



# **Environment Court of ]**

## **Graham v Grey District Council [2010]**

### **NZEnvC 424 (17 December 2010)**

Last Updated: 6 January 2011

#### **BEFORE THE ENVIRONMENT COURT**

Decision No. [\[2010\] NZEnvC 424](#)

**IN THE MATTER** of the Resource Management Act 1991  
(**the Act**) and of appeals pursuant to section 120 of the Act

**BETWEEN** G A GRAHAM

(ENV-2008-CHC-295) TRUSTPOWER LIMITED (ENV-2008-  
CHC-301)

P MILES

(ENV-2008-CHC-302) J W GROOME

(ENV-2008-CHC-304) Appellants

**AND** GREY DISTRICT COUNCIL First Respondent

WEST COAST REGIONAL COUNCIL Second Respondent

Hearing: In Chambers at Christchurch

Court: Environment Judge J E Borthwick Environment  
Commissioner A J Sutherland Environment Commissioner D H  
Menzies Environment Commissioner H M Beaumont

Date of Decision: 17 December 2010

Date of Issue: 17 December 2010

## FINAL DECISION

A: Under section 290 of the Resource Management Act 1991, resource consents RC06019/1-RC06019/57 granted by the West Coast Regional Council are confirmed subject to the final version of General and Specific conditions set out in Appendix A which attaches to and forms part of this decision.

B: The Court records that ENV-2008-CHC-295 *G A Graham v West Coast Regional Council* and ENV-2008-CHC-302 *P Miles v West Coast Regional Council* have been resolved by consent and those agreements are reflected in the General and Specific conditions attached as Appendix A.

C: Costs are reserved.

### REASONS Introduction

[1] In 2008 four appeals were lodged against a joint decision of the West Coast Regional Council and the Grey District Council granting a number of consents[1] to TrustPower Limited to construct, operate and maintain a hydro electric power station on the Arnold River. All of the appeals related to conditions imposed by the West Coast Regional Council.

[2] The Registrar received consent memoranda in relation to:

- the *Graham* appeal, dated 4 September 2009;
- the *Miles* appeal, dated 6 July 2009; and
- the *TrustPower* appeal, dated 30 July 2009.

[3] The court has issued two decisions in this proceeding. The first was an interim decision[2] on the *Groome* appeal, issued on 15 June 2010, which addressed the minimum residual flow in

the Arnold River. In that decision the court stated:

Subject to our determination of conditions 7-13 of RC06019/1 it is likely that the appeal will be declined and conditions 2 and 3 on the consent confirmed.

[4] Subsequently the court issued a Minute to the parties<sup>[3]</sup> seeking comments on the suggested amendments to the conditions and seeking clarification on a range of matters.

[5] On 22 November 2010 the court issued a further decision confirming conditions 2 and 3 of water permit RC06019/1 and declining the Groome appeal.

[6] In 2009 TrustPower had filed a consent memorandum in relation to its appeal against the Regional Council's decision, however, this was not accepted by the court and so the matter went to hearing on 13 September 2010.

[7] Following that hearing TrustPower's appeal was allowed in part and an amended set of conditions were attached to the decision. The court reserved leave for the parties to file any memoranda with suggested corrections or references to any errors or omissions within 15 working days of the issue of the decision.

[8] On 13 December 2010 the Registrar received a joint memorandum of counsel on behalf of the West Coast Fish and Game Council (s274 party), TrustPower Limited and the West Coast Regional Council, seeking some further amendments to the conditions.

[9] This decision outlines the consent memoranda filed with the court and finally determines the General and Specific conditions for resource consents RC06019/1 to RC06019/57.

## **Consent memoranda**

[10] The court has read and considered the consent memoranda for the Graham and

Miles appeals.

[11] Agreement was reached with regard to the Graham appeal on the basis of the insertion of new conditions 6, 7 and an Advice note for resource consent RC06019/19. The court has accepted these changes and those amendments are included in the conditions attached to this decision.

[12] In relation to the Miles appeal, agreement was reached based on the insertion of conditions 13 and 14 for RC06019/01; the insertion of General condition 16.8 and the attachment of a new Annexure F. In a Minute dated 14 June 2010 the court indicated it was not satisfied with the use of the word *point* in condition 14 (or 16(b) as it then was) and asked for the parties' response. No response has been received and so the court has amended the wording so that the word *time* is used, which it considers more appropriate. Otherwise the court accepted the changes proposed by the memorandum and these are included in the conditions attached to this decision.

### **Joint memorandum dated 13 December 2010**

[13] The court has read and considered the further amendments proposed by the West Coast Fish and Game Council, TrustPower Limited and the West Coast Regional Council.

[14] We are agreed that the further amendments are in keeping with the spirit and intent of the court's substantive decision and so will make the changes as sought.

### **Outcome**

[15] The final version of the General and Specific conditions for

resource consents RC06019/1-RC06019/57, concerning the hydro electric power station on the Arnold River, is attached as Appendix A and forms part of this decision.

[16] I will reserve the question of costs, although applications are not encouraged.

For the Court:

**J E Borthwick**

**Environment Judge**

arnold river final

[1] RC06019/1-RC06019/57. [2] [2010] NZEnvC199, order A. [3] Minute to the parties, dated 14 June 2010.

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