneer do not believe that the current easement concession achieves this and, in making this submission, does not object to the intention to grant concession but rather objects to the precedents that particular conditions pose for the REG sector.
- 3.2 The following discussion starts with the identification of specific issues with the implementation of the Act by the Department followed by an assessment on why these are issues finishing with outcomes sought on the issues identified.

ISSUES

- 3.3 *Issue 1: Inconsistent annual activity fee pricing, including a lack of transparency in the methods and analysis involved in the setting of annual activity fee pricing.*
- 3.4 *Issue 2: Inconsistent approach to deciding on terms of concessions.*
- 3.5 *Issue 3: Unduly impeded nature of the process as relates to REG.*

ANALYSIS OF ISSUES

Issue 1

- 3.6 A brief comparison of similar activity concessions granted by the Department recently and in the last 10 years has shown that there has been a general acceptance by the Department to require by condition that an annual activity fee of 2-3% of gross operating revenue is paid. In one such notified concession officer's report, it is stated that, *'the basis for hydro-power fees are a specialised area and are often the basis for independent valuations. A fee research report undertaken has shown hydro-power schemes across public conservation land has shown the activity fees to generally be charged at between 1% and 3% of gross annual revenue depending on the percentage of conservation land the scheme is on...As this scheme is only partially on public conservation land, the lower end should be used and the fees set at 2% of gross annual revenue'* (Report No. DOC-2700147, September 2015).

- 3.7 In this instance, the Departments Officer writes in their Report that the Department *'considers the market fee for this activity to be 6% of gross operating revenue as established by our current framework for this activity type.'*
- 3.8 The inconsistency is a frustration to the energy sector with different projects being held to different standards resulting in different and potentially significant economic disparity in the industry. How this occurs is the question Pioneer asks the Minister to consider when deciding to grant a condition which could potentially set a precedent.
- 3.9 Unfortunately, in all concession activities reviewed; fee research papers, methods and 'frameworks' relating to annual activity fee setting for any activities on public conservation land have not been referenced in the Reports nor are the materials retrievable in a free and easy manner (i.e., from a document library on the Department's website).
- 3.10 In terms of the setting of an annual activity fee, it is unclear why key information as relates to a 'market value' are not made available either in the Officer's Report to the Decision-Maker or by other publicly accessible means. Through further correspondence with the Department we have become aware that such information may need to be specifically requested in the form of an Official Information Act 1982 (OIA) request. The lack of referencing in reports makes it difficult to be able to make an OIA request however as official information requested shall be specified with due particularity in the request (s.12(2) of the OIA).
- 3.11 Whether or not a market fee has been established through a robust process with clearly stated methodology remains unclear, however, what has become evident is that if such a process has been carried out, it has been conducted without industry knowledge. As far as Pioneer are aware, there has been no industry consultation surrounding the setting of a market fee for REG activities which require concession over Conservation estate land. While such consultation is not a requisite and is neither demanded by Pioneer, it would seem more consistent with the steps taken by other government departments with the focus being achievement of the strategic target set in the NZES. For example, one of the NPSREG key messages regarding its implementation by resource management practitioners is that authorities are encouraged to engage early with electricity generators to understand issues associated with developing, operating, maintaining and upgrading new and existing REG activities to be able to give effect to national energy policy and international climate change obligations.
- 3.12 Without knowing the specific framework and method which has been applied to set a market fee for these types of activities, it is unclear whether the NZES target has even been considered in the valuation assessment for the industry. The fact that predictions for significant increases in installed capacity of around 77% to meet demand and the NZES target were made in 2010 does not seem to feature anywhere in the analysis relating to the setting of the market fee in any of the comparative documentation.
- 3.13 Finally, the affordability of REG becomes extremely exposed when external costs are not fully comprehended. The annual activity fee is something that Pioneer expects can remain as an

affordable and fair payment for the benefit that any REG installations derive from use of public conservation land. A problem arises for the country when costs associated with concession acquisition ends up discouraging investment into REG. As was recognised in the BOI process to establish and implement the NPSREG, it would be difficult if not impossible to meet the NZES target under the conditions of the regulatory framework at that time and therefore the NPSREG was needed to strengthen policy direction and consistency in decision-making. Creating further barriers by pricing generators out of the market or destabilising the economics within the sector would not be consistent with the NZES and would be detrimental to New Zealand's ability to meet its obligations relating to international climate change policy.

Issue 2

- 3.14 Pioneer fully supports the recommendation to grant concession to Westpower for 49 years due to the life of the asset and level of investment.
- 3.15 The issue that Pioneer wish to highlight is that there have been very apparent inconsistencies in the setting of terms of concession activities specifically as relates to REG and that this needs to be addressed to ensure that future proposals have a level understanding of the Department's expectations.
- 3.16 For example, Westpower applied for a 49 year term of which the Officer has considered is a reasonable and appropriate term for a number of reasons, in particular, the Officer notes that, *'the Department considers that these matters are of such a high level of investment and planning for community needs in terms of power provision are exceptional...'*. Yet, in April of this year (2016), Pioneer had their proposed term reduced from 49 years to 30 years for a new hydro-scheme in the Central Otago district.
- 3.17 Pioneer had advised in their application that the proposal was of local and national significance and that the term requested was consistent with other concessions granted by the Department for similar activities. In response to this commentary, the permissions officer advised, *'We do acknowledge that other concessions granted to the applicant may have been for a longer term in the past. What has changed since the other concessions were granted is that there has been a considerable amount of internal work on what is considered an exceptional circumstance. This work includes case law, legal opinion, and Departmental policy and the threshold of what is considered an exceptional circumstance has increased. Recent opinions have stated that exceptional circumstances should relate to the purpose of the Conservation Act (i.e. not economic), should be unique and should be outside the control of the applicant. In the past the lifetime of the structure could have been considered an exceptional circumstance but this is no longer the case. It is also not considered an exceptional circumstance to align the term to the resource consent length as this is not a unique occurrence. The recommended term length will remain at 30 years.'* (L Trewavas, personal conversation, 22 April 2016 12:15pm).
- 3.18 It may be considered that the scale and magnitude of investment between the two projects is different and therefore the terms may be different. However, in the eyes of the NZES, both projects would need to be treated equally so as not to discourage the development of REG,

recognising that REG activities at any level are a necessity to be able to achieve the target set. To be absolutely clear, Pioneer supports the granting of a term of 49 years for this proposal and for future proposals for REG.

- 3.19 Such inconsistency in concession term setting, while seemingly quite harmless, creates a false economy in the regions because some Conservancy areas are conditioning differently to others in this respect. New installations will be investigated in areas more likely to grant favourable conditions as, the longer the term of the concession, the more secure the investment is perceived to be. This has immense implications to the achievement of both national and, in particular, regional policy implementation for energy objectives.
- 3.20 The South Island contains the dominant proportion of hydroelectricity generation schemes in the country. And yet, all of these regions acknowledge in their policy statements that they still remain net energy importers.
- 3.21 A review of all four South Island Regional Policy Statements identified key messages in relation to the benefits to be derived from REG and efficient use of energy. Energy is a critical factor in enabling each and every region's communities to provide for their well-being, health and safety. Regional economies depend on accessible and reliable supply of energy as it is an essential resource for the transport, agricultural, industrial, commercial and residential sectors. It is widely accepted that the benefits of REG at all scales can avoid, reduce or displace greenhouse gas emissions to aid in meeting international obligations. However, one of the major benefits that everyday people experience first-hand is the security to which locally sourced electricity gives to communities, particularly the many remote communities in these regions. This in turn supports thriving and resilient communities.

Issue 3

- 3.22 New Zealand has set ambitious energy generation and efficiency targets. However, at the time these targets were set, interrelated influences and drivers for the development of REG were identified so that they could be brought together in an integrated manner to ensure a cohesive response to the targets.
- 3.23 The first order drivers were considered to be of a political, economic, technological and socio-cultural nature. In other words, the Government had to lead from the front; the benefits of REG needed to be mandated; this would stimulate competitiveness in the energy sector to seek out and invest in REG over fossil-fuel based generation; new technologies would be supported alongside traditional REG activities to meet the NZES target; and REG would sustain New Zealand's reputation as an environmentally responsible nation, including meeting international climate change obligations.
- 3.24 The mandate afforded to REG activities by Government was in the form of regulatory and legal amendments within the practice of sustainable resource management where it was considered that energy policies and climate change policy were partly dependent for their implementation.

- 3.25 However, Pioneer's involvement in REG has made them vividly aware that REG activities are also becoming increasingly dependent on a clear and consistent implementation of the Act. Without this, the stimulus to the energy sector to move to REG from a clearer resource management process is stalled at the point at which authorisations are sought from the Department. To be clear, Pioneer objects to the implementation of the Act and not the Act itself.
- 3.26 There is a disconnect between how practitioners approach REG activities in the form of resource management decision-making to that of how the Department approaches such activities. While it is accepted that the two enactments have different purposes and principles, there is clearly a connection in how effects of activities are considered, including the opportunity for applicants to identify alternative methods and locations and to offer measures which avoid, remedy or mitigate adverse effects. In this respect, the Act relies heavily upon the RMA which is a broad body of law supported by a generous background of tested case law and precedent. The opportunity for further connectivity between the two enactments therefore exists, however, as with the resource management sector, such change is probably not going to be possible without stronger policy direction at the national level.
- 3.27 The RMA works well in its direction for decision-makers to have consideration to a number of matters. However, Pioneer expects that an over-arching national energy policy would be considered by the Minister in making their decision to grant concessions subject to conditions which may set precedents for the energy generation industry, whether or not this has been specified as a particular consideration in the Act or not. Any statute which affects the capacity for REG development should be implemented in a manner which identifies the benefit of that development under the NZES as well as other underlying energy policies.
- 3.28 It is expected that should such an approach be taken, that the Department would actively seek to adopt a positive and proactive response to REG activities at national and local levels.

4. OUTCOMES SOUGHT

- 4.1 Pioneer objects to the annual activity fee condition on the intended concession agreement being set at 6% of gross operating revenue and seeks for this to be reduced to 2-3% which is considered reasonable market value for the benefit received from use and occupation of public conservation estate. Reasons for this objection are set out in Section 3 of this submission, however, in summary, the lack of supporting material which befits a 100% increase in market valuation from recent and comparative activity fees is the primary concern for Pioneer regarding annual activity fee setting for REG activities.
- 4.2 Pioneer requests that the term of concession be issued for 49 years to Westpower and that all future proposals for REG which specifically seek terms of 49 years are granted such terms. Decision-making in this capacity would be consistent with the over-arching national policy which requires all REG to be viewed equally to support national and international energy policy obligations and targets. Concession terms whilst seemingly independent to market influences,

will have the effect of discouraging REG development in areas where more restrictive conditioning in the form of concession terms are issued and vice versa.

- 4.3 Issues 1 and 2 are seen by Pioneer to be products of systematic failures in the implementation of the Act when it comes to REG. There is inadequate guidance in the framework of the Act in relation to the benefits and importance of REG. Therefore, despite government attempts to draw attention to and debate the merits of ensuring that the benefits of renewables receive national recognition, the development of REG, whatever its scale, has received uneven treatment by the Department when considering applications for concession. Many improvements to other bodies of legislation have been made to streamline and make processing of REG activity approvals less impeded. Consequently, the primary outcome sought by Pioneer relating to procedural issues is that the Department establishes first order policies specifically for REG that strengthens central government energy policy direction within the framework of the Act. To support this first order policy, a second order policy which requires the Department to support the achievement of the Government's current target of 90% REG by 2025 is also seen as an important step in the integration of national energy and climate change policy responses. While this does not ease tensions which may arise between the need to manage land for conservation purposes and to manage for REG activities, it instructs those considering and addressing these tensions that the benefits of REG are not up for debate and ensures that those activities are explicitly acknowledged in a clear and consistent manner.

5. CONCLUSION

- 5.1 Pioneer has made submission to the Director-General on a notified application for concession activities by Westpower Limited (Westpower) associated with a run-of-river hydroelectricity generation scheme on the Waitaha River, Westland District. The permission record number for this proposal is identified as WC-34113-OTH.
- 5.2 The submission, whilst lodged against this particular concession application, is a general submission to object to the inconsistent stewardship by the Department of Conservation (the Department) in decision-making as relates to the management of activities within national conservation estate.
- 5.3 The ultimate resolution being sought by Pioneer is a reflection and statement by the Minister as to whether the concession application process for REG, including the subsequent variability in drafted conditions, meets the Government's objectives, detailed in the NEECS, the NZES and the raft of climate change policies in place.
- 5.4 Pioneer wishes to be heard in support of their submission and if others have made a similar submission, will consider presenting jointly with them before the Director-General in support of their submission.



TARARUA TRAMPING CLUB Inc

1607

P.O. Box 1008, Wellington 1, New Zealand. Clubrooms in Moncrieff Street
Email: secretary@ttc.org.nz Internet: <http://www.ttc.org.nz>

14 November 2016

Director-General
Department of Conservation
Private Bag 701
Hokitika 7842

Attention: Pauline Adams, permissionshokitika@doc.govt.nz

SUBMISSION on the Minister of Conservation's intention to grant a lease, licence and easement concession for a term of 49 years under section 17Q of the Conservation Act 1987 to Westpower Limited to construct and operate a run of the river hydro scheme on the Waitaha River on the West Coast.

SUBMITTER: Tararua Tramping Club, P O Box 1008, Wellington 6140.

The Tararua Tramping Club is the oldest Tramping Club in New Zealand, and the largest, with 715 members currently, including those who kayak as well as tramp.

This year seven of our members went up the Waitaha river to Ivory Lake, which is one of the pinnacle tramps in this country. They and we as a Tramping Club were deeply dismayed to hear about the Minister's intention to grant this concession, which will irrevocably alter the pristine Waitaha river and its awesome landscape.

We believe this concession should not be granted because:

- It runs counter to the purpose of the Conservation Act, particularly the purpose of DOC stewardship land. It is an accident of history, not merit, that the Waitaha River and its catchment are not included in the core DoC estate. We do not see how the hydro scheme proposed can be compatible with the qualities of the Morgan Gorge and of the Waitaha River from the bottom of the Morgan Gorge to the headwaters. They fit the resource management criteria of "outstanding natural feature" and "outstanding natural landscape" respectively.
- The mitigations proposed are insufficient to safeguard the Morgan Gorge and the Waitaha River. The proposed hydro scheme will irrevocably alter the river's flow and the landscape and fauna where the scheme will be built, even if the permission is only given for 49 years. Should Westpower's assumptions about the viability and financial gains from this project prove to be unfounded, the damage will already have been done - for no gains to anyone.

- We believe that DoC should ensure that wilderness areas of such quality remain in our publicly owned conservation estate. Morgan Gorge and the Waitaha River offer some of the finest challenges for kayakers, and these cannot be duplicated elsewhere. The value of this river goes beyond the number who currently experience it themselves: as with any wilderness area of great beauty and challenge.
- Finally, having read the Concession Officer's Report and associated papers, we are not convinced that this hydro scheme is essential. Section 17(U)4 of the Conservation Act states that the Department of Conservation cannot grant concessions for activities that do not need to be undertaken, or can be undertaken in other locations. New Zealand has a plentiful electricity supply, and there are other locations where Westpower could use if it had to.

Yours sincerely,

Peter Barber,
President,
Taranua Tramping Club

Email: ttc-president@ttc.org.nz
Phone: 027 750 5443

1633

Lucy Croft

From:
Sent: Sunday, 13 November 2016 7:40 p.m.
To: Permissions Hokitika
Cc: Maggie.Barry@parliament.govt.nz
Subject: Attn: Pauline Adams
Attachments: Submission Opposing Waitaha Scheme Rutherford Watch.pdf

Kia ora,

I am emailing this submission on the behalf of 13 members of Rutherford Watch 623, who are currently attending an Outward Bound Course.

Regards,

Tui Kraal
Outward Bound Instructor

Attention: Pauline Adams and Maggie Barry,

We are opposed to the application by Westpower for the run of the river scheme on the Waitaha River.

We are a team of young adults who come from a variety of different backgrounds and we are all currently attending an Outward Bound course. Over the past week we have had the opportunity to immerse ourselves in New Zealand's stunning natural environment, and we strongly believe that all those who visit and live in New Zealand should be able to experience the Waitaha River in its untouched state.

The construction of this Hydro Dam will be disrespectful to the people of the West Coast and the rest of New Zealand, as it is to be created entirely for monetary gain.

We were shocked when the proposal of this scheme was raised in a group discussion, as we take pride in our beautiful sceneries, and believe that this project is an inefficient use of natural resources.

We are very aware that every action has a reaction and the impact of this scheme will have greater negative consequences as opposed to positive ones.

Yours sincerely,

Rutherford Watch 623.

Submission on the Proposed Morgan Gorge run-of-river hydropower scheme

**Michael North
96 Biggsburn Way
Wakapuaka
Nelson 7071**

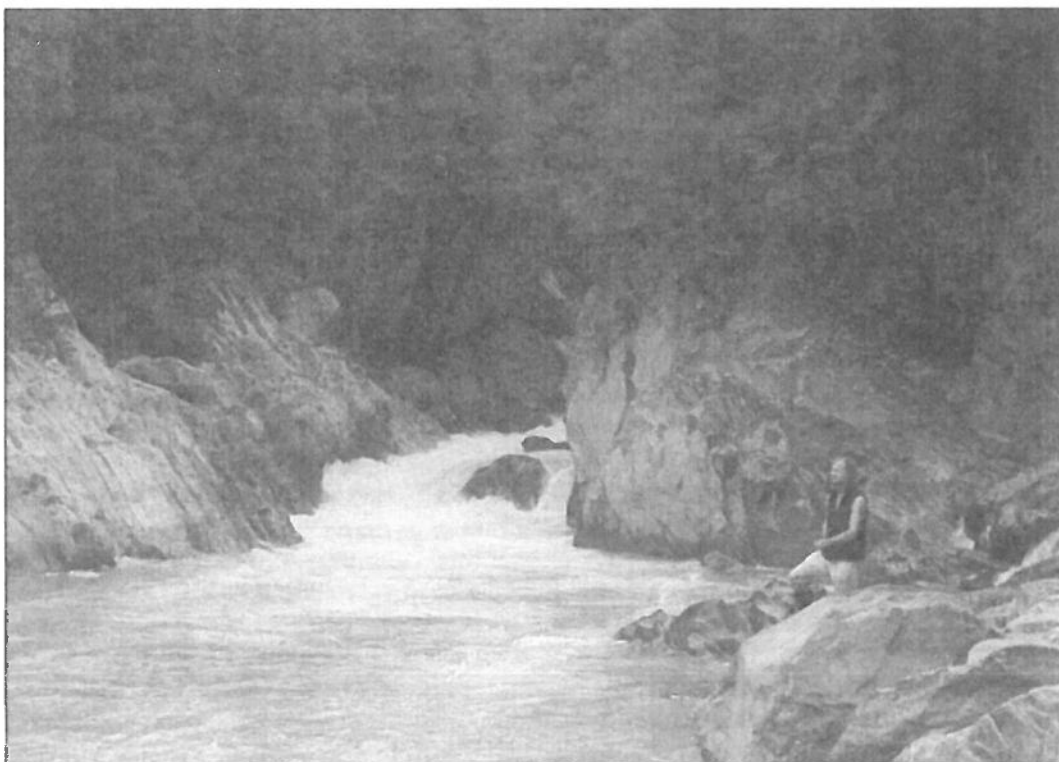
**03-5452431
totara@ts.co.nz**

Outcome sought

That the application be declined.

Preamble

In autumn 2009 a friend and I walked the entire length of the Waitaha River Valley from Park Dome (2340m) in its very headwaters to the public road end beyond Robinson Slip. This was part of a much longer tramp. The experience of the valley is one of the highlights of my tramping life. Of exceptional interest to me were the glacial features such as Ivory Lake, and the several spectacular river gorges, of which the Morgan Gorge is one. But greater than that was the extraordinary sense of wilderness experienced - of days along an untamed wild river that still ran free from snowfield to ocean, and of the absence of industrialised infrastructure that would have destroyed such an experience.



Lower end of the Morgan Gorge coming out of a 10 day tramp

The intangible qualities of wilderness, whether experienced or simply inherent in the landscape, are difficult to articulate against hard-nosed development arguments that impacts upon them. Wilderness is so often the loser in such a conflict. My submission

is a cry for the wild, which cannot otherwise defend itself against the relentless appetites of our industrial age.

Main Points

1 The proponents claim that de-watering of the Morgan Gorge will have only minor effects on the wilderness integrity of the gorge. This reductionist thinking diminishes the gorge to nothing more than static rock walls + water: Take the water away and voila, the gorge is still a gorge.

Rather, a natural feature such as this is defined as *much* by process as by its physical features. To reduce it to just its physical components belies a lamentable lack of comprehension of what is meant by wilderness and wilderness values: Remove the water and the gorge is irrevocably altered to something entirely different. Artificially removing the processes of the gorge's formation destroys its very essence.

2 The location of the proposed development is within Schedule 4 lands that have very weak protections against development. That such an area of country still falls within this category is a spectacular failing of DOC, and respective governments that have failed to fund DOC sufficiently to undertake the necessary review of such areas. Schedule 4 is a 'holding pen' for unclassified lands pending review. It is hard to imagine the upper Waitaha catchment failing to reach the highest levels of significance with such a review.

The Morgan Gorge is within remote back-country, an entirely inappropriate place for such an industrial development.

3 Wild and untamed rivers are vanishing internationally at a spectacular rate. There are not many of them left in NZ and they are diminishing, as more and more proposed hydro schemes and irrigation takes are developed. There has been a recent hiatus in hydro development proposals due to national oversupply of power, but this situation will change. The Parliamentary Commissioner for the Environment in 2012 has cautioned against developing our remaining unindustrialised rivers in a hard-hitting report.

4 DOC have no choice but to refuse this application on a number of counts:

- i) The proposal flies in the face of a number of objectives and policies set out by DOC under their West Coast Te Tai O Putini Conservation Management Strategy (well articulated in Whitewater NZs initial submission).
- ii) The effects on the gorge cannot be avoided or mitigated.
- iii) Hydro power generation can 'reasonably' be developed elsewhere, so the proposal fails this test.

5 There is no foreseeable need for additional power generation capacity on the West Coast. There is already an approved 44MW scheme on the Arnold River that has yet to be developed due to the lack of sufficient power demand regionally and nationally. Energy Minister Simon Bridges said earlier this year that there was enough fully consented renewable generation in the pipeline to meet national demand for the next 30 years.

The West Coast does not have to generate all its own power. That is why we have a piece of infrastructure named the national grid: It distributes power nationally, eliminating the need for each region to be self-sufficient.

There simply isn't a strategic business case to be made to support the need for this proposal.

Feb 2014 entitled Westpower Waitaha Hydro Investigations Recreation and Tourism Assessment of Effects by Rob Greenaway and Associates. This has been given to us as part of consultation we are currently engaged in with Westpower. We recently sent Westpower a detailed hydrological analysis of the impact of their Scheme on our values in the Morgan Gorge and await their confirmation of our analysis. We have yet to complete our discussions and consultation with Westpower.

The Greenaway and Associates report does not properly present the value of the Waitaha River to kayakers. The author(s) has omitted very salient points. The author is not an expert kayaker and has prepared the report for Westpower. The author has not consulted with kayakers in the preparation of this report.

Some areas of the report are in error, particularly those referring to:

- The reliance on some literature for forming a view on the value of the Waitaha River to kayakers, and especially the Morgan Gorge, is not appropriate, as the assessments carried out or referred to in the literature were for unnamed or other reaches of the Waitaha River, or are out of date.
- The flows needed and kayaking opportunity remaining in the Morgan Gorge. Our analysis of flow data and flow needs of kayakers using the Morgan Gorge shows that flows suitable for running the Morgan Gorge will all be lost if the scheme proceeds, unless controlled ceases to abstraction (no-take flow days) are provided as part of the Scheme.
- The summary of Scheme effects and mitigation recommended in Table 1 (and Table 7) is incomplete, contains an error and is confusing; not all effects on kayakers are properly listed; it is not clear if the effects listed are based on the assumption that recommended mitigation will be provided or not; and it is not clear what level of mitigation would be provided.
- Little reference is made to the outstanding wilderness and scenic natural feature qualities of the river and the Morgan Gorge itself and the role they play in the outstanding white water features this river offers.
- There are references to the 'removable' nature of the control and generation structures planned for the Scheme, matters that are irrelevant to the assessment of impacts of the scheme on kayakers and most other parties if the scheme proceeds.
- The final conclusion that the loss of the Morgan Gorge through installation of the Scheme will only constitute a low effect on the kayaking setting on the West Coast is also in error. This river is one of the 'jewels in the crown' of outstanding West Coast Rivers and of national and international importance to kayakers. As mentioned in the DoC Conservation Management Strategy for the region a development such as the proposed hydro Scheme is incompatible with the current values of the river.

I am writing to ask that DoC consult our experts on the kayaking values of the Waitaha when considering the Westpower concession to ensure that they receive an appropriate appraisal of the value of the river to us and the analysis of the impacts of the Scheme on our values. This would be essential in our view, especially if a decision in principle were to be arrived at before any public notification or consultation on the Scheme concession, for the reasons given above.

Whitewater NZ would also request that given the importance of the river to the national and international kayaking community, that the concession application be advertised nationally so that kayakers from around the country and internationally hear about the scheme and can submit if they wish.

Whitewater NZ would also request notification from DoC as soon as the Application for a Concession has been lodged.

We look forward to hearing from you further on this matter and especially your views on our requests. We hope our requests make sense and will add value to the deliberations.

Yours sincerely

**Dr Douglas A Rankin
Conservation Officer
Whitewater NZ**

Cc Mr Michael Hopkinson, Director, New Zealand Kayak School, Murchison

APPENDIX II: INTERNATIONAL SCALE OF RIVER DIFFICULTY (ALSO REFERRED TO AS GRADE, ESPECIALLY OUTSIDE THE USA)

- Class I** Fast moving water with riffles and small waves. Few obstructions, all obvious and easily missed with little training. Risk to swimmers is slight; self-rescue is easy.
- Class II** Novice: Straightforward rapids with wide, clear channels which are evident without scouting. Occasional manoeuvring may be required, but rocks and medium-sized waves are easily missed by trained paddlers. Swimmers are seldom injured and group assistance, while helpful, is seldom needed. Rapids that are at the upper end of this difficulty range are designated "Class II+".
- Class III** Intermediate: Rapids with moderate, irregular waves which may be difficult to avoid and which can swamp an open canoe. Complex manoeuvres in fast current and good boat control in tight passages or around ledges are often required; large waves or strainers may be present but are easily avoided. Strong eddies and powerful current effects can be found, particularly on large-volume rivers. Scouting is advisable for inexperienced parties. Injuries while swimming are rare; self-rescue is usually easy but group assistance may be required to avoid long swims. Rapids that are at the lower or upper end of this difficulty range are designated "Class III-" or "Class III+" respectively.
- Class IV** Advanced: Intense, powerful but predictable rapids requiring precise boat handling in turbulent water. Depending on the character of the river, it may feature large, unavoidable waves and holes or constricted passages demanding fast manoeuvres under pressure. A fast, reliable eddy turn may be needed to initiate manoeuvres, scout rapids, or rest. Rapids may require "must" moves above dangerous hazards. Scouting may be necessary the first time down. Risk of injury to swimmers is moderate to high, and water conditions may make self-rescue difficult. Group assistance for rescue is often essential but requires practiced skills. A strong Eskimo roll is highly recommended. Rapids that are at the lower or upper end of this difficulty range are designated "Class IV-" or "Class IV+" respectively.
- Class V** Expert: Extremely long, obstructed, or very violent rapids which expose a paddler to added risk. Drops may contain large, unavoidable waves and holes or steep, congested chutes with complex, demanding routes. Rapids may continue for long distances between pools, demanding a high level of fitness. What eddies exist may be small, turbulent, or difficult to reach. At the high end of the scale, several of these factors may be combined. Scouting is recommended but may be difficult. Swims are dangerous, and rescue is often difficult even for experts. A very reliable Eskimo roll, proper equipment, extensive experience, and practiced rescue skills are essential. Because of the large range of difficulty that exists beyond Class IV, Class 5 is an open-ended, multiple-level scale designated by class 5.0, 5.1, 5.2, etc... each of these levels is an order of magnitude more difficult than the last. Example: increasing difficulty from Class 5.0 to Class 5.1 is a similar order of magnitude as increasing from Class IV to Class 5.0.
- Class VI** Extreme and Exploratory Rapids: These runs have almost never been attempted and often exemplify the extremes of difficulty, unpredictability and danger. The consequences of errors are very severe and rescue may be impossible. For teams of experts only, at favourable water levels, after close personal inspection and taking all precautions. After a Class VI rapid has been run many times, its rating may be changed to an appropriate Class 5.x rating.

(From American Whitewater: <http://www.americanwhitewater.org/content/Wiki/door/id/safety%3Astart/#vi>. International scale of river difficulty; accessed 21 October 2013)

APPENDIX III: DESCRIPTION OF WAITAHA RIVER KAYAK SECTIONS NOT COVERED IN ENGLAND (2011)

River (section)	Waitaha River – Ivory Lake to Upper Waitaha Hut	
Locations (latitude and longitude of put in and take out)	Put in	Take out
	River at base of cliffs at Ivory Lake	Upper Waitaha Hut
Access description	Helicopter	
Land status (banks)	Waitaha Catchment – Conservation Area – Waitaha Forest	
Date kayaked (for this report)	(Reported by Keith Riley)	
Group members (on this trip)	Kelth Riley, Zak Shaw, William Martin, Paul Carrant, Justin Venable	
Description of whitewater kayaking technicality (inc. grade and style of kayaking, volume on day, flow requirements and estimate of reliability)	Tight low volume kayaking Class V kayaking with numerous waterfalls up to 10 metres Some difficult scouting One long portage around 70 metre waterfall Flow requires extra water for ideal conditions, preferably day after rain Could be paddled in high flows Half day trip	
Description of water landscape (inc. water quality and clarity, river bed features)	Pristine water quality Snow melt and lake fed Bedrock gorge river bed	
Description of valley landscape from River (inc. gorges and views from river, types of vegetation)	Alpine kayaking Trip starts at 1200m, one of highest kayaking trips in New Zealand Alpine tussock scene – all above bush line Portaging over avalanche debris	
Description of degree of wilderness feel (inc. presence or absence of human influence, remoteness)	Pristine wilderness – only indication of human influence is Top Waitaha Hut at take off Rugged/harsh alpine environment	
Notable flora and fauna (eg, blue duck)	Alpine vegetation	
Description of overall character of section of river	Tight and technical alpine kayaking	
Distinctive features of river trip (key words)	Alpine, slot gorge, tight	

River (section)	Waitaha River – Top Waitaha Hut to Moonbeam Hut	
Locations (latitude and longitude of put in and take out)	Put in Top Waitaha Hut (alternatively Stag Creek below trib from Ivory Lake) Top Waitaha Hut Lat: -43.131182 Long: 170.876541 Stag Creek Lat: -43.137821 Long: 170.909157	Take out Moon beam Hut Lat: -43.140139 Long: 170.807705
Access description	Helicopter access; very difficult tramping access from Moonbeam Hut on true right of Windhover Gorge	
Land status (banks)	Waitaha Catchment – Conservation Area – Waitaha Forest	
Date kayaked (for this report)	(Reported by Justin Venable) January 2012	
Group members (on this trip)	Zak Shaw, Paul Currant, Keith Riley, William Martin, Justin Venable; helicopter access by Patrick Amberger, Precision Helicopters Ltd	
Description of whitewater kayaking technicality (inc. grade and style of kayaking, volume on day, flow requirements and estimate of reliability)	Stag Creek to Top Waitaha: Shingle/slides, high alpine environment, Class II-IV+ Small volume, need snowmelt and recent rain of moderate volume <u>or</u> recent significant rainfall with good forecast for dropping flow to allow navigation of lower stretches Top Waitaha to Moonbeam: Large schist/greywache boulders Class V-VI if including Windhover Gorge; either a very strenuous <u>portage</u> from Chairman's Creek on route through bush up and around gorge on true right, down spur to river level below gorge exit and swingbridge; <u>or kayaking</u> : six major waterfalls of Class V+-VI (one potentially marginal, remainder have been kayaked in January 2013 by Matt Coles, Shannon Mast and Justin Venable) Section between bottom of Windhover Gorge Moonbeam Hut is Class IV-V+ Flow for upper section between Top Waitaha to start of Windhover requires medium flow, similar flow in Windhover Gorge	
Description of water landscape (inc. water quality and clarity, river bed features)	Pristine water quality, drinkable, gin clear Huge beautiful schist boulders, vertical dramatic gorge walls, overhanging in places	
Description of valley landscape from River (inc. gorges and views from river, types of vegetation)	Typical alpine vegetation of high country West Coast to bush line with development of kamahi/podocarp/broadleaf mixed forest at Moonbeam Hut Amazing transition from alpine to bush	
Description of degree of wilderness feel (inc. presence or absence of human influence, remoteness)	Zero human influence visible except at three huts (Ivory Lake, Top Waitaha, Moonbeam) and swingbridges Route (rough) for difficult tramping linking huts World class wilderness experience; uber remote	
Notable flora and fauna (eg, blue duck)	Whio in lower reaches, birds galore, kea at Stag Creek	
Description of overall	Remote, pristine wilderness, very committing, nearly untouched, stunning	

<p>character of section of river</p>	<p>scenery Dramatic cascading complex rapids of exceptional international quality One of the most dramatic landscapes in the entire world Pinnacle of hard whitewater kayaking experiences available on Earth when taken as a complete river ecosystem Wilderness challenge for fit, determined, experienced and intrepid parties of backcountry adventurers</p>
<p>Distinctive features of river trip (key words)</p>	

River (section)	Waitaha River – Morgan Gorge	
Locations (latitude and longitude of put in and take out)	Put in	Take out
	Kiwi Flat	DOC carpark at trail head
Access description	Helicopter or three plus hour walk in	
Land status (banks)	Waitaha Catchment – Conservation Area – Waitaha Forest	
Date kayaked (for this report)	(Reported by Keith Riley)	
Group members (on this trip)	Keith Riley, Paul Currant, Trent Garnham	
Description of whitewater kayaking technicality (inc. grade and style of kayaking, volume on day, flow requirements and estimate of reliability)	Class V kayaking Committing and pushy whitewater in super tight bedrock gorge Distinct rapids with 'calm' between 15-20 cumecs flow Feels isolated and remote spot in the Earth	
Description of water landscape (inc. water quality and clarity, river bed features)	Pristine water Bedrock gorge river features	
Description of valley landscape from River (inc. gorges and views from river, types of vegetation)	Densely forested podocarp rainforest Views are upwards	
Description of degree of wilderness feel (inc. presence or absence of human influence, remoteness)	Wilderness feel only Interrupted by swingbridge at the start Feels like a place no one has been before – untouched and inaccessible	
Notable flora and fauna (eg, blue duck)		
Description of overall character of section of river	Spectacular tight and deep whitewater gorge	
Distinctive features of river trip (key words)	Committing, spectacular, deep	

APPENDIX IV: VALUES AND USE OF MOST HIGHLY USED CLASS V ACCORDING TO THE WEST COAST RIVAS STUDY (BOOTH *et al.*, 2010) AND SUBSTITUTABILITY

Run	User numbers per annum	River value (score)	Rank (of river value)	Comments
Kakapotahi, Upper	150	17	4=	Less reliable flow, less wilderness value, accessible by car; not a suitable substitute for the Waitaha
Perth, Scone	80	19	2=	Same score and ranking as Waitaha Gorge run; possible substitute for the Waitaha, similar wilderness values but without a spectacular natural feature such as the Morgan Gorge and other high Class challenging runs in the Catchment
Hokitika, Serpentine	60	18	3=	Less reliable flow; not a suitable substitute for the Waitaha
Whitcombe, Prices	60	18	3=	Less reliable flow; not a suitable substitute for the Waitaha
Waitaha Gorge	50	19	2=	Same score and ranking as Perth Scone run
Kokatahi, Crawford	50	18	3=	Less reliable flow; not a suitable substitute for the Waitaha
Falls Creek	50	15	6=	Much less reliable flow, local users largely; not a suitable substitute for the Waitaha

APPENDIX V: SCHEME EFFECTS ON KAYAKING (AS IN TABLE 1 AND TABLE 7)

Activity	Effect	Level of effect
Kayaking in the Upper Waitaha and Windhover Gorge	Kayaker's experience of the Class V and V+ runs will be tarnished and affected by industrial development lower down the catchment in an otherwise pristine wilderness environment	Moderate – indirect effect that may result in reduced uptake and use of the resource
Kayaking the Waitaha Gorge run	Residual flow removes ability to kayak a significant component of the run, the Class IV-III-II 1.5 km abstraction reach below the Morgan Gorge	Significant – Opportunity to run 1.5 km of river below Morgan Gorge is lost; would have to be portaged
Kayaking the Morgan Gorge	Residual flow removes the ability to kayak the Class V Morgan Gorge Loss of wilderness and wild and scenic values Loss of natural character Soundscape and white water changes to Morgan Gorge experience (above four effects also relevant to kayakers paddling the other Upper River runs and the Waitaha Gorge, but wanting to run or portaging the Morgan Gorge) Hazard from weir	Significant – Opportunity is lost Significant – Industrial features incompatible with CMS, wilderness, and outstanding natural feature setting Significant – Loss of white water and natural appearance Significant – Opportunity is lost in normal settings when kayakers would be accessing and using the river Significant – weirs are exceptionally dangerous structures that kill kayakers
Kayaking below the Morgan Gorge (after accessing from the road end)	Residual flow removes ability to kayak the Class IV-II 1.5 km abstraction reach below the Morgan Gorge Loss of natural character	Significant – Opportunity to run 1.5 km of river below Morgan Gorge is lost most of the time Significant – loss of white water and natural appearance
Kayaking whole river	Loss of intact and undeveloped wild and scenic river system Loss of intact and undeveloped wilderness and natural state of the Morgan Gorge	Significant – Outstanding wild and scenic river despoiled by industrial structures and dewatering on two reaches Significant – Outstanding natural feature despoiled by industrial structures and dewatering and loss of white water

ENERGY

14th November, 2016

Director-General
Department of Conservation
Private Bag 701
Hokitika

PO Box 113
Motueka 7143
Ph: 03 5281068
Fax: 03 5281064

Attention Pauline Adams

Re: Westpower Limited: Waitaha River Hydro Power Scheme Application

New Zealand Energy Limited wishes to submit in support of the Minister of Conservation's intention to grant a concession to Westpower Limited to construct and operate a Hydro Power Scheme on the Waitaha River in Westland.
If a hearing is required then we wish to be heard.

Background:

New Zealand Energy own and operate three small hydro power stations throughout New Zealand. These schemes are of a small scale and are of extremely low impact. They sit well with their neighboring communities, providing a valuable source of renewable energy whilst fitting well into the surrounding environment. Two of these stations are located in South Westland and reside on DoC estate. NZ Energy holds concessions from DoC to operate these schemes.

NZ Energy is very familiar with the DoC concession application process and having reviewed the Westpower application, the further information requests and the DoCs officers report we are of the view that the entire process has been undertaken thoroughly and accurately and the recommendation fair and just.

We would however wish to raise the following points for consideration by the Minister. They are:

- A significant amount of work has been done around the kayaking values afforded to the section of river that will be affected. It would be fair to say that Whitewater NZ does not want to see a power scheme at this location and this is a common response by Whitewater NZ when any power scheme is proposed on any river anywhere in NZ that has kayaking values. Power schemes are not a new activity to our river systems and have in fact been in existence for well over 100yrs. Their effects are well known and clearly they have been able to co-exist with many other values including Kayaking. In more modern times the consenting process gives due consideration to all values and allows for appropriate control measures to be put in place that allows all users of a

- resource to utilize that resource. What has been proposed by Westpower with regard to kayaking values is fair and reasonable and will allow both activities to co-exist. On a personal note, I have 30yrs experience in the power industry working on and around hydro power schemes and never once have I had a kayaker or the general public come up to me and complain of having a bad or interrupted experience because of the presence of a power scheme. In fact it is the contrary whereby I have met many people, kayakers included that are generally interested in the power schemes and want to know all about them.
- Under section 6.10 of the officers report a concession fee of 6% of the gross operation revenue is proposed. We strongly oppose this fee as it is inconsistent with other concession fees of the same activity and to the best of our knowledge has been proposed with no supporting information. There is mention the fee has been established using the departments existing activity framework but we are unaware of any such framework and we are an existing concession holder. The proposed fee is also inconsistent with the dealings we have had with the department.
 - Under section 6.13 of the officer's report a bond is proposed. We believe more thought needs to be given as to the form this bond will take. Over the life of the project a significant financial cost will be incurred which will be to the benefit of a third party (eg: a bank). An opportunity exists whereby a financial/contractual mechanism is put in place that redirects part or all of those costs that would benefit conservation or social initiatives.

We thank you for the opportunity to provide our submission. Should the department require any further information then we would be happy to assist.

Yours sincerely,



David Inch
Managing Director

Victoria University Canoe Club

Student Union Building
Victoria University, Kelburn Parade
Wellington
14 November 2016

vuccadmin@gmail.com

The Director-General
Department of Conservation
Private Bag 701
Hokitika 7842

Attention: Pauline Adams permissionshokitika@doc.govt.nz
cc: Maggie Barry, Minister of Conservation: Maggie.Barry@parliament.govt.nz

Thank you for the opportunity to comment on the Minister of Conservation's intention to grant a 49 year concession to Westpower Ltd to construct and operate a run of the river hydro electric scheme on the Waitaha River

This submission is made on behalf of the Victoria University Canoe Club. A representative of the club would like to be heard at the hearing for the concession.

The club is part of the Victoria University Students Association, established in 1899 with a membership of around 17,000 students. The club is active in introducing and teaching students the skills, risk management and enjoyment of whitewater kayaking. Many of our students go on to immerse themselves in the sport, gaining physical and mental fortitude that serves them so well in life and enjoy the wild river experience for decades to come. It is the interests of the young, up and coming generation that this submission represents.

Having reviewed the proposal and the Department's assessment of the application, including the mitigation steps proposed, our club **OPPOSES** the proposal for the following reasons and asks that the Department decline the concession application.

- 1) The proposal is contrary to the purposes of the Conservation Act. Although the proposal is to grant the concession for a fixed term of 49 years, the practical outcome will be to allow Westpower to make permanent changes to the valley and its landscape, in effect acquiring 'defacto property rights' over the public land and denying present and future generations benefit of conservation. Once the concession comes up for renewal in 2045, it is highly unlikely that an application to renew the concession for an established hydroelectric scheme would be refused. Conservation of natural resources for future generations is one of the key purposes of the Department of Conservation. Under the Conservation Act "Functions of the Department" Sections 6 (ab), (b) and (c) outline this clearly;

(ab) to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:
(b) to advocate the conservation of natural and historic resources generally:
(c) to promote the benefits to present and future generations of—
(i) the conservation of natural and historic resources generally and the natural and historic resources of New Zealand in particular;

- 2) The area has outstanding recreational and natural values, with the Waitaha catchment recognized as an Outstanding Natural Landscape and the Morgan Gorge as an Outstanding Natural Feature. Although the area is currently classified a 'stewardship land', if a full proper assessment of the values of the Waitaha catchment had been carried out, the area would have been assigned a much higher conservation status. The unique status is more than obvious if the area is visited in person. In supporting the concession, DoC and the West Coast Conservation Board have failed in their duty to appropriately assess and rationally conclude that conservation of this special area for future generations is legally, rationally and morally appropriate.
- 3) Had the area been designated appropriately with higher conservation status, under the Conservation Act section 17U (3) the proposal must be declined.
- 4) The mitigation offered to kayakers is not practical, workable or a reasonable mitigation for the following reasons and the application should be declined in accordance with the Conservation Act section 17U (2);
 - a) A minimum of 7 days notice is too long to forecast the likely and critical flow through the Morgan Gorge
 - b) 2 days per annum is too few and does not make adequate allowance for the increasing standards and abilities of participants in the sport. This will prevent the growing number of people in the up and coming generation from participating in what will inevitably become tomorrow's achievable goal for many. As in many other sports, what was achieved by the elite 30 years ago is achieved by hundreds of people today (e.g., ascent of Mt. Everest, running the 4 minute mile, kayaking Huka falls etc). The proposed mitigation also fails to meet the objective outline in the Conservation Act section 6 (c).
 - c) The rigorous, prescriptive nature of the proposed management regime of the two no-take days favour the continuity of industrial venture over public recreation. This action does not mitigate the major impact and loss of amenity as proposed. It is also both inappropriate and inconsistent with the purposes of the Conservation Act as outlined earlier in this submission.
- 5) The design of the weir has not been provided by the applicant. The DOC report outlines conditions on the design of the weir, as outlined below;
 - a) *The weir must be designed, managed and maintained to prevent the upstream movement of all fish except koaro whitebait.*
 - b) *The downriver face of the weir shall be designed to allow kayaking access into Morgan Gorge. The Concessionaire will consult with Whitewater New Zealand on the development of the weir design.*
 - c) *The intake weir shall be designed in consultation with the appropriate specialists to allow for blue duckling access*

There is no known and proven weir design, that achieves these significant and disparate outcomes. The need to stop aggressive, migratory salmonid sport fish which could navigate up the significantly reduced flow of Morgan Gorge, may not be possible at the same time as allowing native fish to pass upstream, kayakers to safely pass downstream, and provide for blue duckling access. Under the Conservation Act section 17U (2) the minister should decline the application as:

(a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or

(b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.

- 6) Whilst as kayakers and outdoor enthusiasts we do not claim expertise in the assessment of effects on fauna, the DOC Concession Officers report points to alarming impacts to numerous endangered species for which common sense suggests mitigation is wholly inadequate.
- a) The noise and disturbance to bats, birds and other fauna from noise and pressure waves resulting from blasting a 1.5 km tunnel through the rock
 - b) total and permanent loss of habitat for endangered species
 - c) 4 to 6 helicopter flights per day over the home of the endangered and "protected" species
 - d) Blue duck/whio that must be "scared off" prior to blasting, but only if they are seen by Westpower, something that cannot be verified or enforced..
 - e) the resources and cost to DOC of constantly monitoring adherence to conditions during and after construction. The following summary from the DOC report outlines the many "ifs" related to the impact on native fauna

"Westpower suggests only a low number of threatened species are present however the Department does not agree with this statement. The site contains significant habitat of threatened and representative bird and bat species. Impacts potentially include loss of breeding and/or feeding habitat through felling of trees and clearance of habitats mainly for the road development, and locally about the portal, weir and other workings. The greatest potential impact would be the potential loss of a bat roost during felling, if this happened this would be a significant effect. However if Westpower could avoid felling any bat roosts then the potential effects on bats would be considered minor. Effects on forest birds would also be considered negligible if Westpower could avoid important food source trees. If Westpower adheres to the proposed conditions it is considered that effects on fauna values would be adequately avoided, remedied and mitigated.

- 7) Other experts have made submissions about the questionable reasons offered for the proposed scheme. To simplify however, the prime motivation for the scheme is the ability to turn a profit from the venture. If there was no profit available, there would be no scheme.
- a) The profit opportunity only exists owing to the low level of protection DOC has provided to a public conservation amenity. Recent assessments commissioned by DOC indicate that concession rates DOC has been historically charging are as low as 20% of market

value. Essentially, DOC is using the conservation estate to provide Westpower with the opportunity to undercut other electricity generators operating in existing modified environments and thereby reducing demand for environmentally sympathetic generation such as the Stockton scheme.

- b) Moreover, this profit opportunity crosses the line of what is and what isn't acceptable in such a magnificent and wild place. If the scheme is approved, DOC will set the precedent bar so low that it will effectively open up the entirety of the conservation estate currently held in stewardship land – ie 30% of the conservation estate, to industrial, extractive and other forms of profit driven development. This is in complete contrast to DOC's core purpose, and something future generations will view in a similar light to the introduction of stoats and possums.

In closing, the Victoria University Canoe Club invites the decision maker to visit the Waitaha to see it first hand, to understand the value in preserving this special wild river for our youth and future generations. And if that isn't possible in the immediate time frame, please see the following video:

www.wildriver.nz/videos/2016/11/9/waitaha-river-aoraki-cook-of-rivers

Michelle Schurmann

President, for and on behalf of Victoria University Canoe Club



New Zealand Recreation Association | National Office
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 Ph +64 04 801 5598
info@nzrecreation.org.nz
www.nzrecreation.org.nz

14 November 2016

Director-General
 Department of Conservation
 Private Bag 701
 Hokitika 7842

Attention: Pauline Adams

Dear Lou,

Re: Intention to grant a run of the river hydro scheme concession to Westpower Limited

I am writing on behalf of the New Zealand Recreation Association to inform you of NZRA's objection to the Minister of Conservation's intention to grant a concession to Westpower Ltd. to construct and operate a hydro scheme on the Waitaha River. NZRA also wishes to register its concern that the Minister has given notice of her intention to grant Westpower permission to develop the scheme on DoC land.

The New Zealand Recreation Association (NZRA) is the national association for those who work in the recreation industry, including aquatic facilities, parks and open spaces, community recreation and the great outdoors. Our members include policy makers, regional sports trusts, recreation planners, volunteer organisations, programme and event managers, researchers, private fitness and outdoor recreation providers, government employees and many others involved in the delivery of recreation in New Zealand.

The Waitaha river and Morgan Gorge is an area suitable for a wide variety of recreational pursuits, including but not limited to, swimming and kayaking. According to Sport New Zealand's Active New Zealand Survey 2013/14, swimming is the second most popular activity for New Zealanders, with 30.2% of the population taking part. Around 8% of New Zealanders take part in canoeing/kayaking. The upper catchment of the Waitaha is highly valued for its sense of remoteness by trampers and hunters. 9.7% of New Zealanders go tramping each year and 5.0% go hunting.

While the proposed mitigation measures suggested by the applicant are admirable, for those who utilise the area for recreational purposes, the proposed development is an unacceptable industrial intrusion into an otherwise pristine landscape on public conservation land.

It is also our view that the granting of these concessions is inconsistent with the purposes of the Conservation Act and the West Coast Conservation Management Strategy.

Under the Conservation Act section 17U, the Minister of Conservation can only give permission to build and operate a hydroelectric scheme on the conservation estate if it:

1. Would not compromise the purposes for which the land is held.

2. Could not reasonably be done elsewhere, including in another conservation area where the effects would be less significant.

It is the view of NZRA that neither of these two requirements are met by the proposal.

For the recreationalists that we work to represent, granting the concession would also signal a concerning precedent of the commercial utilisation of Stewardship Land.

NZRA is confident that for the several reasons illustrated here and the numerous other reasons described elsewhere, the Minster will decline a concession to Westpower Limited to construct and operate a run of the river hydro scheme on the Waitaha River

I look forward to hearing your response and am happy to discuss this matter at any time.

Yours faithfully,



Sam Newton
Advocacy Manager – Outdoors Sector
New Zealand Recreation Association

CC:
New Zealand Federation of Freshwater Anglers
White Water New Zealand

Lucy Croft

From: Sam Newton <sam@nzrecreation.org.nz>
Sent: Monday, 14 November 2016 4:29 p.m.
To: Permissions Hokitika
Subject: Intention to grant a run of the river hydro scheme concession to Westpower Limited
Attachments: Objection to Waitaha River Westpower permission.pdf

14 November 2016

Director-General
Department of Conservation
Private Bag 701
Hokitika 7842

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Yours faithfully,



Sam Newton
Advocacy Manager – Outdoors Sector
New Zealand Recreation Association

CC:
New Zealand Federation of Freshwater Anglers
White Water New Zealand

Lucy Croft

From: Joss Debreceeny <Joss.Debreceeny@parliament.govt.nz>
Sent: Monday, 14 November 2016 2:33 p.m.
To: Permissions Hokitika
Cc: Mojo Mathers; Gareth Hughes
Subject: Submission on the Minister of Conservation's intention to grant a concession to Westpower Limited
Attachments: waitaha_signers_20161113.pdf

Dear Lou Sanson,

The Green Party of Aotearoa New Zealand, and 2343 others (as attached), are opposed to the application by Westpower Limited for a Lease, Easement and License for a hydro scheme in the Waitaha River. We request that the Minister of Conservation decline the Application.

We oppose the application because:

- The proposal will be detrimental to the native wildlife of the area including western weka, kaka, whio, long-tailed bats and native geckos who are at risk of extinction.
- Approving this application would disregard the functions of the Department of Conservation, one of which is to advocate the conservation of natural and historic resources.
- We don't have confidence that Westpower can avoid or mitigate harm to these species.
- The Morgan Gorge, famed for its white water and kayaking opportunities, will become an industrial site.

What Westpower should do instead:

- There's already 106 MW of consented electricity generation projects ready to be built on the West Coast. Those are all better options than consenting yet another hydro plant, because they shouldn't dam an untouched wild river like the Waitaha.
- Advances in grid-scale battery technology such as those being trialled in Timaru and Auckland provide opportunities for regions like the West Coast to invest affordably in electricity storage, rather than more generation.
- The West Coast may not need any more electricity generation anyway. Several large electricity users have recently closed, and electricity demand on the Coast is 17% lower than it was in 2009.
- Even if all the planned new mining, industrial and agricultural users open in the next five years, they won't need any new electricity generation, according to Transpower.

Kind regards

Gareth Hughes and Mojo Mathers, Members of Parliament

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