

[AS REPORTED FROM THE WATER AND SOIL CONSERVATION
AMENDMENT BILL COMMITTEE]

House of Representatives, 20 October 1981.

Words struck out are shown in italics within bold round brackets; words inserted are shown in roman underlined with a double rule.

Hon. W. L. Young

WATER AND SOIL CONSERVATION AMENDMENT

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A BILL INTITULED

An Act to amend the Water and Soil Conservation Act 1967

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

1. Short Title and commencement—(1) This Act may be cited as the Water and Soil Conservation Amendment Act

No. 74—2

1981, and shall be read together with and deemed part of the Water and Soil Conservation Act 1967* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of April 1982.

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2. Long Title—The Long Title of the principal Act is hereby amended by omitting the words “water supplies of local authorities, fisheries, wildlife habitats, and all recreational uses of natural water”, and substituting the words “community water supplies, all forms of water-based recreation, fisheries, and wildlife habitats, and of the preservation and protection of the wild, scenic, and other natural characteristics of rivers, streams, and lakes”.

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “natural water”, and substituting the following definition:

“‘Natural water’ means all forms of water (including fresh water, ground water, artesian water, sea water, water vapour, ice, snow, and water or steam or vapour heated by geothermal energy, whatever its temperature) that are within the outer limits of the territorial sea of New Zealand; but does not include water in any form while in any reservoir (not being an aquifer) under the control of a public authority and used mainly for the water supply purposes of that public authority, or while in any pipe, tank, or cistern:”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Local water conservation notice’ means a local water conservation notice made pursuant to section 20H of this Act:

“‘National water conservation order’ means a national water conservation order made pursuant to section 20D of this Act:

“‘Water conservation order’ means a national water conservation order; and includes a local water conservation notice:”.

*Reprinted 1973, Vol. 2, p. 1703

Amendments: 1974, No. 137; 1976, No. 164; 1977, No. 63; 1980, No. 153

(3) Section 2 (2) (c) of the Water and Soil Conservation Amendment Act (No. 2) 1971 is hereby consequentially repealed.

5 **4. Bodies to participate in administration**—Section 4 (3) of the principal Act is hereby amended by inserting in the second proviso, after the words “National Parks Act 1952,” the words “the Geothermal Energy Act 1953,”.

10 **5. Functions, powers, etc., of Authority**—Section 14 (3) (a) of the principal Act is hereby amended by repealing subparagraph (v), and substituting the following subparagraphs:

“(v) The needs of primary and secondary industry and of the community (*water supplies*):

15 “(vi) All forms of water-based recreation, fisheries, and wildlife habitats, and the preservation and protection of the wild, scenic, and other natural characteristics of rivers, streams, and lakes, or parts of rivers, streams, and lakes:”

20 **6. New sections inserted**—The principal Act is hereby further amended by inserting, after section 20, the following heading and sections:

“Water Conservation Orders and Notices

25 **“20A. Water conservation orders**—(1) Any public authority, local authority, or any body specifically constituted by or under any Act, and any Minister of the Crown, which or who has any function, power, or duty which relates to, or which is or could be affected by any aspect of, water conservation or soil conservation may apply to the Minister for the making of a water conservation order in respect of any specified river, stream, or lake, or any specified part thereof.

30 “(2) Every such application shall be supplemented by such particulars and information as the Minister notifies the applicant he considers necessary.

35 “(3) The Minister shall refer every such application to the Authority.

“(4) On receipt of the application, the Authority, after consulting the appropriate Regional Water Board and united or regional council and such other bodies and persons as it considers appropriate, shall recommend to the Minister whether the application should be treated as an application for a national water conservation order or a local water conservation notice. 5

“(5) On receipt of the Authority’s recommendation the Minister, after considering it, shall either—

“(a) Refer the application back to the Authority for consideration under section 20B of this Act; or 10

“(b) Refer the application to the appropriate Regional Water Board for consideration under section 20F of this Act.

“20B. Consideration of application for national water conservation order—(1) If an application is referred to the Authority under section 20A (5) (a) of this Act, the Authority shall as soon as practicable publicly notify the application and call for submissions or objections to be made not later than 28 days after the date of public notification, and send a copy of the public notice to such bodies and persons as it considers appropriate. 15 20

“(2) The following bodies and persons shall have the right to make submissions on or object to the application, in writing, within the time specified in the public notice: 25

“(a) The applicant:

“(b) The Minister:

“(c) Any Regional Water Board or regional or united council or local authority whose region or district is affected by the application: 30

“(d) Any body or person affected by the application:

“(e) Any body or person representing some relevant aspect of the public interest.

“(3) The Authority shall consider or hear the application and all submissions and objections received by it or may, if it thinks fit, appoint a committee, consisting of any 2 or more of its members, with power to consider or hear the application and submissions and objections and to make recommendations to the Authority in respect of them. 35

“(4) If the Authority or committee holds a hearing it shall give not less than 28 days’ written notice of the time and 40

place of the hearing to the applicant, the Minister, any Regional Water Board or regional or united council or local authority whose region or district is affected by the application, and every body or person which or who made submissions on or objected to the application; and the applicant and every such body or person shall have the right to be present and be heard by the Authority or committee, and may be represented by counsel or duly authorised representative, and to call evidence in support of its or his contentions, before the Authority or committee makes a decision on or recommendation in respect of the application.

“(5) For the purposes of any such hearing the Authority or committee shall have the power to summon witnesses and to hear evidence on oath.

“(6) In considering the application the Authority or committee shall take into account—

“(a) All forms of water-based recreation, fisheries, and wildlife habitats;

“(b) The wild, scenic, or other natural characteristics of the river, stream, or lake;

“(c) The needs of primary and secondary industry, and of the community (*water supplies*); and

“(d) The provisions of any relevant regional planning scheme and district scheme.

“(7) After the application and submissions and objections have been considered, the Authority may—

“(a) Prepare and publicly notify a draft national water conservation order; or

“(b) Recommend to the Minister that a local water conservation notice be made; or

“(c) Recommend to the Minister that the application be declined.

“(8) The reasonable expenses and costs of the Authority and of an applicant and any parties to the proceedings shall be borne as the Authority may direct or may be left where they fall.

“(9) If a draft national water conservation order has been prepared the Authority shall forthwith forward a copy of the draft order to—

“(a) The applicant;

“(b) The Minister; and

“(c) The Regional Water Board and any regional or united council or local authority whose region or district will be affected by the proposed order.

“(10) If the Authority recommends to the Minister that the application be declined, the Minister shall advise the applicant, and give public notice, of that recommendation.

“20c. **Inquiry by Planning Tribunal**—(1) Within 28 days after the date of public notification of—

“(a) A draft national water conservation order under section 20B (7) (a) of this Act; or

“(b) A recommendation under section 20B (9) (10) of this Act that the application be declined—
the applicant and every body and person which or who made submissions on or objected to the application under the said section 20B, or which or who may be affected by the draft order, may make submissions on or object against the draft order or any part of it to the Planning Tribunal, or object to that Tribunal against the recommendation, as the case may be.

“(2) The Planning Tribunal shall consider all submissions and objections received by it under subsection (1) of this section and for that purpose shall conduct a public inquiry at such times and places as it may appoint.

“(3) For the purposes of conducting an inquiry under this section, the Tribunal shall have all the powers, privileges, and immunities conferred on it by Part VIII of the Town and Country Planning Act 1977.

“(4) The applicant, the Minister, any Regional Water Board or regional or united council or local authority whose region or district is affected by the application, and every body and person which or who made submissions on or objected against the application to the Authority under section 20B of this Act, shall have the right to be present and be heard at every inquiry conducted by the Planning Tribunal under this section, and may be represented by counsel or duly authorised representative.

“(5) The Planning Tribunal may, if it considers it to be expedient, conduct any 2 or more inquiries together notwithstanding that they relate to different rivers, streams, or lakes, or different parts of any river, stream, or lake.

“(6) On completion of the inquiry the Planning Tribunal shall—

“(a) Make a report and recommendation to the Minister on the application and the draft national water conservation order; or

“(b) Direct the appropriate Board to make a local water conservation notice; or

“(c) Recommend to the Minister that the application be declined—

5 and publicly notify its decision.

“(7) Subject to subsection (8) of this section, no appeal shall lie from any report or recommendation of the Planning Tribunal under this section.

“(8) Where any party to any proceedings under this section
10 before the Planning Tribunal is dissatisfied with the report or any recommendation of the Planning Tribunal as being erroneous in point of law, he may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only and the provisions of subsections (2) to (11)
15 of section 162 and of section 162A of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of that report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning
20 Act 1977.

“20D. Making of national water conservation order—

(1) The Governor-General in Council may, on the advice of the Minister given after taking into account the recommendation of the Authority or the Planning Tribunal, as the
25 case may be, make a national water conservation order.

“(2) Every national water conservation order shall specify the river, stream, or lake, or part thereof, to be preserved as far as possible in its natural state, or the outstanding wild, scenic, or other natural characteristics, or the outstanding
30 recreational, fisheries, wildlife habitats, scientific, or other feature of the river, stream, or lake, or part thereof, to be protected.

“(3) Any order made under this section may provide for—

“(a) The retention in its natural state of the quantity,
35 rate of flow, or level of natural water in a river, stream, or lake, or part thereof, because of its wild, scenic, or other natural characteristics or because of the value of the water for recreational, fisheries, wildlife habitats, scientific, or other purposes:

40 “(b) The quantity, rate of flow, or level of natural water to be retained in a river, stream, or lake, or part thereof, for scenic, recreational, fisheries, wildlife habitats, or other purposes:

“(c) The parts of a river or stream in which a right to dam under section 21 or section 23 of this Act shall not be granted, or which shall not be affected by any dam authorised under any such right granted in any other part of the river or stream: 5

“(d) The maximum and minimum levels to be sought or permitted for the natural water in a lake, and the minimum rate of flow and maximum range of flow to be sought or permitted for the natural water in a river or stream. 10

“(4) Any order made under this section may impose conditions, restrictions, and prohibitions on the power of Regional Water Boards and the Authority to grant any water right in accordance with sections 21, 23, and 24 of this Act in respect of any natural water affected by the order, and on the power of any Board to make a general authorisation, in accordance with section 22 of this Act, in respect of any such natural water. 15

“(5) Every order made under this section shall be deemed to be a regulation for the purposes of the Regulations Act 1936. 20

“(6) If under section 20B (8) (9) (b) or section 20c (6) (a) of this Act, the Authority or Tribunal has recommended that a national water conservation order be made and the Minister decides not to advise the Governor-General that the order be made, then the Minister shall, within 28 days after making that decision if Parliament is then in session, and, if not, within 28 days after the commencement of the next ensuing session, lay before Parliament a written statement setting out the reasons for his decision. 25 30

“(7) Nothing in this section or in any order made under this section shall affect or restrict any right in respect of natural water granted or authorised before the order was made.

“(8) Every body and person, in the exercise and performance of any statutory power, function, or duty, shall recognise and as far as possible have regard to the conditions, restrictions, and prohibitions incorporated in any order made under this section. 35

“(9) Without limiting the generality of subsection (8) of this section, regional and united councils, local authorities, and Maritime Planning Authorities shall take into account the 40

contents of any order made under this section when preparing, reviewing, and administering regional, district, or maritime planning schemes under the provisions of the Town and Country Planning Act 1977.

5 **“20E. Application for revocation or variation of order—**

(1) Any body or person specified in section 20A (1) of this Act may at any time apply to the Minister for the revocation or variation of any order made under section 20D of this Act or of any condition, restriction, or prohibition imposed by
10 any such order. On receipt of the application the Minister shall forthwith refer it to the Authority for consideration.

“(2) Where the Authority considers the revocation or variation of any order made under section 20D of this Act or of any condition, restriction, or prohibition imposed by any
15 such order, it shall follow the procedure prescribed for the preparation and making of a national water conservation order; and the provisions of sections 20B and 20C of this Act relating to the preparation and making of such an order shall, so far as they are applicable and with the necessary
20 modifications, apply accordingly.

“(3) The Governor-General in Council may, on the advice of the Minister given after taking into account the recommendation of the Authority or the Planning Tribunal, as the case may be, revoke or vary any order made under section
25 20D of this Act, or revoke or vary any condition, restriction, or prohibition imposed by any such order.

“20F. Consideration of application for local water conservation notice—(1) On receipt of a recommendation under section 20B (7) (b) of this Act that a local water conservation
30 notice be made, the Minister shall refer the application to the appropriate Regional Water Board for consideration.

“(2) On receipt of the application the Board shall as soon as practicable publicly notify the application, call for submissions or objections, to be made not later than 28 days after
35 the date of public notification, and send a copy of the public notice to such bodies and persons as it considers appropriate.

“(3) The following bodies and persons shall have the right to make submissions on or object to the application, in writing, within the time specified in the public notice:

“(a) The applicant:

“(b) The Minister:

“(c) The Authority:

“(d) Any regional or united council or local authority whose region or district is affected by the application: 5

“(e) Any body or person affected by the application:

“(f) Any body or person representing some relevant aspect of the public interest.

“(4) The Board shall consider or hear the application and all submissions and objections received by it or may, if it thinks fit, appoint any Tribunal constituted in accordance with section 24 of this Act with power to consider or hear the application and submissions and objections and to make recommendations to the Board in respect of them. 10

“(5) If the Board or such Tribunal holds a hearing it shall give not less than 28 days' written notice of the time and place of the hearing to the applicant, the Minister, any Regional Water Board or regional or united council or local authority whose region or district is affected by the application, and every body or person which or who made submissions on or objected to the application; and the applicant and every such body or person shall have the right to be present and be heard by the Board or Tribunal, and may be represented by counsel or duly authorised representative, and to call evidence in support of its or his contentions, before the Board or Tribunal makes a decision on or recommendation in respect of the application. 15 20 25

“(6) For the purposes of any such hearing the Board or Tribunal shall have the power to summon witnesses and to hear evidence on oath. 30

“(7) In considering the application the Board or Tribunal shall take into account—

“(a) All forms of water-based recreation, fisheries, and wildlife habitats;

“(b) The wild, scenic, or other natural characteristics of the river, stream, or lake; 35

“(c) The needs of primary and secondary industry, and of the community (*water supplies*); and

“(d) The provisions of any relevant regional planning scheme and district scheme. 40

“(8) After the application and submissions and objections have been considered, the Board may—

“(a) Prepare and publicly notify a draft local water conservation notice; or

“(b) Recommend to the Minister that the application be referred to the Authority and dealt with under section 20B of this Act; or

“(c) Decline the application.

5 “(9) The reasonable expenses and costs of the Board and of an applicant and any parties to the proceedings shall be borne as the Board may direct or may be left where they fall.

“(10) If a draft local water conservation notice has been prepared the Board shall forthwith forward a copy of the
10 draft notice to—

“(a) The applicant;

“(b) The Authority;

“(c) The Minister; and

15 “(d) Any regional or united council or local authority whose region or district will be affected by the proposed order.

“(11) If the Minister declines a recommendation made under subsection (8) (b) of this section, he shall so advise the Board which may then proceed to prepare a draft local water
20 conservation notice under subsection (8) (a) of this section.

“(12) If the Board declines the application it shall so advise the applicant and give public notice of its decision.

“20G. **Appeal to Planning Tribunal**—(1) Within 28 days after the date of public notification of—

25 “(a) A draft local water conservation notice under section 20F (8) (a) of this Act; or

“(b) A decision to decline the application under section 20F (12) of this Act—

30 the applicant and every body or person which or who made submissions on or objected to the application under the said section 20F, or which or who may be affected by the draft notice, may appeal to the Planning Tribunal against the draft notice or any part of it, or against the decision to decline the application, as the case may be.

35 “(2) For the purpose of hearing any appeal under this section, the Tribunal shall have all the powers, privileges, and immunities conferred on it by Part VIII of the Town and Country Planning Act 1977.

40 “(3) At the hearing of any appeal under this section, the applicant, the Minister, any Regional Water Board or regional or united council or local authority whose region or district is affected by the application, and every body and person

which or who made submissions on or objected to the application under section 20F of this Act shall have the right to be present and be heard, and may be represented by counsel or duly authorised representative.

“(4) When the Planning Tribunal has completed its hearing of any appeals, it may— 5

“(a) Confirm, modify, or cancel the draft local water conservation notice; or

“(b) Confirm or overrule the Board’s decision to decline the application— 10

as the case may require.

“(5) If the Planning Tribunal modifies the draft notice or overrules the Board’s decision to decline the application, it shall direct the Board to make a local water conservation notice in accordance with the direction. If the Planning Tribunal cancels the draft notice it shall so advise the Board. 15

“(6) Notwithstanding the provisions of subsections (4) and (5) of this section, the Planning Tribunal may refer the draft local water conservation notice or modified draft notice to the Minister with a recommendation that a national water conservation order in the same form be made under section 20D of this Act. 20

“(7) The Planning Tribunal shall give public notice of every decision made by it under this section.

“20H. Local water conservation notice to be gazetted— 25

(1) As soon as practicable after—

“(a) The public notification of the draft notice; or

“(b) The Planning Tribunal has confirmed or modified the draft notice; or

“(c) Receiving from the Planning Tribunal under section 20c (6) (b) or section 20g (5) of this Act a direction to make a notice,— 30

as the case may be, the Board shall without further formality adopt the draft notice, or modified draft notice, or make a notice as directed by the Planning Tribunal, as the case may require, publish the notice in the *Gazette*, and enter it in the records of the resources of natural water in its region. 35

“(2) Every local water conservation notice shall specify the river, stream, or lake, or part thereof, to be preserved as far as possible in its natural state, or the (*outstanding*) wild, scenic, or other natural characteristics, or the (*outstanding*) recreational, fisheries, wildlife habitats, scientific, or other feature of the river, stream, or lake, or part thereof, to be protected. 40

“(3) Any notice made under this section may provide for—

5 “(a) The retention in its natural state of the quantity, rate of flow, or level of natural water in a river, stream, or lake, or part thereof, because of its wild, scenic, or other natural characteristics or because of the value of the water for recreational, fisheries, wild-
life habitats, scientific, or other purposes:

10 “(b) The quantity, rate of flow, or level of natural water to be retained in a river, stream, or lake, or part thereof, for scenic, recreational, fisheries, wildlife habitats, or other purposes:

15 “(c) The parts of a river or stream in which a right to dam under section 21 of this Act shall not be granted, or which shall not be affected by any dam authorised under any such right granted in any other part of the river or stream:

20 “(d) The maximum and minimum levels to be sought or permitted for the natural water in a lake, and the minimum rate of flow and maximum range of flow to be sought or permitted for the natural water in a river or stream.

25 “(4) Any notice made under this section may impose conditions, restrictions, and prohibitions on the power of the Board to grant any water right in accordance with sections 21 and 24 of this Act in respect of any natural water in the region of the Board affected by the order, and on the power of the Board to make a general authorisation, in accordance with section 22 of this Act, in respect of any natural water.

30 “(5) Nothing in this section or in any notice made under this section shall affect or restrict any right in respect of natural water granted or authorised before the notice was gazetted.

35 “(6) Every body and person in the exercise and performance of any statutory power, function, or duty, shall recognise and as far as possible have regard to the conditions, restrictions, and prohibitions incorporated in any notice made under this section.

40 “(7) Without limiting the generality of subsection (6) of this section, regional and united councils, local authorities, and Maritime Planning Authorities shall take into account the contents of any notice made under this section when preparing, reviewing, and administering regional, district, or maritime planning schemes under the provisions of the Town and Country Planning Act 1977.

“20r. Application for revocation or variation of notice—

(1) Any body or person specified in section 20A (1) of this Act may at any time apply to the Board for the revocation or variation of any notice made under section 20H of this Act or of any condition, restriction, or prohibition imposed by any such notice. 5

“(2) Where the Board considers the revocation or variation of any notice made under section 20H of this Act or of any condition, restriction, or prohibition imposed by any such notice, it shall follow the procedure prescribed for the preparation and making of a local water conservation notice; and the provisions of sections 20F to 20H of this Act relating to the preparation and making of such a notice shall, so far as they are applicable and with the necessary modifications, apply accordingly.” 10 15

7. Rights in respect of natural water—(1) Section 21 (1) of the principal Act is hereby amended by adding the following further proviso:

“Provided further that any authorisation granted under the provisions of the Geothermal Energy Act 1953 shall not constitute an express authorisation within the meaning of this subsection.” 20

(2) Section 21 of the principal Act is hereby further amended by inserting, after subsection (2A), the following subsection: 25

“(2B) A right in respect of any natural water subject to a national water conservation order shall not be granted if the grant of that right would be contrary to any provision of the order or of any condition or restriction imposed under section 20D (4) of this Act.” 30

(3) Section 21 of the principal Act is hereby further amended by inserting, after subsection (3E), the following subsections:

“(3F) In considering any application for a right under this section in respect of any natural water which is subject to a water conservation order made under this Act, the Board may grant the right only if the combined effect of the grant and of existing rights is such that the provisions of the water conservation order can remain without change or variation, and in granting any such right shall impose such terms and conditions as are necessary to ensure that the provisions of the water conservation order are maintained. 35 40

“(3G) Notwithstanding the provisions of subsection (3F) of this section, a Board may grant a right which is contrary to the provisions of a local water conservation notice, or not impose a condition required by such a notice, if it considers
5 that the right would be of a minor nature, duration, or effect, **(and)** or that the exception is warranted in the public interest in the particular circumstances of the case.

“(3H) The provisions of subsections (3F) and (3G) of this section shall also apply to applications for rights in respect of
10 natural water that flows into natural water that is subject to a water conservation order.”

8. Applications by Crown in respect of natural water—

Section 23 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

15 “(1A) In considering an application for a right under this section in respect of any natural water that is subject to a national water conservation order made under section 20D of this Act, the Authority may grant the right only if the combined effect of the grant and of existing rights is such
20 that the provisions of the order can remain without change or variation, and in granting any such right shall impose such terms and conditions as are necessary to ensure that the provisions of the order are maintained.

25 “(1B) In considering an application for a right under this section in respect of any natural water that is subject to a local water conservation notice made under section 20H of this Act, the Authority shall take into account the provisions of the notice.”