



The sustainability façade: An analysis of the Ruataniwha dam debate

James RANSTEAD

BSc (Conservation & Ecology), Lincoln University, New Zealand

1. INTRODUCTION

The Ruataniwha dam is a pivotal issue in New Zealand's freshwater debate. First proposed in 2011, the dam encouraged a shift to more water intensive, more economical forms of agriculture, particularly dairy farming. It would provide greater farm revenue and stability, work towards the Ministry for Primary Industries target of doubling dairy exports by 2025, whilst also alleviating the Hawkes Bay region's declining numbers of youth, low employment and increasing crime rates through providing an estimated 3500 new jobs. These stated benefits occurred alongside controversy that fed the national freshwater debate; a shift from low intensity land-use to high intensity dairy farming, forming mono-cultural landscapes, and eroding New Zealand's highly regarded environmental integrity, primarily water quality. This debate was further complicated and contested through a land-swap plan between conservation and private land, which led to environmental lobby group Forest and Bird taking the development company to court and winning, soon followed by the government stating its intention to over-ride the court's decision and change the law.

This paper argues that the Ruataniwha dam highlights three emerging tensions in New Zealand environmental policy. First, the Ruataniwha dam brings into focus competing ideas of how the environment is valued in New Zealand, with friction between the two conflicting ideas of the environment being seen as an exchangeable good, or containing

more inherent value. Second, the debate is a potential marker of public rejection of dairy development at the expense of the environment, especially freshwater. Third, the intention of the National-led Government to over-rule the land-swap law threatens to set a dangerous precedent for future cases by driving the government agenda at the expense of public democracy.

2. ENVIRONMENT, SOCIETY AND CULTURE AT THE EXPENSE OF THE ECONOMY

The Ruataniwha dam as an issue has emerged alongside the freshwater debate in New Zealand. A 69 percent national rise in dairy cows since 1992 has contributed to increases in nitrate, phosphate, sediment and microbes in freshwater, which has contributed to a loss of childhood swimming holes, a reduction in freshwater organism diversity, and algal blooms (Cullen et al., 2006; Warne, 2017). Recognition of declining water quality and quantity has been growing throughout New Zealand in recent years, and public coordination and cooperation largely began in 2002 through Fish and Game's dirty dairying campaign and continued through other groups such as Greenpeace and Forest & Bird. (Cullen, 2006; Warne, 2017). Water quality and quantity is now regarded as New Zealand's number one environmental issue. It is this debate that has drawn so much attention to the Ruataniwha dam (Warne, 2017).

The Ruataniwha dam was a project to enable further expansion of dairy and is typical of nation-wide patterns; private benefit through agricultural economic gain at the

expense of degradation to the public good, being water. The Ruataniwha dam issue is ongoing in the midst of thick freshwater debate, spurred on by its sheer scale (the largest on-river dam since Prime Minister Robert Muldoon's Think Big Clyde Dam scheme of 1992), and the conservation land-swap/rule of law dilemma¹, creating a larger pool of concerned individuals (Macfie, 2016).

The council decision for the Ruataniwha dam not to go ahead is a potential first example of public rejection towards dairy expansion. Although there was initially considerable local support for the scheme due to the benefits provided above, there has been a gradual loss of support from influential parties, and active opposition from locals. Three years of resource consent analysis, with significant pressure from opposition groups, led to stricter land management and nitrogen and phosphorus conditions being imposed, somewhat easing the concerns of environmental groups, though demanding more costly on-farm practices (Carson, 2017, July 15; Hawkes Bay Regional Investment Company, 2013, March 6). However, opponents considered these restrictions to be inadequate.

Local iwi also became opposed to the dam through a lack of consultation, concerns about the environmental impacts, and questionable economic and social outcomes. Investors such as Ngāi Tahu pulled out due to its arguable economic benefits, and sources of funding are now being shifted to ratepayers and ACC (R. Norman, personal communication, August 16, 2017). Furthermore, Hawkes Bay regional councillors voted unanimously in opposition to the scheme due to mounting financial pressures, due in part to environmental obligations (Hawkes Bay Today, 2016; Lyon & Brackebush, 2017).

¹ The rule of law is the principle that people and institutions are subject to a fairly enforced law. It is therefore a rule of law dilemma that the National Government intended to change the law regarding conservation land-swaps after it lost the legal battle against Forest & Bird.

3. SQUEEZING THE ENVIRONMENT INTO THE ECONOMY

The Ruataniwha dam also brings to light a debate about how the environment is valued: whether conservation land can be considered an economically calculable exchangeable good, or an entity possessing inherent value worth protecting in its own right (Dryzek 1997). The National-led Government advocated for the former, which conflicts with growing consideration for the Māori world view, and a strong environmental ethic and attachment to park boundaries, which contributes to the latter.

Initial consent for the Ruataniwha dam was granted in 2010, allowing the Hawkes Bay Regional Investment Company² to apply for a land-swap, allowing current conservation land to become private land able to be flooded, and vice versa in exchange. This land swap was described as a 'net gain for conservation' by the Director-General of Conservation Lou Sanson, and the (then) Conservation Minister Maggie Barry (Carson, 2017, July 15). A 22 hectare riparian portion of the land that was to be flooded was part of the Ruahine Forest Park, and the developer, Hawkes Bay Regional Investment Company, applied to swap this with a nearby 170 hectare portion of private farmland (Warne, 2017). The Ruahine land has rare oxbow wetlands and already contains threatened and at-risk native plants, birds, lizards and bats, including iconic species such as the long-tailed bat and the New Zealand falcon. The 170ha of private land in exchange contains small segments of forest and wetlands, different underlying geology, and significant potential to provide more value once the farmland is retired (Warne, 2017).

This debate over conservation land being an economically calculable, tradeable entity and possessing inherent value is at the heart of many environmental policy arguments. Placing a 'value' on conservation land is a difficult task, going beyond monetary terms and looking at

² The Hawkes Bay Regional Investment Company is a council controlled organisation (CCO) that is set up to manage some of the Hawkes Bay Regional Council's larger infrastructure investments around the region

non-use values, such as intrinsic values (Warne, 2017). Biodiversity offsets are proliferating globally as a method of weak sustainable development, risking a mis-match in biodiversity value, often exacerbated by poor compliance, poor ecological outcomes, and a lack of in-depth exchange analysis (Brown & Penelope, 2016).

In New Zealand, there have previously been other land-swaps, which the former Minister for Conservation Maggie Barry has argued have been successful (Leslie, 2017; Warne, 2017). However, like the Ruataniwha case, these land-swaps have been of questionable ecological value. For example, the nearby Waikatea station farm development saw a conflict between DOC and landowners over land swap options, and the final agreement saw a net loss in biodiversity according to DOC, but a net gain according to the land owner and the courts (Norton, 2009). Cases like the Waikatea station and the Ruataniwha dam suggest that land swaps form more of a tokenistic front that expounds the importance of environmental values, but which in practice are overridden when development interests are threatened.

The Ruataniwha dam case has created an interesting legal precedent in New Zealand about the inherent value of conservation land. Forest and Bird filed a judicial review in the High Court challenging the Ruataniwha land-swap on the basis that only stewardship land can undergo land-swaps under the Conservation Act 1987 (Carson, 2017, July 15; Warne 2017). Although initial rulings considered the transfer to be within the broader purpose of the Conservation Act 1987, Forest and Bird appealed this decision and won (Warne, 2017). As the Court of Appeal said, 'designation [of non-stewardship conservation land] could only be revoked if its intrinsic values had been detrimentally affected such that it did not justify continued preservation and protection' (Warne, 2017). This decision was then appealed by the Government in the Supreme Court in February 2017, but they lost the case (Carson, 2017, July 15). The Supreme Court's 85-page decision made clear that the 22 hectares of Ruahine Forest Park land and the nearby 170 ha to be exchanged could be

considered to have even conservation value (Warne, 2017). However, they considered the Court of Appeal's ruling to be right; that specially protected conservation land cannot have its status revoked, even if it is for an exchange that enhances overall conservation value (Warne, 2017).

4. A LAW-CHANGE DILEMMA

Unlike most other developed nations, New Zealand's parliament is always supreme, and can override a court's decision. Following the Supreme Court's ruling, the National-led Government signalled its intent to over-rule the legal decision against the land-swap. The Conservation Minister and Prime Minister pursued a law change to allow, what is in their eyes, a trade-up from lower value to higher value conservation land (Warne, 2017).

The law change announcement is reminiscent of the Foreshore and Seabed Act 2004, which created public upheaval and arguably tarnished the then Labour-led Government's reputation (Hickford, 2017). Ownership and access to the coast and beaches came into focus in the early 2000's when the Court of Appeal overturned a case that ruled that Māori customary interest in the foreshore was lost when the once adjoining dry land had been purchased by the Crown (Hickford, 2017). Claims that Māori could potentially 'own' the beaches contributed to hostility amongst some sectors of society, and the Labour Government undermined the court's ruling through passing the Foreshore and Seabed Act 2004, declaring the land in question to be owned by the Crown, though allowing Māori to have guardianship over many areas (Hickford, 2017). The Foreshore and Seabed Act remains a controversial piece of legislation that saw relentless protests and drastic polling changes, and displays the impact of imposing legislation over a court's ruling of a contentious issue (Hickford, 2017).

In the case of the Ruataniwha dam, the controversy now surrounding the scheme is seriously putting its feasibility into question, even if the law is changed (R. Norman, personal communication, August 16, 2017). From the point of view of the National-led Government, enhancing flexibility improves

overall land use efficiency, but to the opposition, it creates a lack of certainty that grants greater ability to developers and government interests (Warne, 2017). Sir Geoffrey Palmer has argued that the law change would be ‘deeply offensive to the rule of law and a constitutional outrage’, questioning the point of the prior long-winded argument, when the court’s decision can be over-ruled by the executive (Palmer, 2017).

Moreover, public buy-in has been seriously undermined. Changing the law would be a blunt and centralised means of outweighing society’s voice, but would not lead to support for the project. The current majority of residents in the Hawkes Bay region are thought to oppose the dam, as do a vast number of New Zealanders through the freshwater and conservation land swap debates, an issue that crosses cultural boundaries (Carson, 2017). Complex issues like the Ruataniwha dam demand new approaches that can enable cooperation, genuine participation and understanding across multiple perspectives (Dryzek, 1997; Carson, 2017).

5. CONCLUSION

The Ruataniwha scheme has been highlighted as a pivotal turning point in the freshwater debate in New Zealand, thought to be the first case to meet the threshold for public rejection of dairy development at the expense of the environment. Tension between seeing the environment as an exchangeable good or containing more inherent value is also present, as shown with the conservation land-swap dilemma. Finally, the integrity of the rule of law is brought into question, and it is confirmed that a law change would set a dangerous precedent for other cases in the future.

The Ruataniwha dam has garnered significant attention as a symbol of the 2008 – 2017 National-led Government’s push for large-scale irrigation and the debate about freshwater quality in New Zealand. It developed into a conflict of its own; whilst offering development to a region in social and economic turmoil, it also threatened to contribute to the declining water quality of the region and the country. The discussion around

the dam has also brought into focus how the environment is valued in New Zealand, either as an economically calculable entity or as possessing inherent value. A building freshwater debate has highlighted the Ruataniwha as potential first evidence of society finding their limit of tolerance of dairy expansion. A conservation land-swap law is currently blocking project development, and the National-led Government’s intention to over-ride this with a law change put their commitment to representing the New Zealand voice into question. These challenges suggest that a sustainability façade has been placed on the Ruataniwha debate, involving inadequate consultation and collaboration, a failure to address societal perspectives, and a funnelling of the environment, society and cultural aspects into an agenda aiming for economic progression.

6. REFERENCES

- Brown, M. A., & Penelope, J. (2016). *Biodiversity Offsets in New Zealand addressing the risks and maximising the benefits*. *Policy Quarterly*, 12, pp.35 – 41
- Bengston, D. N. (1994). *Changing forest values and ecosystem management*. *Society & Natural resources*, 7(6), 515-533
- Carson, J. (2017). *Fighting for nature*. *The Nelson Mail*, p. 13. Retrieved from <http://www.knowledge-basket.co.nz/databases/newztext-uni/search-newztext/view/?sid=1743713&d5=fairfax/text/2017/07/15/00131130939088-BO.html>
- Charlton, C. (2012). *Benefits of dam project under scrutiny*. *Hawkes Bay Today*. Retrieved from http://www.nzherald.co.nz/hawkes-bay-today/news/article.cfm?c_id=1503462&objectid=11068491
- Cohen, S. (2014). *Understanding Environmental Policy*. New York: Columbia University Press.
- Cullen, R., Hughey, K., & Kerr, G. (2006). *New Zealand freshwater management and agricultural impacts*. *Agricultural and*

- Resource Economics*, 50(3), pp.327-346
- Dryzek, J. S. (1997). *The politics of the Earth*. Oxford: Oxford University Press
- Dryzek, J. S., & Schlosberg, D. (2005). *Debating the earth*. United States: Oxford University Press
- Fowler, P. (2015). No investor yet for Ruataniwha dam. Radio New Zealand Newswire. Retrieved from <http://www.knowledge-basket.co.nz/databases/newztext-uni/search-newztext/view/?sid=1719564&d23=rnz/text/2016/01/19/b730e18.html>
- Hawkes Bay Regional Investment Company. (2013, March 6). Ruataniwha water scheme stepping up. Retrieved from: <http://www.scoop.co.nz/stories/BU1303/S00236/ruataniwha-water-scheme-stepping-up.htm>
- Hickford, M. (2017). Law of the foreshore and seabed. Retrieved from <https://www.teara.govt.nz/en/law-of-the-foreshore-and-seabed/page-4%20%20->
- Leslie, D. (2017). DOC 'know what they're doing' on land swaps - Minister. Radio New Zealand. Retrieved from <http://www.radionz.co.nz/news/political/334615/doc-know-what-they-re-doing-on-land-swaps-minister>
- Lyon, R. & Brackebush, J. (2017). Council pulls backing for Ruataniwha dam plan. Radio New Zealand. Retrieved from <http://www.radionz.co.nz/news/country/338297/council-pulls-backing-for-ruataniwha-dam-plan>
- Macfie, R. (2016). The Government's Ruataniwha water storage scheme remains dogged by controversy and litigation. Noted. Retrieved from: <http://www.noted.co.nz/currently/environment/the-governments-ruataniwha-water-storage-scheme-remains-dogged-by-controversy-and-litigation/>
- Manning, R., Valliere, R., & Minter, B. (2010). *Values, Ethics, and Attitudes Toward National Forest Management: An Empirical Study*. *Society & Natural resources*, 12(5), pp.421-436
- Memon, P. A., Gleeson, B. J. (1995). Towards a new planning paradigm? Reflections on New Zealand's Resource Management Act. *Environment and Planning B: Planning and Design*, 22(1), pp.109-124
- Norton, D. A. (2009). Biodiversity Offsets: Two New Zealand Case Studies and an Assessment Framework. *Environmental Management*, 43(4), pp.698-706
- Palmer, G. (2017). Land-swap law change would be a 'constitutional outrage'. Retrieved from <http://www.radionz.co.nz/news/on-the-inside/334661/land-swap-law-change-would-be-a-constitutional-outrage>
- Warne, K. (2017). Troubled waters. Retrieved from <https://www.nzgeo.com/stories/troubled-waters/>