
ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED
(“Settlor”)

JOHN MURRAY NEILSON

GERRY CLOSS

JOHN JILLET

DANIEL RAE

IAN COLE

(“Trustees”)

CLUTHA FISHERIES TRUST

[This is not the signed Trust Deed. It is merely a document
showing the original Trust Deed and all the
subsequent variations]

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PARTICULARS

Definitions

In this Trust Deed.

- A. "Sports fisheries" is a population of sports fish subject to exploitation for recreational purposes.
- B. "Sports fish" shall have the meaning defined in section 2 of the Conservation Act 1987.
- C. "Conservation" means the preservation and protection of natural resources for the purposes of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.
- D. "Natural resources" means
 - i. plants and animals of all kinds; and
 - ii. the air, water and soil in or on which any plant or animal lives or may live; and
 - iii. landscape and land form; and
 - iv. geographical features; and
 - v. systems of interacting living organisms, and their environment.
- E. "Preservation" in relation to a natural resource means the maintenance, so far as is practicable, of its intrinsic values.
- F. "Protection" in relation to a natural resource means its maintenance, so far as is practicable, in its current state, but includes its restoration to some former state and its augmentation, enhancement or expansion.

1. **THE TRUST NAME**

CLUTHA FISHERIES TRUST

2. **THE TRUST DATE**

9 April 1992

3. **THE SETTLOR**

ELECTRICITY CORPORATION OF NEW ZEALAND LIMITED, a duly incorporated company having its registered office at Wellington

4. **THE TRUSTEES**

ROBERT MONTGOMERY McDOWALL the nominee of the Minister of Fisheries.

JOHN MURRAY NEILSON the nominee of the Minister of Conservation

JOHN JILLET the nominee of the New Zealand Fish & Game Council

DANIEL RAE) the two nominees of the Otago
IAN COLE) Fish & Game Council

BACKGROUND

1. Under the Clutha Development (Clyde Dam) Empowering Act 1982 the Minister of Energy was required as a condition to the granting of a water right to provide a sports fish hatchery for the purposes of re-establishing and maintaining stocks of sports fish in the lake above Cromwell and in the river reach below the Dam.
2. The Settlor assumed responsibility for providing the sports fish hatchery pursuant to section 3(3) of the Electricity Operators Act 1987.
3. The Settlor has agreed with all the organisations referred to in clause 6.3 of this, Trust Deed being organisations having an interest in the statutory management of fisheries in the Clutha area that the best way for the Settlor to discharge its obligation under the Clutha Development (Clyde Dam) Empowering Act 1982 is to form and fund this Trust.
4. The Resource Management Act 1991 has:
 - (i) repealed the Clutha Development (Clyde Dam) Empowering Act 1982 (section 361(1));
 - (ii) deemed the rights granted by the Clutha Development (Clyde Dam) Empowering Act 1982 to be water permits or discharge permits under the Resource Management Act upon the same terms and conditions (section 386(1));
 - (iii) provided for the change or cancellation of any condition to a water permit or discharge permit (section 127).

1.0 THE TRUST

1.1 Date

This Deed of Trust is made on the trust date between the Settlor and the Trustees.

1.2 Definition

The terms defined or details given in the particulars shall have that meaning throughout this Deed of Trust.

1.3 Initial Amount Settled

The Settlor wishes to create a trust ("**the Trust**") and has paid to the Trustees the sum of ten dollars (\$10.00) to constitute the Trust Fund.

2.0 TRUST FUND

2.1 Receipt

The Trustees acknowledge receipt of the sum of ten dollars (\$10.00) paid by the Settlor.

2.2 Declaration of Trust

The Trustees declare that they hold the sum of ten dollars (\$ 10.00) together with all other property and investments which may be added to it by way of capital or income ("**the Trust Fund**") upon the trusts set out in this Trust Deed.

3.0 OBJECT OF TRUST

3.1 The Settlor directs and the Trustees declare that the Trustees hold the Trust Fund upon the following trust.

3.2 To establish, maintain and enhance primarily the sports fisheries values and secondarily the conservation values of the waters of the Clutha Catchment for the benefit of the people of New Zealand in recognition of the effects of the Clyde Dam development.

4.0 NAME OF TRUST

4.1 The name of the Trust shall be the **CLUTHA FISHERIES TRUST.**

5.0 INCORPORATION

5.1 The Trustees shall as soon as practicable apply for incorporation of the trustees as a board under the Charitable Trusts Act 1957.

6.0 TRUSTEES

6.1 There shall at all times be not less than three or more than seven Trustees.

6.2 The Trustees shall hold office until they resign, die, become incapable of performing their duties, or their nomination is withdrawn in accordance with clause 6.8.

6.3 The following bodies together with such bodies as shall at any time have the right to nominate a Trustee under clause 6.10, shall have the right to nominate one Trustee:

Minister of Fisheries (one Trustee)

Minister of Conservation (one Trustee)

New Zealand Fish and Game Council (one Trustee)

6.4 The Otago Fish & Game Council shall have the right to nominate two Trustees.

6.5 The bodies specified in clauses 6.3 and 6.4 shall be known in this Trust Deed as the “nominating bodies”.

6.6 In selecting a Trustee or Trustees as the case may be each nominating body shall have regard to that person's knowledge, experience and understanding of sports fisheries management and of local conditions and issues in the Lake Dunstan and the Clutha Catchment areas.

6.7 The persons who have executed this Deed as Trustees shall be deemed to have been nominated by the above nominating bodies to be the first Trustees.

- 6.8 Each nominating body may at any time by notice in writing to the other Trustees withdraw the nomination of any Trustee it has nominated and nominate another person to be a Trustee.
- 6.9 If any of the nominating bodies listed in clauses 6.3 or 6.4 or nominated under clause 6.10 shall cease to exist or cease to have any interest in fisheries and conservation in the Clutha Catchment and in the event of legislative change removing the Minister of Fisheries, the Minister of Conservation, the Otago Fish & Game Council and the New Zealand Fish & Game Council, then the right to nominate a Trustee shall pass to the person or body who succeeds to their assets, duties and responsibilities pursuant to that legislative change.
- 6.10 The Trustees shall have the power to appoint for any reason they see fit another nominating body which shall have the power also to nominate a Trustee in the, same manner as if it had been listed in clauses 6.3 or 6.4.

7.0 FUNDING

- 7.1 The Settlor covenants that within thirty (30) days of it receiving notice that its obligation to provide a fish hatchery under condition 15 of Part 1 of the schedule to the Clutha Development (Clyde Dam) Empowering Act 1982 (now deemed to be a water permit under the Resource Management Act 1991, pursuant to sections 365 and 386 of that Act) has been removed or varied on terms satisfactory to the Settlor then the Settlor will increase the Trust Fund by payment to the Trustees of the **sum** of \$2.7 million.

8.0 CRITERIA AND PROGRAMME

- 8.1 The Trustees shall be bound to observe the object of the Trust set out in clause 3.0 and in furtherance of that object shall observe the criteria and programme set out in the schedule attached to this Trust Deed.
- 8.2 Until the investigation stage of the programme as described in clause 2(a) of the schedule has been completed and firm answers formulated to the questions set out the Trustees shall have the power to spend in furtherance of the object of this Trust only part of the Trust Fund and shall preserve sufficient capital of the Trust Fund to ensure it retains the financial resources required to build a sports fish hatchery as originally required by the Clutha Development (Clyde Dam) Empowering Act 1982.

9.0 ANNUAL REPORT

- 9.1 The financial year for the Trust shall end on 31 August in each year.
- 9.2 The Trustees shall within three months of the end of each financial year publish an Annual Report and Financial Statement giving details of the operations and activities of the Trust during the financial year, complete audited financial statements in accordance with accepted accounting standards, details of proposals and policies for the future operation of the Trust and such other matters as the Trustees may determine.
- 9.3 Copies of the Annual Report and Financial Statements shall as soon as they are published be forwarded to each of the nominated organisations and to the Settlor and shall be made available to any other person or organisation requesting one free of charge or at a fee which shall not exceed the reasonable printing and distribution cost of each Report and Financial Statement.

10. VARIATION OF TRUST

- 10.1 The terms of this Trust Deed (including the schedule) may be varied only by the Trustees providing they first obtain the written consent of the Otago Regional Council or such other body as shall have the right to grant water rights for the Clutha River and provided that such alteration does not result in the Trust ceasing to be operated for the benefit of the people of New Zealand.
- 10.2 No alteration to the terms of this Trust Deed shall be allowed which affects clause 11 (winding up of Trust) or clause 12 (personal pecuniary profit) without the approval of the Inland Revenue Department.

11. WINDING UP OF TRUST

- 11.1 The Trustees shall have the power to wind up the Trust can no longer make a worthwhile contribution to the object of the Trust as set out in this Trust Deed and that it would be in the interests of the people of New Zealand that the Trust be wound up.
- 11.2 In the event of the Trust being wound up by the Trustees the Trustees shall apply to the High Court for consent to establish a new Trust pursuant to part 111 of the Charitable Trusts Act 1957.

- 11.3 If the High Court does not give its consent to establish a new Trust pursuant to part 111 of the Charitable Trusts Act 1957, the Trustees agree that all surplus assets shall be disposed of as the High Court, acting pursuant to section 27 of the Charitable Trusts Act 1957, shall direct.

1.0 TRUSTEES POWERS

- 12.1 To enable the Trustees to fulfil the objects of this Trust the Trustees shall have all the powers of a natural person, including the power to expend part or all of the capital and income of the Trust in accordance with the provisions of this Deed.

13.0 PERSONAL PECUNIARY PROFIT

- 13.1 Any income, benefit or advantage shall be applied to the purposes of the Trust.
- 13.2 No Trustee or person associated with a Trustee of the Trust shall derive any income, benefit or advantage from the Trust where they can materially influence the payment of the income, benefit or advantage.

Except where that income, benefit or advantage is derived from:

- (a) Professional services to the Trust rendered in the course of business charged at no greater rate than current market rates; or
 - (b) Interest on money lent at no greater rate than current market rates.
- 13.3 The provisions and effect of this clause shall not be removed from this Trust Deed and shall be included and implied into any document replacing this Trust Deed.

SCHEDULE

1.0 CRITERIA

The Trustees shall use their best endeavours in Lake Dunstan, its tributaries and the river reach immediately below the Clyde Dam to:

- a. Maintain a sports fishery satisfactory to the Trustees and to the Otago Fish & Game Council or its successors as far as biological limitations will allow.
- b. Maintain sports fish habitat.
- c. Maintain sports fish spawning/rearing opportunities and facilities.
- d. Provide and promote sports fishing opportunities for anglers and associated sporting and recreational users.
- e. Ensure that the benefits gained from its activities bear a reasonable relationship to the cost and effort expended.

The Trustees shall ensure that all their activities comply with the existing law and that where appropriate the consent of the Minister of Conservation is obtained.

2.0 PROGRAMME

The Trustees shall observe the following initial programme:

a. Investigation

The first responsibility of the Trustees shall be to give full consideration to all existing research results and such other research as the Trustees may consider it necessary or worthwhile to carry out, to consult with the Otago Fish & Game Council or its successors and to formulate answers to the following questions:

- i. Do the Trustees, after consultation with the Otago Fish & Game Council or its successors, consider that a satisfactory sports fishery is being maintained in Lake Dunstan and the river reach immediately below the Clyde Dam by natural processes acknowledging the biological constraints on the system?

- ii. If a satisfactory sports fishery is not being maintained by natural processes will additional stocking be effective to increase fish stocks to an adequate level?
- iii. If additional stocking would be effective is the most effective and economic method of achieving this the provision of a sports fish hatchery?
- iv. If a sports fish hatchery is not the most effective and economic method then what is? (The answer to this question shall hereafter be called "**the Trustees preferred alternative method**").

The trustees shall ensure that answers to the above questions are formulated not later than five years after the 1st day of January in the year after filling of Lake Dunstan to its normal operating level is completed.

b. **Implementation**

If the Trustees formulate a negative answer to question (a)(i) and an affirmative answer to question (a)(ii) above they shall then provide a sports fish hatchery or implement the Trustees preferred alternative method whichever is appropriate.

c. **Expansion**

If:

- i. The Trustees formulate an affirmative answer to question (a)(i) above, or a negative answer to question (a)(ii) above or
- ii. There is or will be surplus funds remaining after providing a sports fish hatchery or the implementation of the Trustees preferred alternative method then;

The trustees may apply the Trust Fund to the wider aspects of the object of the Trust as set out in clause 3.0 having particular regard to such matters as:

- Mitigating upstream and downstream effects of hydro electric development.
- Expanding the geographical focus from the Lake Dunstan area to other parts of the Clutha Catchment.

- Fisheries and conservation purposes over and above the normal sports fisheries and conservation management responsibilities of other organisations.
- Consult with organisations responsible for sports and recreational fisheries and conservation in the Clutha Catchment.

In no circumstances will the Trustees apply the Trust Fund to the wider aspects until the investigation stage described in paragraph (a) above has been fully completed.